

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
BANKRUPTCY DIVISION  
ST. CROIX, VIRGIN ISLANDS**

In re:

HOVENSA L.L.C.,

Debtor.

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Chapter 11

Case No. 1:15-bk-10003-MFW

Re: Docket No. 467, 541, 542, 608 ~~469~~

**ORDER APPROVING STIPULATION CLARIFYING THE OBLIGATIONS OF THE  
REORGANIZED DEBTOR AND THE ENVIRONMENTAL RESPONSE  
TRUST UNDER THE TRANSACTION DOCUMENTS**

Upon the request (the “Request”) of HOVENSA L.L.C. (the “Debtor”) for entry of an order approving the *Stipulation Clarifying the Obligations of the Reorganized Debtor and the Environmental Response Trust Under the Transaction Documents* [Docket No. 608] (the “Stipulation”), by and between the Debtor and Limetree Bay Terminals, LLC (collectively the “Parties”), made and entered into in accordance with Paragraph 88 of the *Order Granting Final Approval of Disclosure Statement and Confirming Chapter 11 Plan Of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (Docket No. 572) (the “Confirmation Order”); and it appearing that this Court has jurisdiction to consider the Request pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Request in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the Request is a core proceeding pursuant to 28 U.S.C. § 157(b); and sufficient notice of the Request having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and the Request having been brought before the Court for hearing on February 11, 2016 (the “Hearing”); and the Court having approved the form of Stipulation presented at the Hearing; and it appearing that the relief requested is in the best interests of the Debtor’s estate, its

creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Stipulation attached hereto as Exhibit 1 is approved.
2. The terms of the Stipulation, including Exhibit A attached thereto, shall be treated for all purposes as if it were part of, and included in, the Confirmation Order.
3. The Parties are hereby authorized to take any and all actions reasonably necessary to effectuate the terms of the Stipulation.
4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: St. Croix, Virgin Islands  
February 16, 2016

  
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**HONORABLE MARY F. WALRATH**  
**UNITED STATES BANKRUPTCY JUDGE**

**Exhibit 1**

**Stipulation**

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
BANKRUPTCY DIVISION  
ST. CROIX, VIRGIN ISLANDS**

In re:

HOVENSA L.L.C.,

Debtor,

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Chapter 11

Case No. 1:15-bk-10003-MFW

Re: Docket Nos. 467, 541, 542

**STIPULATION CLARIFYING THE OBLIGATIONS  
OF THE REORGANIZED DEBTOR AND THE ENVIRONMENTAL  
RESPONSE TRUST UNDER THE TRANSACTION DOCUMENTS**

This stipulation (this “**Stipulation**”) is made and entered into as of February 10, 2016, by and among (i) HOVENSA L.L.C., as debtor and debtor-in-possession (the “**Debtor**” or “**Seller**”); and (ii) Limetree Bay Terminals, LLC, as purchaser of certain of the Debtor’s assets pursuant to the Purchase Agreement (the “**Purchaser**”). The Debtor and the Purchaser are each referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**.”<sup>1</sup>

**WHEREAS**, on January 20, 2016, this Court entered that certain *Order Granting Final Approval of Disclosure Statement and Confirming Chapter 11 Plan Of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (Docket No. 572) (the “**Confirmation Order**”);

**WHEREAS**, pursuant to the Confirmation Order, this Court confirmed the *Debtor’s Second Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, a copy of which was attached as Exhibit A to the Confirmation Order;

**WHEREAS**, Paragraph 88 of the Confirmation Order states the following:

The Debtor and the Purchaser shall work in good faith to enter into a stipulation designating which obligations under the Transaction Documents shall be assumed by the Environmental Response

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Confirmation Order. Capitalized terms used but not otherwise defined herein or in the Confirmation Order shall have the meanings ascribed to them in the Plan.

Trust, and which obligations shall be assumed by the Reorganized Debtor. The Debtor and the Purchaser agree to cooperate in good faith to the extent necessary regarding any obligations under the Transaction Documents that are not assigned to the Environmental Response Trust. To the extent the Debtor and the Purchaser are unable to reach agreement with respect to the stipulation, the Court shall hold a hearing to determine which obligations under the Transaction Documents must be assumed by the Environmental Response Trust and the Reorganized Debtor. For the avoidance of doubt, all parties' rights are reserved with respect to any proposed agreement regarding the assumption of obligations. It shall be a condition precedent to the Effective Date of the Plan that the Court shall approve an agreement regarding the assumption of obligations under the Transaction Documents.

