

## **SETTLEMENT AGREEMENT AND LIMITED MUTUAL RELEASE**

This SETTLEMENT AGREEMENT AND LIMITED MUTUAL RELEASE (this “**Settlement Agreement**”), dated as of January 5, 2009, is by and between Enron Creditors Recovery Corp. (f/k/a Enron Corp.), an Oregon corporation (“**Enron**”), and Goldman, Sachs & Co. (“**Goldman Sachs**”), a New York limited partnership. Enron and Goldman Sachs may be referred to hereinafter jointly as the “**Parties**” or individually as a “**Party**.”

### **Recitals**

A. On December 2, 2001, Enron filed a voluntary petition for relief (the “**Bankruptcy Case**”) under chapter 11 of title 11 of the United States Code, as amended (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

B. Prior to December 2, 2001, Enron issued unsecured commercial paper to various investors. Such commercial paper had maturities of up to 270 days (the “**CP**”).

C. In a series of transfers starting on October 26, 2001, and concluding on November 6, 2001, Enron paid over one billion dollars to various holders of CP in respect of the CP prior to the stated maturity date of the CP (the “**CP Transfers**”).

D. By complaints dated November 6, 2003, and later amended (the “**Complaint**” or “**Complaints**”), styled Enron Corp. v. J. P. Morgan Securities Inc., et al., Adversary Proceeding No. 03-92677 (the “**J.P. Morgan Action**”) and Enron Corp. v. Mass Mutual Life Insurance Co., et al., Adversary Proceeding No. 03-92682 (the “**Mass Mutual Action**”) (together the “**Adversary Proceedings**”), Enron commenced litigation against Goldman Sachs and other defendants, asserting claims for the avoidance and recovery of allegedly preferential or constructively fraudulent transfers, and seeking disallowance of defendants’ claims against Enron. On February 14, 2007, Enron filed a Second Amended Complaint (the “**Second Amended Complaint**”) in the J.P. Morgan Action. In the Adversary Proceedings, Enron seeks to recover from Goldman Sachs \$382,835,978.06 plus interest in connection with the CP Transfers identified in paragraphs 137(1), 137(4), 137(17), 137(20), 137(21), 137(22), 137(23), 137(24), 137(25), 137(26), 137(27), 137(28), 137(29), 137(30), 137(31), 137(32), 137(36-1), 137(36-2), 137(36-3), 137(36-4), 137(36-5), 137(36-6), 137(36-7), 137(44), 137(45), 137(46), 137(48), 137(49), 137(50), 137(51), 137(53), 137(54), 137(59), 137(60), 137(61), 137(62), 137(63), 137(64), 137(65), 137(66) and 137(68) of the Second Amended Complaint and in paragraphs 98(b), 98(c), 98(d), 98(e), 98(f), 98(g), 98(h), 98(i), 98(j), 98(k), 98(r), and 98(s) of the Amended Complaint in the Mass Mutual Action, and to disallow any claims of Goldman Sachs against Enron. Enron no longer intends to pursue claims against Goldman Sachs in connection with the CP Transfers, including those identified in this Recital D.

E. On February 19, 2004, Goldman Sachs moved to dismiss the Complaints in the Adversary Proceedings. Enron opposed the motions to dismiss, and the motions to dismiss were denied by the Bankruptcy Court.

F. On August 1, 2005, Goldman Sachs filed answers in the Adversary Proceedings denying the material allegations of the Complaints and asserting various affirmative defenses thereto.

G. On August 1, 2005, Goldman Sachs moved for leave to appeal the denial of its motions to dismiss. Enron opposed the motions for leave to appeal on August 31, 2005. The motions for leave to appeal were denied by the district court.

H. On April 29, 2008, Goldman Sachs moved for summary judgment. Enron opposed the motion for summary judgment on June 27, 2008. Goldman Sachs filed its reply on July 28, 2008. The motion for summary judgment is currently pending.

