

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: FREEPORT-MCMORAN )  
COPPER & GOLD INC. DERIVATIVE ) C.A. No. 8145-VCN  
LITIGATION )

**STIPULATION AND AGREEMENT OF  
SETTLEMENT, COMPROMISE AND RELEASE**

This Stipulation and Agreement of Settlement, Compromise and Release (the “Stipulation”) is entered into between and among the following parties, by and through their respective counsel, in the above-captioned stockholder derivative action (the “Action”): (i) plaintiffs Dauphin County Employee Retirement Fund; State-Boston Retirement System; Amalgamated Bank as Trustee for the LongView LargeCap 500 Index Fund, LongView LargeCap 500 Index VEBA Fund, LongView Quantitative LargeCap Fund and LongView Quantitative LargeCap VEBA Fund; and City of Roseville Employees’ Retirement System (collectively, “Plaintiffs”); and (ii) individual defendants James R. Moffett, Richard C. Adkerson, Gerald J. Ford, Robert Addison Day, the estate of B.M. Rankin, Jr., H. Devon Graham, Jr., Robert J. Allison, Jr., Charles C. Krulak, Bobby Lee Lackey, Jon C. Madonna, Dustan E. McCoy, Stephen H. Siegele, Kathleen L. Quirk and James C. Flores (collectively, the “Settling Defendants,” and with Plaintiffs, each a “Party” and, collectively, the “Parties”). The Parties intend for this Stipulation to fully, finally and forever resolve, discharge and settle all claims

between the Parties and any and all Released Claims (defined below) as against the Released Parties (defined below) upon and subject to the terms and conditions herein (the “Settlement”) and subject to the approval of the Court of Chancery of the State of Delaware (the “Court”).

**WHEREAS:**

A. Between December 14, 2012 and March 5, 2013, the following eleven derivative complaints (the “Delaware Actions”) were filed in the Court, alleging claims on behalf of Freeport-McMoRan Copper & Gold Inc. (“Freeport” or the “Company”) against the Settling Defendants: *Jacksonville Police & Fire Pension Fund v. James R. Moffett, et al.*, C.A. No. 8110-VCN; *Sklar v. James R. Moffett, et al.*, C.A. No. 8126-VCN; *Gaines v. Richard C. Adkerson, et al.*, C.A. No. 8139-VCN; *Rosenzweig v. Richard C. Adkerson, et al.*, C.A. No. 8140-VCN; *Lang v. James R. Moffett, et al.*, C.A. No. 8142-VCN; *Dauphin Cnty. Emp. Ret. Fund v. James R. Moffett, et al.*, C.A. No. 8145-VCN; *Newman v. James R. Moffett, et al.*, C.A. No. 8156-VCN; *State-Boston Ret. Sys. v. James R. Moffett, et al.*, C.A. No. 8206-VCN; *Inter-Local Pension Fund of the Graphic Commc’ns Conference of the Int’l Bhd. of Teamsters v. James R. Moffett, et al.*, C.A. No. 8207-VCN; *United Wire Metal & Mach. Pension Fund v. James R. Moffett, et al.*, C.A.

No. 8208-VCN; and *Stephen Blau MD Money Purchase Pension Plan Trust v. Moffett, et al.*, C.A. No. 8384-VCN (the “Blau Action”).

B. Between December 14, 2014 and January 16, 2014, three derivative complaints (the “Arizona Actions”) were filed in the Superior Court of the State of Arizona, Maricopa County: *Liberatore v. James R. Moffett, et al.*, CV2012-018351; *Teich, et al. v. James R. Moffett, et al.*, CV2012-018403; and *Harris v. Richard C. Adkerson, et al.*, CV2013-004163. The Arizona Actions, together with the Delaware Actions, are referred to as the “Related Actions.”

C. Each of the Related Actions alleged that the Settling Defendants breached their fiduciary duties to Freeport and its stockholders by approving Freeport’s acquisitions of McMoRan Exploration Co. (“MMR”), which was announced December 5, 2012 and closed June 3, 2013, and Plains Exploration & Production Co. (“Plains”), which was announced December 5, 2012 and closed May 31, 2013 (together, the “Transactions”).

D. On January 8, 2013, plaintiff Dauphin County Employee Retirement Fund, C.A. No. 8145-VCN, filed a Verified Amended Derivative Action Complaint and moved to expedite.

E. On January 25, 2013, the Court consolidated the Delaware Actions, with the exception of the *Blau* Action, and appointed Dauphin County Employees Retirement Fund, Jacksonville Police and Fire Pension Fund, and State-Boston Retirement System as co-lead plaintiffs, and appointed the law firms of Chimicles & Tikellis LLP, Bernstein Liebhard LLP and Labaton Sucharow LLP as Plaintiffs' co-lead counsel.