**WHEREAS**, the Parties hereby enter into this Stipulation in order to satisfy the condition precedent to the Effective Date of the Plan created by Paragraph 88 of the Confirmation Order by (i) allocating the Debtor's obligations under the Transaction Documents to be assumed by either the Environmental Response Trust or the Reorganized Debtor (each an "Assignee", and together, the "Assignees") and (ii) amending certain terms and conditions of the Plan and the Confirmation Order, in each case as further specified in this Stipulation.

NOW, THEREFORE, it is hereby stipulated and agreed to by and among the Parties and upon Court approval hereof, it shall be ordered as follows:

1. A new paragraph shall be added to the end of Article IV.D of the Plan stating the following:

Notwithstanding anything contained in the Plan to the contrary, the Reorganized Debtor and the Manager shall be bound by the terms of that certain *Stipulation Clarifying the Obligations of the Reorganized Debtor and the Environmental Response Trust Under the Transaction Documents*, dated February 10, 2016 (the "Stipulation"), including, without limitation, assuming and timely performing in full those obligations of the Debtor specified in Exhibit A to the Stipulation.

2. Article IV.R of the Plan shall be amended and restated in its entirety to read as follows:

Notwithstanding anything in the Plan or the Confirmation Order to the contrary, nothing in the Plan or the Confirmation Order shall, or shall be deemed to, amend, modify, or waive any term or condition of the Sale Order, the Purchase Agreement, or any other Transaction Document or limit, alter, or impair any of the rights or remedies of the Purchaser under any of the foregoing; provided; however, the obligations of the Debtor pursuant to the Transaction Documents shall be allocated to the Reorganized Debtor or the Environmental Response Trustee, as applicable, pursuant to the Stipulation.

3. The first paragraph of Article VIII.D of the Plan shall be amended and restated in its entirety to read as follows:

The Environmental Response Trust will be administered by the Environmental Response Trustee. The powers and duties of the Environmental Response Trustee shall be set forth in the Stipulation and the Environmental Response Trust Agreement, and shall include, among other things, the duty to conduct the Environmental Remediation Program, including any Remedial Actions, as well as any additional duties set forth in the “Environmental Remediation/Compliance Program” (as defined in the Environmental Response Trust Agreement). As set forth in the Environmental Response Trust Agreement, any property placed into the Environmental Response Trust may be sold or transferred with the approval of the EPA and the DPNR, and the proceeds of any such sale or transfer shall be retained by the Environmental Response Trust to be used as provided in the Environmental Response Trust Agreement.

4. The first paragraph of Article VIII.D of the Plan shall be amended and restated in its entirety to read as follows:

The Environmental Response Trust will obtain and maintain in full force and effect the ERT Agreed Insurance Policies, which are 10-year policies and which shall at all times name each of the Purchaser, Hess Corporation, Hess Oil Virgin Islands Corp., Petróleos de Venezuela, S.A., PDVSA V.I., Inc., Seller and its successors and the GVI as named insureds or additional insureds, under commercially reasonable terms with insurance carriers with AM Best Ratings of A- or greater and Financial Size Category XV or greater providing coverage, at a minimum, for cleanup and remediation of, and bodily injury or property damage arising from, presently unknown conditions at or emanating or migrating from

the Facility, with coverage of no less than \$50,000,000 per occurrence and in the aggregate (to be raised to \$75,000,000 if such limits are reasonably commercially available), and all on such other terms as laid out in Exhibit 1 or Exhibit 1-A (as amended) to the Termination and Release Agreement.