I. Enron's claims for the avoidance and recovery of allegedly preferential or fraudulent transfers from Goldman Sachs relating to or arising from the CP Transfers, including without limitations, claims in the amount of \$382,835,978.06 in connection with the CP Transfers identified in paragraphs 137(1), 137(4), 137(17), 137(20), 137(21), 137(22), 137(23), 137(24), 137(25), 137(26), 137(27), 137(28), 137(29), 137(30), 137(31), 137(32), 137(36-1), 137(36-2), 137(36-3), 137(36-4), 137(36-5), 137(36-6), 137(36-7), 137(44), 137(45), 137(46), 137(48), 137(49), 137(50), 137(51), 137(53), 137(54), 137(59), 137(60), 137(61), 137(62), 137(63), 137(64), 137(65), 137(66) and 137(68) of the Second Amended Complaint and in paragraphs 98(b), 98(c), 98(d), 98(e), 98(f), 98(g), 98(h), 98(i), 98(j), 98(k), 98(r), and 98(s) of the Amended Complaint in the Mass Mutual Action are referred collectively to herein as the "**CP Settled Claims.**"

J. Enron and Goldman Sachs now desire to settle amicably all matters between them relating to the CP Settled Claims on the terms provided herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I CONSIDERATION**

### **Section 1.1. Settlement Payment and Waiver of Section 502(h) of the Bankruptcy Code.**

(a) As consideration for Enron's release and settlement of the CP Settled Claims, Goldman Sachs shall pay to Enron as otherwise set forth herein the total sum of six million nine hundred fifty thousand dollars (\$6,950,000.00) (the "**Settlement Payment**"), and Goldman Sachs shall forfeit, waive and release any claim pursuant to 11 U.S.C. § 502(h) against Enron based upon the Settlement Payment. The Parties agree that the Settlement Payment shall be allocated to the CP Settled Claims arising out of Goldman Sachs' involvement in the CP Transfers identified in paragraphs 137(1) and 137(4) of the Second Amended Complaint. Enron reserves all rights, claims and defenses against the other defendants in the Adversary Proceedings.

(b) Payment of the Settlement Payment shall be made on the day (the "**Settlement Payment Date**") that is the fifth Business Day following the Bankruptcy Court Approval Date (as defined in Section 4.1(b) below). Counsel for Enron will send telecopy notice of the occurrence of the Bankruptcy Court Approval Date to Goldman Sachs at the addresses in Section 5.1 below promptly upon the occurrence thereof. Payment of the Settlement Payment shall be (i) made in full, in one lump sum payment, without setoff, recoupment, counterclaim or reduction of any kind and (ii) made by wire transfer in immediately available United States funds to the following account designated by Enron:

JPMorgan Chase Bank  
270 Park Avenue  
New York, NY 10017  
ABA: 021000021  
Credit: Enron Estate Collections  
Acct: 304-194077  
Ref: Goldman Sachs

(c) For purposes of this Settlement Agreement, the term "**Business Day**" shall mean any day other than Saturday or Sunday or any other day on which banks in New York City, New York, are required to close.

**Section 1.2. Interest Rate.** Interest, if any, shall accrue on any overdue portion of the Settlement Payment from the day after the Settlement Payment Date until the date of receipt thereof by Enron at a rate equal to the lesser of (a) a rate per annum equal to the Prime Rate published in The Wall Street Journal from time to time, and which is defined as the "base rate on corporate loans at large money center commercial banks," plus three percent (3%) or (b) the maximum non-usurious rate under Applicable Law (as defined in Section 2.2(b) below).

## ARTICLE II LIMITED MUTUAL RELEASE AND WAIVER

**Section 2.1. Limited Mutual Release.** Effective upon Enron's receipt of full payment of the Settlement Payment as contemplated in Section 1.1 above plus any interest owing thereon (the "**Release Effective Date**"), the Parties agree:

(a) Subject to Section 2.3 below, Enron, for itself, its successors and assigns, hereby waives, releases and forever discharges Goldman Sachs and its Affiliates and each of their past, present, and future officers, directors, partners, members, employees, agents, and servants from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, character and description, whether in law or equity, whether sounding in tort, contract or under other Applicable Law, as defined in Section 2.2 below, whether known or unknown, and whether anticipated or unanticipated, of or to Enron, which Enron and its successors and assigns ever had, now have or may ever have, arising from any event, transaction, matter, circumstance or fact in any way arising out of, arising as a result of, related to, with respect to or in connection with or based in whole or in part on the CP, the CP Transfers, the CP Settled Claims and any other facts or allegations alleged in or that could have been alleged in the Adversary Proceedings (such claims, obligations, demands, actions, causes of

action and liabilities referred to herein collectively as “**Enron Released Claims**”); provided, however, that Enron does not hereby waive, release or discharge Goldman Sachs from any of its obligations under this Settlement Agreement.