F. On February 20, 2013, the Court entered a Stipulation and Order Governing Expert Discovery and a Stipulation and Order Governing the Production and Exchange of Confidential and Highly Confidential Documents.

G. On February 22, 2013, the Court entered the Stipulation and Order Regarding Expedited Proceedings, which Order contemplated expedited discovery and applications for injunctive relief, and was later amended on March 21, 2013.

H. On March 1, 2013, plaintiffs in the Arizona Actions moved to intervene in the Delaware Actions, and on March 18, 2013, the Court granted the motion.

I. In accordance with the Stipulation and Order Regarding Expedited Proceedings, the Parties engaged in extensive expedited fact discovery. Plaintiffs reviewed thousands of documents produced by the

Settling Defendants, Freeport and certain third parties. Plaintiffs also deposited eleven individuals (some for multiple days), including several of the Settling Defendants and representatives of the advisors to Freeport's special committee, RPS Group Plc and Credit Suisse Securities (USA) LLC ("Credit Suisse").

J. In a letter dated March 21, 2013, Plaintiffs informed the Court that they were no longer seeking preliminary injunctive relief.

K. On April 22, 2013, the Court entered an amended consolidation order that added Amalgamated Bank as Trustee for the LongView LargeCap 500 Index Fund, LongView LargeCap 500 Index VEBA Fund, LongView Quantitative LargeCap Fund and LongView Quantitative LargeCap VEBA Fund; and City of Roseville Employees' Retirement System as additional co-lead plaintiffs, and added Grant & Eisenhofer P.A. and Bernstein Litowitz Berger & Grossmann LLP as additional Plaintiffs' co-lead counsel (together with Chimicles & Tikellis LLP, Bernstein Liebhard LLP and Labaton Sucharow LLP, "Plaintiffs' Counsel").

L. On July 19, 2013, Plaintiffs filed a verified second amended consolidated derivative complaint (the "Second Amended Complaint").

M. On September 12, 2013, defendant James C. Flores moved to dismiss the Second Amended Complaint.

N. On October 10, 2013, the remainder of the Settling Defendants and Freeport moved to dismiss the Second Amended Complaint.

O. On March 12, 2014, oral argument was held on the motions to dismiss.

P. By Order dated April 4, 2014, the Court consolidated the *Blau* Action into this Action.

Q. The Parties continued to conduct discovery after the oral argument, including discovery from Credit Suisse.

R. Since the spring of 2014, counsel for Plaintiffs and the Settling Defendants have engaged in arm's-length discussions and negotiations regarding a potential resolution of the Action.

S. On May 23, 2014, counsel for Plaintiffs and the Settling Defendants and certain of the insurance carriers that provide coverage applicable to the claims against the Settling Defendants asserted in the Action participated in a mediation session in New York, New York with the Honorable Layn R. Phillips, regarding a potential resolution of the Action.

T. Thereafter, counsel for Plaintiffs, the Settling Defendants and certain of the insurance carriers continued to engage in arm's-length settlement discussions and participated in additional mediation sessions with

Judge Phillips on August 4, 2014 and September 12, 2014 in Newport Beach, California, and on November 5, 2014 in New York, New York.

U. On November 5, 2014, Plaintiffs and the Settling Defendants reached an agreement in principle to settle all claims against the Settling Defendants, which led to the execution of a term sheet (the “Term Sheet”).

V. On the basis of information available to them, including publicly available information and formal discovery, Plaintiffs’ Counsel have determined that the settlement reached with the Settling Defendants on the terms reflected in this Stipulation is fair, reasonable and adequate to Plaintiffs, Freeport and Freeport’s stockholders.

W. Plaintiffs’ entry into this Stipulation is not an admission as to the lack of merit of any of the claims asserted in the Action.

X. The Settling Defendants have vigorously denied, and continue to vigorously deny, all allegations of wrongdoing, fault, liability or cognizable damage to Freeport or its stockholders, deny that they committed any violation of law, deny that the Transactions were in any way unfair to Freeport or its stockholders, believe that they acted properly at all times, believe that the Action has no merit and maintain that they have committed no breach of duty whatsoever in connection with the Transactions. The Settling Defendants are entering into this Stipulation solely because they

consider it desirable that the claims against them in the Action be settled and dismissed with prejudice as between the Parties in order to, among other things, (i) avoid the substantial expense, inconvenience and distraction of continued litigation, and (ii) avoid any possibility of a finding of liability, however remote, and finally put to rest the claims asserted against the Settling Defendants in the Action.

Y. Plaintiffs have indicated a desire to pursue claims derivatively on behalf of Freeport against Credit Suisse arising from allegations of Credit Suisse's bad faith, gross negligence, willful misconduct or fraud, as those terms are used in the Engagement Letter between Freeport and Credit Suisse dated September 20, 2012, in connection with its engagement to act as lead financial advisor to the Special Committee of the Freeport Board with respect to Freeport's decision to acquire and acquisition of MMR and Plains.