5. A new paragraph shall be added to the end of Article VIII.D of the Plan stating the following:

Notwithstanding anything contained in the Plan or the Environmental Response Trust Agreement to the contrary, the Environmental Response Trust and the Environmental Response Trustee shall be bound by the terms of the Stipulation, including, without limitation, assuming and timely performing in full those obligations of the Debtor specified in Exhibit A to the Stipulation. For the avoidance of doubt, the Purchaser's obligations pursuant to Section 7.33 of the Purchase Agreement are subject to the Plan's designation of the Environmental Response Trust or the Environmental Response Trustee, as applicable, as the entity that will assume and perform those obligations of the Debtor specified in Exhibit A to the Stipulation upon the Effective Date of the Plan, as more fully set forth in Section 7.33 of the Purchase Agreement. Nothing contained in the Plan, the Confirmation Order, or the Environmental Response Trust Agreement shall limit, alter, or impair the Environmental Response Trust or the Environmental Response Trustee's ability or requirement to timely perform in full their obligations under the Transaction Documents pursuant to the Stipulation, including, without limitation, the Environmental Response Trust's obligation to sell some or all of the Option Refinery Property to the Purchaser pursuant to and in accordance with the Option Agreement.

6. Article VIII.H of the Plan shall be amended and restated in its entirety to read as follows:

Consistent with the terms of this Article VIII, subject to the fulfillment of all of its legal responsibilities, and so long as the Environmental Response Trust has access to any resources, including, without limitation, resources held in trust for the Environmental Remediation Program or available assets owned by the Environmental Response Trust, that may be monetized, the Environmental Response Trustee (a) shall not unduly prolong the duration of the Environmental Response Trust past the time reasonably necessary to fulfill the purposes of the Environmental Response Trust, and (b) shall at all times endeavor to resolve,

settle, or otherwise satisfy all claims of the Environmental Response Trust Beneficiaries, and to effect the distribution of Environmental Response Trust Assets and Environmental Response Trust Proceeds and other receipts relating thereto to the Environmental Response Trust Beneficiaries and creditors of the Environmental Response Trust in accordance with the terms of the Plan and the Environmental Response Trust Agreement, and to terminate the Environmental Response Trust as soon as practicable consistent with the Environmental Response Trust Agreement and this Article VIII, but in no event prior to the completion of corrective action or other work required under the RCRA Permit and RCRA Post-Closure Permit. Notwithstanding anything to the contrary contained in the Plan, the Confirmation Order, or the Environmental Response Trust Agreement, the Environmental Response Trust shall not be terminated prior to the earlier of (i) January 4, 2051, or (ii) when the Reorganized Debtor and the Environmental Response Trustee have fully performed their respective obligations, and no longer have or may have any obligations remaining outstanding, arising under or in connection with the Transaction Documents; provided, however, that written notice from the Purchaser to the Environmental Response Trustee that there are no remaining obligations under the Transaction Documents shall be sufficient evidence that all obligations under the Transaction Documents have been performed by the Environmental Response Trust.

7. A new Article VIII.J shall be added to the Plan titled “Budgets and Invoicing”

stating the following:

The Environmental Response Trustee shall provide the Purchaser with balance statements and proposed work plans and budgets at the same time and in the same manner as such balance statements or proposed work plans or budgets are provided to the EPA and/or the DPNR pursuant to the Environmental Response Trust Agreement.

For each calendar quarter beginning after the Environmental Response Trust Effective Date until the Environmental Response Trust is terminated pursuant to Article VIII.H hereof (the “**Term**”), the Environmental Response Trust shall deliver to the Purchaser a budget detailing the reasonable forecasted costs and expenses that are subject to reimbursement pursuant to Section 7.33 of the Purchase Agreement for each month in such calendar quarter (the “**Quarterly Budget**”). The Environmental Response Trustee shall prepare and submit to the Purchaser a proposed Quarterly Budget thirty (30) days prior to the



start of each calendar quarter, being January 1, April 1, July 1 or October 1 (as applicable) of each calendar year of the Term.

The Purchaser shall fund each calendar quarter all actual, documented out-of-pocket expenses incurred or to be incurred during such calendar quarter by the Environmental Response Trustee that are subject to reimbursement pursuant to Section 7.33 of the Purchase Agreement for such calendar quarter (the “Fee”). Thirty (30) calendar days following the end of each calendar quarter, the Environmental Response Trustee shall provide the Purchaser with an accounting of (a) the exact amount of the Fee actually incurred by the Environmental Response Trustee during such calendar quarter along with supporting documentation of such amount, (b) any amounts actually paid directly by the Purchaser or its Affiliates on behalf of the Environmental Response Trustee, and (c) any amounts for which the Seller receives reimbursement on account of (a) or (b) (each, an “Accounting”). Charges not subject to reimbursement pursuant to Section 7.33 of the Purchase Agreement shall not be included in the Accounting. The Purchaser may reasonably review, audit and dispute any Accounting provided by the Environmental Response Trustee. Nothing herein shall otherwise limit the Purchaser’s underlying obligation to fund or reimburse the Environmental Response Trust with respect to Wind-Up Costs (as defined in the Purchase Agreement) as set forth in Section 7.33 of the Purchase Agreement. For the avoidance of doubt, the failure of the ERT to include in its forecast any particular Wind-Up Costs shall not in and of itself relieve the Purchaser from its obligations to pay such Wind-Up Costs.