(b) Subject to Section 2.3 below, Goldman Sachs, for itself, its successors and assigns, hereby waives, releases and forever discharges Enron and its Affiliates and each of their past, present and future officers, directors, partners, members, employees, agents, and servants from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, character and description, whether in law or equity, whether sounding in tort, contract or under other Applicable Law, as defined in Section 2.2 below, whether known or unknown, and whether anticipated or unanticipated, of or to Goldman Sachs, which Goldman Sachs and its successors and assigns ever had, now have or may ever have, arising from any event, transaction, matter, circumstance or fact in any way arising out of, arising as a result of, related to, with respect to or in connection with or based in whole or in part on the CP, the CP Transfers, the CP Settled Claims and any other facts or allegations alleged in or that could have been alleged in the Adversary Proceedings (such claims, obligations, demands, actions, causes of action and liabilities referred to herein collectively as “**Goldman Sachs Released Claims**” and, together with the Enron Released Claims, as “**Released Claims**”); provided, however, that Goldman Sachs does not hereby waive, release or discharge Enron from any of its obligations under this Settlement Agreement.

(c) The consequences of the foregoing waiver provisions have been explained by each of the Parties’ respective counsel. Each of the Parties acknowledges that it may hereafter discover facts different from, or in addition to, those it now knows or believes to be true with respect to the Released Claims, and agrees that this Settlement Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof.

(d) To the extent Applicable Law would not otherwise recognize the provisions of subsections (a) and (b) of this Section 2.1 as constituting a full and final release applying to all unknown and unanticipated Released Claims, as well as those now known or disclosed, the Parties hereby expressly waive all rights or benefits which either one or both of them may have now or in the future under any such Applicable Law.

## **Section 2.2. Defined Terms.**

For purposes of this Settlement Agreement, the following terms shall have the following meanings:

(a) “Affiliate” shall mean a Person directly or indirectly controlled by, controlling or under common control with the other Person. For the purposes of this definition, “control” means, when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

(b) “Applicable Law” shall mean any statute, law, rule or regulation or any judgment, order, consent order, stipulated agreement, ordinance, writ, injunction or decree of any Governmental Entity.

(c) “Governmental Entity” shall mean any domestic or foreign court or tribunal in any domestic or foreign jurisdiction or any federal, state, municipal or local government or other governmental body, agency, authority, district, department, commission, board, bureau, or other instrumentality, arbitrator or arbitral body (domestic or foreign), including any joint action agency, public power authority, public utility district, or other similar political subdivision.

(d) “Person” shall mean any individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organization, Governmental Entity or other entity.

(e) “Final” shall mean as to the Bankruptcy Court Order (as defined in Section 4.1(b) below), that the Bankruptcy Court Order has been entered by the Bankruptcy Court and (i) that the time to appeal or petition for certiorari has expired and no timely appeal or petition for certiorari shall then be pending, or (ii) if a timely appeal or writ of certiorari has been sought, that the Bankruptcy Court Order shall have been affirmed by the highest court to which such Bankruptcy Court Order was appealed, or certiorari shall have been denied or reargument or rehearing on remand shall have been denied or resulted in no material modification of such Bankruptcy Court Order, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or other rules governing procedure in cases before the Bankruptcy Court may be filed with respect to such Bankruptcy Court Order shall not cause such Bankruptcy Court Order not to be Final.

### **Section 2.3. Limitation of Mutual Release.**

The Parties hereby acknowledge and agree that the provisions of Section 2.1 above and the releases provided for therein shall be solely applicable to the Released Claims. The provisions of Section 2.1 above shall not be interpreted as, and are not otherwise intended to be, a release of any rights, remedies, claims or obligations either of the Parties or their Affiliates may have against or to any other Party and/or any Affiliates of any other Party arising out of, related to or in connection with any contracts, agreements, actions, conduct or other matters, other than those rights, remedies, claims or obligations related to the Released Claims.