Z. In connection with settlement discussions and negotiations leading to this proposed Settlement, counsel for the Parties in the Action did not discuss the appropriateness or amount of any application by Plaintiffs' Counsel for an Attorneys' Fees and Expenses Award (defined below) until all other matters had been agreed upon.

**NOW THEREFORE, IT IS STIPULATED AND AGREED,**  
subject to approval of the Court of Chancery, by and between the undersigned



counsel for the Parties, in consideration of the benefits flowing to the Parties from, and as described in, the Settlement, that all Released Claims (as defined below) shall be and hereby are fully and finally settled, compromised, released and discontinued, and that the claims against the Settling Defendants in the Action shall be dismissed with prejudice on the merits and without costs (except as provided herein) as to all Released Parties upon the terms and conditions of this Stipulation, as follows:

### **DEFINITIONS**

1. In addition to the terms defined above, as used in this Stipulation, the following additional terms have the meanings specified below:

(a) “Attorneys’ Fees and Expenses Award” means the amount of attorneys’ fees and expense reimbursement awarded by the Court in response to an application by Plaintiffs’ Counsel, as described in Paragraph 16 of this Stipulation.

(b) “Credit Suisse” means Credit Suisse Securities (USA) LLC, its employees and agents, and any parent or subsidiary thereof.

(c) “D&O Carriers” means Freeport’s directors’ and officers’ insurance policy carriers funding the Escrow Amount into the Escrow Account.

(d) “Effective Date” means the first date by which all of the conditions precedent set forth in Paragraph 13 of this Stipulation have been met and occurred or have been waived in writing by the Parties.

(e) “Final” with respect to the judgment approving this Settlement or any other court order means: (i) if no appeal from an order or judgment is taken, the date on which the time for taking such an appeal expires, or (ii) if any appeal is taken, the date on which all appeals, including petitions for rehearing or reargument, have been finally disposed of (whether through expiration of time to file, denial of any request for review, by affirmance on the merits or otherwise) in a manner that does not result in any material alteration of the order or judgment. Notwithstanding the foregoing, the Court’s ruling or failure to rule on any application for attorneys’ fees and expenses or any modification of the Attorneys’ Fees and Expenses Award, shall not preclude any judgment approving the Settlement from becoming Final.

(f) “Final Order and Judgment” or “Judgment” means the Final Order and Judgment of the Court, substantially in the form attached hereto as Exhibit B, approving the Settlement and dismissing with prejudice the claims asserted against the Settling Defendants in the Action without costs to any Party (except as provided in this Stipulation).

(g) “Freeport Board” means Freeport’s board of directors.

(h) “Freeport Stockholder(s)” means any and all persons and entities who or which held common stock of the Company as of the close of business on the date that the Stipulation is filed with the Court.

(i) “Notice” means the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing and Right to Appear, substantially in the form attached hereto as Exhibit C.

(j) “Person” means any individual, corporation, professional corporation, limited-liability company, partnership, limited partnership, limited-liability partnership, association, joint-stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representative or assignees.

(k) “Released Claims” means all Released Defendants’ Claims and all Released Plaintiffs’ Claims.

(l) “Released Defendants’ Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description

whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (defined below), arising out of or relating to the commencement, prosecution, or settlement of the Action, but excluding any claims relating to the enforcement of the Settlement.

(m) “Released Plaintiffs’ Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (defined below), that Plaintiffs asserted against the Released Defendant Parties in the complaints filed in the Action, or that Freeport could have asserted directly, or that Plaintiffs or any other Freeport Stockholder could have asserted derivatively on behalf of Freeport against the Released Defendant Parties, in any court, tribunal, forum or proceeding, whether based on state, local, foreign, federal,

statutory, regulatory, common or other rule of law, based upon, arising out of, relating to, or concerning (which phrases are intended to be construed as broadly as permitted under applicable Delaware law as to the scope of releases provided in consideration for settlement of derivative claims): (i) Freeport's decision to acquire and acquisition of MMR, which transaction was announced December 5, 2012 and closed June 3, 2013, (ii) Freeport's decision to acquire and acquisition of Plains, which transaction was announced December 5, 2012 and closed May 31, 2013, or (iii) the actions, inactions, conduct, deliberations, discussion, decisions, votes or any other conduct of any kind of the Freeport officers or directors relating to the Transactions or the Freeport Board's approval of the Transactions, but excluding (a) any claims Freeport may have against Credit Suisse arising from Credit Suisse's bad faith, gross negligence, willful misconduct or fraud, as those terms are used in the Engagement Letter between Freeport and Credit Suisse dated September 20, 2012, in connection with its engagement to act as lead financial advisor to the Special Committee of the Freeport Board with respect to Freeport's decision to acquire and acquisition of MMR and Plains, and (b) any claims relating to the enforcement of the Settlement. For the avoidance of doubt, Released Plaintiffs' Claims do not

include any direct claims belonging to Freeport Stockholders, and such claims are not released by this Settlement.