For all calendar quarters, the Environmental Response Trustee shall invoice the Purchaser in advance for the anticipated Fee for such calendar quarter in the Quarterly Budget, which shall include an Accounting for the most recent calendar quarter(s) for which an Accounting or Accountings are available and have not yet been provided to the Purchaser in connection with an invoice. The invoice for each calendar quarter after the first calendar quarter shall specify the amount of the Fee set forth in the Quarterly Budget for such calendar quarter and any credits with respect to funds advanced by the Purchaser to the Environmental Response Trust during prior calendar quarters that were not utilized by the Environmental Response Trust for Wind-Up Costs (as defined in the Purchase Agreement) or were reimbursed to the Environmental Response Trustee by a party other than the Purchaser or its Affiliates during such prior calendar quarters. Subject to Section 7.33 of the Purchase Agreement, the Purchaser or any successor in interest pursuant to Section 11.5 of the Purchase Agreement shall pay or cause to be paid the Fee, as invoiced, to the Environmental Response Trust within thirty (30) days of the Purchaser’s receipt of the Quarterly Budget to which such Fee related.

If the Purchaser disputes an invoice, it shall pay the undisputed portion of the Fee and notify the Environmental Response Trustee of the disputed charges. The Purchaser and Environmental Response Trustee shall use reasonable commercial efforts to resolve any disputes. The Bankruptcy Court shall resolve any disputes arising from the payment of or accounting for such costs and expenses.

Promptly after the end of each month during the term of the Shared Services Agreement, the Purchaser shall provide the Environmental Response Trustee with an invoice setting forth the previous month's expenses incurred for the services provided, broken down in reasonable detail to indicate the service charges for each service item supplied during the period in question. The Environmental Response Trustee shall pay the full amount invoiced within thirty (30) days of the Environmental Response Trustee's receipt of the invoice; provided, however, that if the Environmental Response Trustee disputes an invoice, it shall pay the undisputed portion of the Fee and notify the Purchaser of the disputed charges in accordance with the terms of the Shared Services Agreement. The Purchaser and Environmental Response Trustee shall use reasonable commercial efforts to resolve any disputes. The Bankruptcy Court shall resolve any disputes arising from the payment of or accounting for such costs and expenses.

8. A new Article VIII.K shall be added to the Plan titled "Amendments to the Environmental Response Trust Agreement" stating the following:

Notwithstanding Paragraph 5 of the Confirmation Order, nothing in the Environmental Response Trust Agreement will be deemed to amend or modify the terms of the Plan, the Confirmation Order, or the Stipulation in any way that adversely affects the rights or obligations of the Purchaser thereunder, including, without limitation, any term or provision of the Environmental Response Trust Agreement expressly providing otherwise, without the express written consent of the Purchaser to such amendment or other obligation.

The Environmental Response Trustee shall provide the Purchaser with written notice of any proposed amendment or waiver to the Environmental Response Trust Agreement prior to such amendment or waiver becoming effective, which notice shall include a copy of such amendment or waiver.

For the avoidance of doubt, the Purchaser's failure to object to any proposed amendment or waiver to the Environmental Trust Agreement shall not prejudice the Purchaser's right to later assert that any term,

provision, amendment, or waiver to the Environmental Response Trust Agreement adversely affects the rights or obligations of the Purchaser under the Plan, the Confirmation Order, or the Stipulation.

9. The Environmental Response Trust shall assume and timely perform those obligations of the Debtor under the Transaction Documents as summarized on Exhibit A attached hereto (which is made a part of this Stipulation). All other obligations of the Debtor under the Transaction Documents shall be assumed and timely performed by the Reorganized Debtor. Nothing in this Stipulation shall alter, limit, or impair the Purchaser's rights to assert that any obligations performed by an Assignee that are paid for by the Purchaser, or for which the other Assignee is reimbursed for by the Purchaser, are Wind-Up Costs (as defined in the Purchase Agreement). The rights and objections of the other Parties are reserved in connection with such matters.