### **Section 2.4. Bar Order.**

The effectiveness of the Settlement set forth herein is conditioned upon, among other things, the Bankruptcy Court Approval of the Bankruptcy Court Order in substantially the same form as Exhibit A annexed hereto, providing, inter alia, that each and every Person (including, but not limited to, the Parties to this Settlement Agreement, all other Defendants and/or former Defendants in the Adversary Proceedings) is permanently enjoined, barred and restrained from instituting, prosecuting, pursuing or litigating in any manner any claim or action

for contribution or indemnity (however denominated) against Goldman Sachs based upon liability or responsibility, or asserted or potential liability or responsibility, either directly or indirectly of any Person arising from or related to the claims, acts, facts, transactions, occurrences, statements or omissions that are, could have been or may be alleged in the Adversary Proceedings, or any other action brought or that might be brought (whether arising under federal, state or foreign law, and regardless of where asserted) based upon, arising from, or related to the Adversary Proceedings, the CP, the CP Transfers, the CP Settled Claims, the Released Claims or any transfer underlying any Released Claim.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

#### **Section 3.1. Due Organization, Standing and Authority.**

(a) Goldman Sachs is a New York limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation. Goldman Sachs has all necessary power and authority to execute, deliver and perform its obligations under this Settlement Agreement as contemplated by its formation agreements, by-laws, or other charter, organizational or governing documents (the *“Goldman Sachs Governing Documents”*);

(b) Enron is an Oregon corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation. Enron is a Reorganized Debtor, and as such pursuant to the Enron Joint Plan of Reorganization, Enron’s entry into this Settlement Agreement and the delivery of the releases is subject to Bankruptcy Court approval. Subject only to the receipt of Bankruptcy Court approval, Enron has all necessary power and authority to execute, deliver and perform its obligations under this Settlement Agreement as contemplated by its applicable governing documents (the *“Enron Governing Documents”*).

#### **Section 3.2. Authorization and Validity of Agreement.**

(a) Goldman Sachs: The execution, delivery and performance of this Settlement Agreement (a) are within Goldman Sachs’ powers, (b) have been duly authorized by all necessary action on their behalf and all necessary consents or approvals have been obtained and are in full force and effect and (c) do not violate any of the terms and conditions of (i) the Goldman Sachs Governing Documents, (ii) any Applicable Law, or (iii) any contracts to which they are a party.

(b) Enron: Subject to Bankruptcy Court approval, the execution, delivery and performance of this Settlement Agreement (a) are within Enron’s powers, (b) have been duly authorized by all necessary action on its behalf and all necessary consents or approvals have been obtained and are in full force and effect and (c) do not violate any of the terms and conditions of (i) the Enron Governing Documents, (ii) any Applicable Law, or (iii) any contracts to which it is a party.

## ARTICLE IV BANKRUPTCY COURT APPROVAL

### **Section 4.1. Bankruptcy Court Approval.**

(a) This Settlement Agreement shall be binding on Enron and Goldman Sachs as of the date set forth in the introductory paragraph of this Settlement Agreement, subject to Bankruptcy Court Approval (as defined below); provided, however, that Sections 4.2, 5.4, 5.9 and 5.10 shall be binding and in full force and effect upon the Parties as of the date set forth in the introductory paragraph of this Settlement Agreement.

(b) For purposes of this Settlement Agreement, (i) the term ***“Bankruptcy Court Approval”*** shall mean an order of the Bankruptcy Court, entered after notice and a hearing, approving this Settlement Agreement substantially in the form of Exhibit A attached hereto, authorizing Enron to consummate this Settlement Agreement (the ***“Bankruptcy Court Order”***); and (ii) the term ***“Bankruptcy Court Approval Date”*** shall mean the date upon which the Bankruptcy Court Order becomes Final.

### **Section 4.2. Covenants Concerning Bankruptcy Court Approval.**

Enron shall use commercially reasonable efforts to obtain entry of the Bankruptcy Court Order, and Goldman Sachs shall use commercially reasonable efforts to cooperate with and support Enron's efforts to obtain Bankruptcy Court Approval in all respects and shall take no actions inconsistent therewith. In the event no Bankruptcy Court Approval is granted, this Settlement Agreement shall be deemed to be null and void and no Party shall have any obligations to any other Party arising out of this Settlement Agreement, save and except for the obligations and/or provisions set forth in Sections 5.4 and 5.9 hereof, which provisions are intended to survive the expiration or earlier termination of this Settlement Agreement. The Parties further agree that in the event the Bankruptcy Court does not approve this Settlement Agreement, the Adversary Proceedings shall remain pending. Any objection to any Goldman Sachs claim therein shall remain outstanding and subject to objection by the debtor notwithstanding any time limitation in Article 21.1 or any other provision of the Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code, dated July 2, 2004, and shall not be deemed an allowed claim.