(n) “Released Defendant Parties” means (i) the Settling Defendants; (ii) all past and present officers and directors of Freeport, and any other of their or Freeport’s respective agents, representatives, estates, insurers, reinsurers, and advisors; and (iii) for each and all of the foregoing Persons (but only to the extent such Persons are released as provided above), any and all of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited-liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants and associates; *provided, however*, that Released Defendant Parties shall not mean and does

not include Credit Suisse with respect to any claims against Credit Suisse not included in Released Plaintiffs' Claims as defined in Paragraph 1(m).

(o) "Released Parties" means the Released Defendant Parties and the Released Plaintiff Parties.

(p) "Released Plaintiff Parties" means Plaintiffs, their respective counsel (including all Plaintiffs' Counsel), and their past and present officers and directors, and all agents, representatives, estates, insurers, reinsurers, and advisors of any of the foregoing.

(q) "Releases" means the releases set forth in Paragraphs 6 and 7 below.

(r) "Scheduling Order" means the scheduling order to be entered pursuant to Rule 23.1 of the Rules of the Court of Chancery, substantially in the form attached hereto as Exhibit D.

(s) "Settlement Hearing" means a hearing required under Rule 23.1 of the Rules of the Court of Chancery, at or after which the Court will review the adequacy, fairness and reasonableness of the Settlement and determine whether to issue the Final Order and Judgment.

(t) "Unknown Claims" means any Released Claims that a Person granting a Release hereunder does not know or suspect exist in his, her or its favor at the time of the Release, including without limitation those which, if

known, might have affected the decision to enter into or object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and the Settling Defendants shall have expressly waived, and Freeport and each of the other Freeport Stockholders shall be deemed to have, and by operation of the Final Order and Judgment by the Court shall have, waived, relinquished and released any and all provisions, rights and benefits conferred by or under California Civil Code § 1542 or any law or principle of common law of the United States or any state or territory of the United States which is similar, comparable or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs and the Settling Defendants acknowledge, and Freeport and all other Freeport Stockholders by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Plaintiffs, the Settling Defendants, Freeport and all other Freeport Stockholders by operation of law, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, heretofore existed or



may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiffs and the Settling Defendants acknowledge, and Freeport and all other Freeport Stockholders by operation of law shall be deemed to have acknowledged, that this waiver and the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for and was a material element of the Settlement and was relied upon by each and all of the Parties in entering into the Stipulation and agreeing to the Settlement.

### **SETTLEMENT CONSIDERATION**

2. In consideration of the full settlement, satisfaction, compromise and release of the Released Plaintiffs’ Claims, an aggregate \$115 million in cash (the “Escrow Amount”) shall be paid on behalf of the Settling Defendants to Freeport by the D&O Carriers. The Settling Defendants shall cause the Escrow Amount to be deposited by the D&O Carriers into an interest-bearing escrow account controlled by an agreed upon representative of Plaintiffs and of the Settling Defendants (the “Escrow Account”) within fifteen (15) business days after the Stipulation is submitted to the Court. Upon the Effective Date, the Escrow Amount, together with any and all interest thereon, shall be paid to Freeport from the Escrow Account. For the avoidance of doubt, the Settling Defendants shall have no obligation to deposit any portion of the Escrow Amount into the Escrow

Account but shall have an obligation to take all reasonably available steps to seek to cause the D&O Carriers to deposit the Escrow Amount into the Escrow Account.

3. In connection with the settlement, an aggregate amount of \$137.5 million, less Plaintiffs' Counsel's attorneys' fees and expenses as awarded by the Court pursuant to paragraph 16 below, shall be distributed to Freeport stockholders as a special dividend issued as follows. The Settlement is conditioned upon the Freeport Board resolving to declare a special dividend (the "Special Dividend") in an amount not less than the Escrow Amount (including accrued interest thereon) plus an additional \$22.5 million to be funded by the Company, less Plaintiffs' Counsel's attorneys' fees and expenses as awarded by the Court pursuant to paragraph 16 below. The Special Dividend shall be made at the time of the issuance of the Company's next regularly scheduled quarterly dividend announced after (but in no event, to the extent that at the time there is no scheduled or contemplated quarterly dividend payment, more than three (3) months after) the Escrow Amount is paid to the Company and the Attorneys' Fees and Expenses Award is paid to Plaintiffs' Counsel pursuant to paragraph 17 below and such Fees and Expenses Award has become Final. Settling Defendants agree that the pendency of this Action was the cause of the Freeport Board's consideration of the Special Dividend.