10. Exhibit A represents the Parties' good faith efforts to summarize certain post-closing obligations of the Debtor under the Transaction Documents to be assumed by the Environmental Response Trust without modifying the Transaction Documents. This Stipulation shall not modify, alter, amend, or impair the rights of the Parties under the Transaction Documents.

11. The Debtor shall assign or transfer any assets, liabilities, rights, or obligations necessary to carry out the terms of this Stipulation to the Reorganized Debtor or the Environmental Response Trust, as applicable.

12. The Parties acknowledge that certain obligations of the Debtor pursuant to the Transaction Documents that are assigned to the Reorganized Debtor or the Environmental Response Trust, as applicable, may be dependent upon obligations that have been assumed by the other Assignee or would benefit from the assistance and cooperation of the other Assignee. The Assignees shall cooperate in good faith with and use reasonable efforts to assist each other

and the Purchaser in the performance of the obligations of the Debtor under the Transaction Documents to the extent that they have the legal authority to do so.

13. Notwithstanding any provision of the Confirmation Order, the Plan, or the Plan Supplement to the contrary, the Purchaser shall be entitled to seek any and all remedies pursuant to the Transaction Documents, including actions for specific performance, against the Reorganized Debtor or the Environmental Response Trust, as applicable, for failure to perform any obligation assumed by the Reorganized Debtor or the Environmental Response Trust, as applicable, pursuant to this Stipulation. The rights and objections of the other Parties are reserved in connection with such matters.

14. This Court shall retain jurisdiction to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Stipulation.

15. The terms of this Stipulation, including Exhibit A attached hereto, shall be treated for all purposes as if it were part of, and included in, the Confirmation Order.

16. To the extent the Plan, the Plan Supplement, or any other part the Confirmation Order conflicts with or derogates from the terms of this Stipulation, the terms of this Stipulation shall control and govern to the extent of any such conflict or derogation; provided, that, for the avoidance of doubt, the Parties acknowledge and agree that nothing in this Stipulation shall be deemed to modify any indemnity obligations of the ERT in favor of the Environmental Response Trustee or any Environmental Response Trust Parties.

17. This Stipulation may not be modified or amended, and no term or condition may be waived, without the written consent of the Parties hereto.

18. This Stipulation has been prepared through the joint efforts of all of the Parties hereto. Neither the provisions of this Stipulation nor any alleged ambiguity herein shall be

interpreted or resolved against any Party on the ground that such Party or such Party's counsel drafted this Stipulation or based on any other rule of strict construction.

19. This Stipulation may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same agreement. Signatures to this Stipulation transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf") form or other electronic means will have the same effect as physical delivery of the paper document bearing an original signature.

***[Remainder of page intentionally blank]***

STIPULATED AND AGREED AS OF FEBRUARY 10, 2016:

FOR THE DEBTOR, HOVENSA, L.L.C.:

/s/ Lorenzo Marinuzzi  
Lorenzo Marinuzzi  
Morison & Foerster LLP  
250 West 55<sup>th</sup> Street  
New York, NY 10019  
Tel: (212) 468-8045  
Fax: (212) 468-7900  
lmarinuzzi@mofo.com

FOR THE PURCHASER, LIMETREE BAY TERMINALS, LLC:

/s/ Keith A. Simon  
Keith A. Simon  
Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022-4834  
Tel: (212) 906-1372  
Fax: (212) 751-4864  
keith.simon@lw.com

## **Exhibit A**

### **Summary and Stipulated Allocation of Obligations under the Transaction Documents**

All post-Closing obligations of Seller<sup>2</sup> under the Transaction Documents to be performed from and after the effective date of the Environmental Response Trust (the “Effective Date”) that are set forth below (such obligations, the “Assumed Obligations”) shall be assumed by and performed in full by the Environmental Response Trust (hereinafter, the “ERT”) pursuant to the Stipulation. Below is an allocation of the Assumed Obligations to the ERT. The ERT agrees to assume and timely perform from and after the Effective Date the Assumed Obligations allocated to it below on the terms and subject to the conditions with respect to such Assumed Obligations as more fully set forth in the Purchase Agreement. To the extent that obligations of Seller under the Transaction Documents are not set forth in this Exhibit A, the applicable provisions of the Stipulation shall govern. The summary of Seller’s post-Closing obligations under the Transaction Documents below is intended to facilitate the allocation of such obligations to the ERT, and it does not replace, amend or modify the terms and conditions of the Transaction Documents. Section references used herein are used solely for the convenience of the Parties and refer to the section of the Transaction Document referred to in the heading preceding such section reference.