### **Section 4.3. Effect of Bankruptcy Court Order.**

Notwithstanding anything in this Settlement Agreement to the contrary, Goldman Sachs shall have all rights and remedies provided by Applicable Law to enforce Enron's obligations under this Settlement Agreement, provided that Goldman Sachs is performing its obligations hereunder; and Enron shall have all rights and remedies provided by Applicable Law to enforce Goldman Sachs' obligations under this Settlement Agreement, including without limitation, Goldman Sachs' obligation to pay the Settlement Payment, provided that Enron is performing its obligations hereunder.

**Section 4.4. Execution and Filing of Stipulation and Order of Dismissal.**

On the Bankruptcy Court Approval Date, Enron shall instruct and cause its counsel to execute the Stipulation and Order Dismissing Claims Against Goldman Sachs in Commercial Paper Actions substantially in the form of Exhibit B attached hereto (the "*Stipulation of Dismissal*"). The executed Stipulation of Dismissal will be delivered by counsel for Enron to counsel for Goldman Sachs on the Release Effective Date at the address set forth in Section 5.1 below (or to such other Person and address as may be designated by Goldman Sachs to Enron in writing prior to the Release Effective Date), who will be responsible for the final execution of the Stipulation of Dismissal by counsel for Goldman Sachs. Counsel for Goldman Sachs will then file with the Bankruptcy Court the executed Stipulation of Dismissal within two (2) business days of its receipt of the executed Stipulation of Dismissal from Enron.

**Section 4.5. Subpoenas.**

Nothing in this Settlement Agreement precludes Enron from serving, nor allows Goldman Sachs to avoid responding to, a subpoena or subpoenas in connection with the Adversary Proceedings after the Bankruptcy Court Approval Date, except as otherwise provided by Applicable Law.

**ARTICLE V  
MISCELLANEOUS**

**Section 5.1. Notices.**

All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given:

- (a) when personally delivered;
  - (b) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first Business Day thereafter, if transmitted by facsimile or telecopier with confirmation of receipt;
  - (c) when mailed by certified mail, return receipt requested, postage prepaid;
- or
- (d) when sent by overnight courier; in each case, to the following addresses, or to such other addresses as a Party may from time to time specify by notice to the other Party given pursuant hereto.

If to Enron, to:

Enron Creditors Recovery Corp.  
1331 Lamar, Suite 1600  
Houston, TX 77010  
Attention: Daniel J. Lyons, Esq.



Telephone : (713) 853-1648  
Facsimile: (713) 646-5847  
Email: [Dan.Lyons@Enron.com](mailto:Dan.Lyons@Enron.com)

With a copy to:

Richard L. Wasserman, Esq.  
Venable LLP  
750 E. Pratt Street  
Suite 900  
Baltimore, Maryland 21202  
Telephone: (410) 244-7505  
Facsimile: (410) 244-7742  
Email: [rlwasserman@venable.com](mailto:rlwasserman@venable.com)

and

Frank A. Oswald, Esq.  
Togut, Segal & Segal LLP One  
Penn Plaza, Suite 3335 New York,  
New York 10119  
Telephone: (212) 594-5000  
Facsimile: (212) 967-4258  
Email: [frankoswald@teamtogut.com](mailto:frankoswald@teamtogut.com)

If to Goldman Sachs, to

Norman Feit, Esq.  
Managing Director  
Goldman, Sachs & Co.  
One New York Plaza  
37th Floor  
New York, NY 10004  
Telephone: (212) 902-7507  
Facsimile: (212) 428-1535  
Email: [norman.feit@gs.com](mailto:norman.feit@gs.com)

With a copy to:

Thomas J. Moloney, Esq.  
Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York NY 10006  
Facsimile: (212) 225-3999  
[tmoloney@cgsh.com](mailto:tmoloney@cgsh.com)

**Section 5.2. Intended Beneficiaries.**

To the extent that this Settlement Agreement inures to the benefit of Persons not signatories hereto as set forth in **Article II**, they shall be deemed to be intended beneficiaries and this Settlement Agreement is hereby declared to be made in and for their respective benefits and uses. No other defendant in the Adversary Proceedings shall be deemed to be an intended beneficiary.