4. The Settlement is further conditioned upon the Freeport Board approving the corporate governance enhancements set forth in Exhibit A hereto (the “Corporate Governance Enhancements”) and agreeing to maintain such enhancements for a period of at least three (3) years from the date of adoption. Settling Defendants agree that the pendency of this Action was a cause of the Freeport Board’s consideration of the Corporate Governance Enhancements.

5. The Settlement is further conditioned on Freeport and the Settling Defendants having obtained from the D&O Carriers prior to the Settlement Hearing a complete waiver of any and all rights the D&O Carriers had, have, may have or will have to subrogation as to any amounts that may be recovered on Freeport’s behalf from Credit Suisse or any third party in the prosecution of claims related to the Transactions or the Action.

### **RELEASES**

6. Upon the Effective Date, Plaintiffs and each and every Freeport Stockholder, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such only, derivatively on behalf of Freeport, and Freeport directly, by operation of this Stipulation and the Final Order and Judgment and to the fullest extent allowed by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Released Defendant Parties from any and all of the

Released Plaintiffs' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Plaintiffs' Claims against any of the Released Defendant Parties. In addition, Plaintiffs agree not to initiate, prosecute, assist in, or facilitate the prosecution of any other claims arising out of the same nucleus of operative facts giving rise to the Action.

7. Upon the Effective Date, the Settling Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such only, by operation of this Stipulation and the Final Order and Judgment and to the fullest extent allowed by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Released Plaintiff Parties from any and all of the Released Defendants' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

#### **SUBMISSION AND APPLICATION TO THE COURT**

8. Promptly after the execution of this Stipulation, the Parties shall jointly request entry of the Scheduling Order (i) approving the form and manner of notice to Freeport Stockholders of the pendency of this Action, the Settlement and of their right to object; (ii) establishing the procedure and schedule for the Court's consideration of the Settlement, dismissal of the Action as between the Parties with

prejudice and Plaintiffs' Counsel's application for attorneys' fees and expenses; and (iii) staying all further proceedings in this Action except as may be necessary to implement the Settlement.

### **NOTICE**

9. The Scheduling Order will provide that Freeport will file a copy of the Notice as an exhibit to a Form 8-K with the Securities and Exchange Commission and mail the Notice to each Freeport Stockholder at his, her or its last known address appearing in the stock transfer records maintained by or on behalf of Freeport as of the close of business on the record date that is the date this Stipulation is submitted to the Court. A copy of the Notice shall also be posted to each of the respective firm websites of Plaintiffs' Counsel through the Effective Date.

10. Except for the costs and expenses related to the posting of the Notice on the websites of Plaintiffs' Counsel, any and all costs and expenses related to providing Notice shall be paid by Freeport regardless of whether the Court declines to approve the Settlement or the Effective Date otherwise fails to occur. In no event shall Settling Defendants, Plaintiffs, Plaintiffs' Counsel or the Escrow Amount be responsible for such notice costs.

## **FINAL ORDER AND JUDGMENT**

11. If the Court approves the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) following the Settlement Hearing as fair, reasonable, adequate and in the best interests of Freeport and Freeport's stockholders, the Parties shall jointly and promptly request that the Court enter the Final Order and Judgment in the Action.

## **AVAILABILITY OF SETTLING DEFENDANTS AS FACT WITNESSES**

12. The Settling Defendants agree to make themselves reasonably available as fact witnesses in any action Plaintiffs may pursue on behalf of Freeport against Credit Suisse arising from Credit Suisse's bad faith, gross negligence, willful misconduct or fraud, as those terms are used in the Engagement Letter between Freeport and Credit Suisse dated September 20, 2012, in connection with its engagement to act as lead financial advisor to the Special Committee of the Freeport Board with respect to Freeport's decision to acquire and acquisition of MMR and Plains. Neither the Settling Defendants nor anyone acting by or on behalf of the Settling Defendants shall seek, on behalf of themselves or any other Person, to intervene in or move to dismiss any action against Credit Suisse that may be initiated by Plaintiffs on behalf of Freeport.

## **CONDITIONS OF SETTLEMENT AND TERMINATION**

13. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver in writing of all of the following events:

(a) the Court has entered the Scheduling Order, substantially in the form attached hereto as Exhibit D, as required by ¶ 8 above;

(b) the Escrow Amount has been deposited into the Escrow Account in accordance with the provisions of ¶ 2 above;

(c) the Freeport Board has resolved to declare the Special Dividend in accordance with the provisions of ¶ 3 above;

(d) the Freeport Board has approved the Corporate Governance Enhancements in accordance with the provisions of ¶ 4 above;

(e) the D&O Carriers shall have provided a complete waiver of subrogation in accordance with the provisions of ¶ 5 above;

(f) the Final Order and Judgment is entered by the Court without material alteration or, in the event of material alteration, such alteration is consented to by the Parties;

(g) the Final Order and Judgment becomes Final; and

(h) the Action is dismissed with prejudice against all Settling Defendants.

14. Plaintiffs and the Settling Defendants shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”), through counsel, to all other Parties hereto within thirty (30) calendar days of: (a) the Court’s final refusal to enter the

Scheduling Order in any material respect; (b) the Court's refusal to approve the Settlement or any material part thereof; (c) the Court's declining to enter the Judgment in any material respect as to the Settlement; or (d) the date upon which an order vacating, modifying, revising or reversing the Judgment becomes Final. In addition, Plaintiffs shall have the right to terminate the Settlement if (a) the Escrow Amount is not deposited into the Escrow Account in accordance with the provisions of ¶ 2 above; (b) the Freeport Board fails to adopt, and agree to maintain for a period of at least three (3) years from the date of adoption, the Corporate Governance Enhancements set forth in Exhibit A hereto, as provided in ¶ 4 above; (c) the Freeport Board fails to declare the Special Dividend as provided in ¶ 3 above; or (d) Freeport and the Settling Defendants fail to obtain from the D&O Carriers a complete waiver of subrogation as provided in ¶ 5 above.

15. In the event the Settlement is terminated pursuant to paragraph 14 above, then: this Stipulation and Settlement (including the Releases given pursuant to the terms of this Stipulation) shall be cancelled and shall become null and void and of no force and effect, except as specifically provided herein; and the Parties shall be restored to their respective positions in the Action immediately prior to the execution of the Term Sheet, and shall promptly agree on a new scheduling order to govern further proceedings in the Action, and the Escrow Amount shall be returned to the D&O Carriers. In the event of such termination,



this Stipulation shall not be admissible for any purpose in any proceedings before any court or tribunal and any judgments or orders entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated *nunc pro tunc*.

### **ATTORNEYS' FEES AND EXPENSES**

16. Plaintiffs' Counsel intend to apply to the Court for an award of attorneys' fees and reimbursement of their litigation expenses to be paid from (and out of) the Escrow Amount (the "Fee and Expense Application"). The Parties will seek to negotiate the amount of such fees and litigation expenses after this Stipulation has been executed. If the Parties are able to reach an agreement, Plaintiffs' Counsel agree not to seek an award of attorneys' fees or litigation expenses from the Court in excess of the amount negotiated by the Parties. In the event the Parties are unable to reach an agreement concerning the Fee and Expense Application, the Settling Defendants may oppose the amount of any such application Plaintiffs' Counsel may make, but the Settling Defendants acknowledge that under existing law Plaintiffs' Counsel have a claim for reasonable attorneys' fees, and reimbursement of reasonable and necessary expenses incurred by Plaintiffs' Counsel, for their efforts in prosecuting the Action and in achieving the Settlement.

17. The Attorneys' Fees and Expenses Award shall be paid from the Escrow Amount to Plaintiffs' Counsel within five (5) business days of the award, notwithstanding any objections thereto, potential for appeal therefrom, appeals that may be taken, or any collateral attack on the Settlement or the Attorneys' Fees and Expenses Award. If the Settlement is terminated pursuant to the terms of this Stipulation, or if the Attorneys' Fees and Expenses Award is reversed or modified by court order and such order has become Final, the Attorneys' Fees and Expenses Award shall be repaid in an amount consistent with such termination, reversal or modification.

18. The Settling Defendants shall not have any responsibility or liability whatsoever with respect to the allocation of any Attorneys' Fees and Expenses Award among Plaintiffs' Counsel, or any other counsel representing Plaintiffs, or any other Freeport stockholder or any other counsel asserting a right to recover any portion of the Attorneys' Fees and Expenses Award. Any dispute regarding any allocation of fees or expenses among Plaintiffs' Counsel shall have no effect on the Settlement.

19. The Settling Defendants shall not be liable for or obligated to pay any fees, expenses, costs or disbursements, or incur any expenses on behalf of any Person (including, without limitation, any Plaintiff or Plaintiffs' Counsel) directly or indirectly, in connection with the Action or this Stipulation, except as

expressly provided for in this Stipulation. Neither Plaintiffs nor Plaintiffs' Counsel shall be liable for or obligated to pay any fees, expenses, costs or disbursements, or incur any expenses on behalf of any Person (including, without limitation, any Defendant or their counsel) directly or indirectly, in connection with the Action or this Stipulation.

20. It is not a condition of this Stipulation or the Settlement that any attorneys' fees and/or expenses be awarded by the Court to Plaintiffs' Counsel. In the event that an attorneys' fees and/or expenses are not awarded by the Court or are awarded in an amount that is unsatisfactory to Plaintiffs' Counsel, or in the event that an attorneys' fee and expense award is vacated or reduced on appeal, this Stipulation and the Settlement, including the effectiveness of the Releases and other obligations of the Parties under the Settlement, nevertheless shall remain in full force and effect.