**Section 5.3. Covenant Not to Take Action in Breach of Representations and Warranties.**

The Parties agree not to take any actions that will result, whether directly or indirectly, in the breach of their respective representations, warranties, agreements, covenants or obligations contained in this Settlement Agreement.

**Section 5.4. Governing Law/Jurisdiction.**

THIS SETTLEMENT AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER WILL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD REQUIRE THE APPLICATION OF LAWS OF ANOTHER JURISDICTION. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE BANKRUPTCY COURT SHALL HAVE THE EXCLUSIVE JURISDICTION OVER THIS SETTLEMENT AGREEMENT AND THAT ANY CLAIMS ARISING OUT OF OR RELATED IN ANY MANNER TO THIS SETTLEMENT AGREEMENT SHALL BE PROPERLY BROUGHT ONLY BEFORE THE BANKRUPTCY COURT. IF AND TO THE EXTENT THAT THE BANKRUPTCY CASE IS CLOSED OR DISMISSED, THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY SHALL HAVE EXCLUSIVE JURISDICTION OVER THIS SETTLEMENT AGREEMENT AND ANY SUCH CLAIMS.

**Section 5.5. Entire Agreement.**

This Settlement Agreement contains the entire agreement among the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations or warranties among the Parties other than those set forth or referred to herein.

**Section 5.6. Severability.**

In case any provision of this Settlement Agreement shall be determined to be invalid, illegal or unenforceable for any reason, the remaining provisions of this Settlement Agreement shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by Applicable Law.

**Section 5.7. Survival of Representations.**

All representations, warranties, agreements, covenants and obligations herein are material, shall be deemed to have been relied upon by the other Parties, and shall survive the date of the Bankruptcy Court Order.

**Section 5.8. Successors and Assigns.**

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

**Section 5.9. No Admission of Liability.**

This Settlement Agreement is not an admission of any liability but is a compromise and settlement of the CP Settled Claims. This Settlement Agreement shall not be treated as an admission of liability. All communications (whether oral or in writing) between and/or among the Parties, their counsel and/or their respective representatives relating to, concerning or in connection with this Settlement Agreement, or the matters covered hereby and thereby, shall be governed and protected in accordance with Federal Rule of Evidence 408 and New York Civil Practice Law and Rules Section 4547 to the fullest extent permitted by law.

**Section 5.10. Interpretation.**

This Settlement Agreement has been jointly drafted by the Parties at arm's length and each Party has had ample opportunity to consult with independent legal counsel. No provision or ambiguity in this Settlement Agreement shall be resolved against any Party solely by virtue of its participation in the drafting of this Settlement Agreement.

**Section 5.11. Attorneys' Fees.**

Each Party shall be responsible for the payment of:

- (a) its own costs and expenses (including attorneys' fees), and
- (b) all of its costs and expenses (including attorneys' fees) in connection with the matters referred to in this Settlement Agreement. Nevertheless, in any action or proceeding to enforce this Settlement Agreement, the prevailing Party shall be entitled to payment of its reasonable costs and expenses (including reasonable attorneys' fees).

**Section 5.12. Captions.**

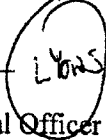
The captions of this Settlement Agreement are for convenience only and are not a part of this Settlement Agreement and do not in any way limit or amplify the terms and provisions of this Settlement Agreement and shall have no effect on its interpretation.

**Section 5.13. Counterparts.**

This Settlement Agreement may be executed in counterparts, by either an original signature or signature transmitted by facsimile transmission or other similar process and each copy so executed shall be deemed to be an original and all copies so executed shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have signed this Settlement Agreement in multiple counterparts.

**ENRON CREDITORS RECOVERY CORP.**

By: R. A. Lydecker   
Name: Richard A. Lydecker, Jr.  
Title: Managing Director & Chief Financial Officer

Date: 1/6/09

**GOLDMAN, SACHS & CO.**

By: \_\_\_\_\_  
Name: Norman Feit, Esq.  
Title: Managing Director

Date: \_\_\_\_\_