### **BAR ORDER**

21. If the Settlement embodied in this Stipulation is approved by the Court, the Parties shall request that the Court enter a Final Order and Judgment substantially in the form annexed hereto as Exhibit B which shall, among other things, contain a provision providing for a Bar Order, as follows:

(a) Pursuant to 10 Del. C. § 6304(b), the Final Order and Judgment relieves the Settling Defendants from liability to make contribution to any

joint tortfeasors for any contribution claim or any other claim in which the injury claimed is the claimant's actual or threatened liability to Freeport, arising out of or relating to the claims asserted in the Action ("Barred Claims");

(b) Pursuant to 10 Del. C. § 6304(b), the damages that Freeport may recover against any Person established at trial to be a joint tortfeasor of the Settling Defendants with respect to claims asserted in, or arising out of the subject matter of, the Action will be reduced to the extent of the *pro rata* share of the Settling Defendants; and

(c) Plaintiffs have expressed an intent to prosecute on behalf of Freeport only non-indemnifiable claims against Credit Suisse (those arising from allegations of Credit Suisse's bad faith, gross negligence, willful misconduct or fraud, as those terms are used in the Engagement Letter between Freeport and Credit Suisse dated September 20, 2012). To the extent that Credit Suisse establishes that any Settling Defendant could be jointly and severally liable with it for any claim brought by or on behalf of Freeport against Credit Suisse related to the Transactions, then the Bar Order contemplated by this provision will apply and ensure that no Settling Defendant will have any liability for any Barred Claims as a result of the pursuit of those claims. For the avoidance of doubt, no Settling Defendant

shall have any liability arising out of any claims brought by or derivatively on behalf of Freeport against Credit Suisse related to the Transactions.

### **COOPERATION**

22. In addition to the actions specifically provided for in this Stipulation, the Parties agree to use their best efforts from the date hereof to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws, regulations or agreements, to consummate and make effective this Stipulation. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of the Settlement and to use their best efforts to effect the consummation of this Stipulation and the Settlement, including, but not limited to, resolving any objections raised with respect to the Settlement. Without further order of the Court, the Parties may agree to reasonable extensions of time not expressly set by the Court in order to carry out any of the provisions of this Stipulation.

### **STIPULATION NOT AN ADMISSION**

23. It is expressly understood that neither this Stipulation nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession or admission by: (i) any of the Settling Defendants or any of the other Released Defendant Parties as to the validity of any claims, defenses, other issues raised, or which might be or have been raised, in the Action or in any

other litigation, or to be evidence of or constitute an admission of wrongdoing or liability by any of them, and each of them expressly denies such wrongdoing or liability; or (ii) Plaintiffs as to the infirmity of any claim or the validity of any defense, or that damages in the Action would not have exceeded the Escrow Amount. The existence of the Stipulation, its contents or any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked or otherwise used by any Person for any purpose in the Action or otherwise, except as may be necessary to effectuate the Settlement. This provision shall remain in force in the event that the Settlement is terminated for any reason whatsoever. Notwithstanding the foregoing, any of the Released Parties may file the Stipulation or any judgment or order of the Court related hereto in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on *res judicata*, collateral estoppel, good-faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

**NO WAIVER**

24. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such

failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions in this Stipulation by such other Party.

25. No waiver, express or implied, by any Party of any breach or default in the performance by any other Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent or contemporaneous, under this Stipulation.

#### **AUTHORITY**

26. This Stipulation will be executed by counsel to the Parties, each of whom represents and warrants that he or she has been duly authorized and empowered to execute this Stipulation on behalf of such Party, and that it shall be binding on such Party in accordance with its terms.

#### **SUCCESSORS AND ASSIGNS**

27. This Stipulation is, and shall be, binding upon, and inure to the benefit of, the Parties and their respective agents, executors, administrators, heirs, successors and assigns; *provided, however* that no Party shall assign or delegate its rights or responsibilities under this Stipulation without the prior written consent of the other Parties.

#### **BREACH**

28. The Parties agree that in the event of any breach of this Stipulation, all of the Parties' rights and remedies at law, equity or otherwise, are expressly reserved.

## **GOVERNING LAW AND FORUM**

29. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of laws principles. Any action relating to this Stipulation will be filed exclusively in the Court. Each Party: (i) consents to personal jurisdiction in any such action (but no other action) brought in the Court; (ii) consents to service of process by registered mail upon such Party and/or such Party's agent; and (iii) waives any objection to venue in the Court and any claim that Delaware or the Court is an inconvenient forum.

## **WARRANTY**

30. Plaintiffs and Plaintiffs' Counsel represent and warrant that: (i) Plaintiffs are each stockholders of Freeport and were stockholders of Freeport at all relevant times for purposes of maintaining standing in the Action; (ii) none of the Released Plaintiffs' Claims has been assigned, encumbered or in any manner transferred in whole or in part by Plaintiffs or Plaintiffs' Counsel; and (iii) neither Plaintiffs nor Plaintiffs' Counsel will attempt to assign, encumber or in any manner transfer, in whole or in part, any of the Released Plaintiffs' Claims.

31. Each Party represents and warrants that the Party has made such investigation of the facts pertaining to the Settlement provided for in this



Stipulation, and all of the matters pertaining thereto, and has been advised by counsel, as the Party deems necessary and advisable.

### **ENTIRE AGREEMENT**

32. This Stipulation and the attached exhibits constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral or written agreements, understandings or representations. No representations, warranties or inducements have been made to any Party concerning the Stipulation or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. All of the exhibits hereto are material and integral parts hereof and are fully incorporated herein by reference.

### **INTERPRETATION**

33. Each term of this Stipulation is contractual and not merely a recital.

34. This Stipulation will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

35. Section and/or paragraph titles have been inserted for convenience only and will not be used in interpreting the terms of this Stipulation.

36. The terms and provisions of this Stipulation are intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights or remedies upon any other Person, except with respect to (a) any attorneys' fees and expenses to be paid to Plaintiffs' Counsel pursuant to the terms of this Stipulation; and (b) the Released Parties who are not signatories hereto, and who shall be third-party beneficiaries under this Stipulation and entitled to enforce it in accordance with its terms.

#### **AMENDMENTS**

37. This Stipulation may not be amended, changed, waived, discharged or terminated (except as explicitly provided herein), in whole or in part, except by an instrument in writing signed by the Parties to this Stipulation.

#### **COUNTERPARTS**

38. This Stipulation may be executed in any number of actual, telecopied or electronically mailed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. This Stipulation will become effective when the actual or telecopied counterparts have been signed by each of the Parties to this Stipulation and delivered to the other Parties. The executed signature page(s) from each actual,

telecopied or electronically mailed counterpart may be joined together and attached and will constitute one and the same instrument.

**CONTINUING JURISDICTION**

39. The consummation of this Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of enforcing the terms of this Stipulation and entering orders providing for awards of attorneys' fees and litigation expenses to Plaintiffs' Counsel.

**NOTICE TO PARTIES**

40. If any Party is required to give notice to any other Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile transmission with confirmation of receipt or by email. Notice shall be provided as follows:

If to Plaintiffs or Plaintiffs' Counsel:

Chimicles & Tikellis LLP  
Attn: Pamela S. Tikellis  
222 Delaware Avenue, Suite 1100  
P.O. Box 1035  
Wilmington, Delaware 19899  
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Facsimile: 302-656-9053

Labaton Sucharow LLP  
Attn: Christine S. Azar  
300 Delaware Avenue, Suite 1340  
Wilmington, Delaware 19801  
Telephone: 302- 573-2530  
Facsimile: 302- 573-2529

Bernstein Liebhard LLP  
Attn: U. Seth Ottensoser  
10 East 40th Street  
New York, New York 10016  
Telephone: 212-779-1414  
Facsimile: 212-779-3218

Bernstein Litowitz Berger & Grossmann LLP  
Attn: Mark Lebovitch, Esq.  
1285 Avenue of the Americas  
New York, New York 10019  
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Facsimile: (212) 554-1444

Grant & Eisenhofer P.A.  
Attn: Michael J. Barry  
123 Justison Street  
Wilmington, DE 19801  
Telephone: (302) 622-7000  
Facsimile: (302) 622-7100

If to Settling Defendants Allison,  
Krulak, Lackey, Madonna, and/or  
McCoy:

Wachtell, Lipton, Rosen & Katz  
Attn: William Savitt  
51 West 52nd Street  
New York, NY 10019  
Telephone: 212-403-1000  
Facsimile: 212-403-2000

If to Settling Defendants Adkerson, Day, Ford, Graham, Moffett, Rankin, Siegele and/or Quirk: Morris Nichols Arsht & Tunnell LLP  
Attn: William M. Lafferty  
1201 N. Market Street, 18th Floor  
Wilmington, DE 19801  
Telephone: 302- 658-9200  
Facsimile: 302- 658-3989

If to the Settling Defendant Flores: Latham & Watkins LLP  
Attn: Blair G. Connelly  
885 Third Avenue  
New York, New York 10022  
Telephone: 212-906-1200  
Facsimile: 212-751-4864

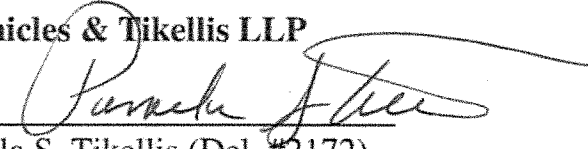
IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed by their duly authorized counsel, as of January 12, 2015.

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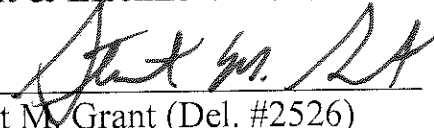
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