As set forth and defined in the Purchase Agreement, the Transactions Documents include, in pertinent part, the (i) Remediation Access Easement, (ii) Limetree Access Easement, (iii) Cross-Easement Agreements, (iv) Assignment of Leased Submerged Lands, (v) Purchase Agreement, (vi) Shared Services Agreement, (vii) Transition Services Agreement and (viii) Option Agreement.

#### **I. Purchase Agreement.**

- A. **Excluded Liabilities** (§2.4). To the extent provided in the Plan as in effect as of the date hereof and as amended, modified or supplemented with the prior written consent of the Purchaser, the Environmental Response Trust shall assume the Excluded Liabilities relating to environmental matters, or otherwise arising under Environmental Law. Obligations related to the Business Permits shall be assumed by the ERT upon dissolution of the Reorganized Debtor to the extent that the Purchaser agrees to fund such obligations as Wind-Up Costs.
- B. **Required Consents; Deferred Assets** (§2.6(b); §2.6(c)). As more fully set forth in the Purchase Agreement:
  - o The ERT shall use commercially reasonable efforts to assist Purchaser in obtaining any Consents necessary for the transfer of Deferred Assets from Seller to Purchaser as set forth in Sections 2.6(b) and 2.6(c) of the Purchase Agreement.
- C. **Consent Decree Modification** (§7.4(c)). As more fully set forth in the Purchase Agreement, the ERT shall assume Seller’s obligations under Section 7.4(c) of the Purchase Agreement including, without limitation, the obligations to use commercially reasonable efforts to cooperate and take, or cause to be taken, all steps required under the Consent Decree to make

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<sup>2</sup> Capitalized terms used but not defined in this Exhibit A shall have the meanings assigned to such terms in that certain Amended and Restated Asset Purchase Agreement, dated January 4, 2016, by and among Limetree Bay Terminals, LLC (“Purchaser”), Limetree Bay Holdings, LLC, HOVENSA L.L.C. (“Seller”) and Hess Oil Virgin Islands Corp. (the “Purchase Agreement”). Capitalized terms used but not defined in this Exhibit A or in the Purchase Agreement shall have the meanings assigned to such terms in the applicable Transaction Documents. Capitalized terms used but not defined in this Exhibit A or in the applicable Transaction Documents shall have the meanings assigned to such terms in the Stipulation, including footnote 1 thereto.

the terms, conditions, obligations and liabilities of the Consent Decree applicable to the Purchaser.

- D. **Post-Closing Access** (§7.8(c)). As more fully set forth in the Purchase Agreement, the ERT shall, upon the dissolution of the Reorganized Debtor, assume Seller's obligations under Section 7.8(c) of the Purchase Agreement with respect to any relevant books and records within its possession, including, without limitation, the obligation to allow Purchaser reasonable access to such books and records within its possession related to the Purchased Assets, Assumed Liabilities and the Business and the ERT's personnel having knowledge of the location or contents of such books and records, in each case for legitimate business reasons.
- E. **Transfer of Permits** (§7.18(a); §7.18(c); §7.18(d)). As more fully set forth in the Purchase Agreement:
- The ERT shall assume all of Seller's obligations under Section 7.18(a), Section 7.18(c), and Section 7.18(d) of the Purchase Agreement with respect to Business Permits described in Section 2.1(a)(vii) of the Seller Disclosure Letter (except as otherwise provided in the Purchase Agreement) to the extent that the Purchaser agrees to fund such obligations as Wind-Up Costs and to use commercially reasonable efforts to cause the issuance or transfer of such Business Permits and to maintain and comply with such Purchaser's Required Permits that are Business Permits until comparable Permits are issued to Purchaser.
- F. **No Adverse Oral or Written Statement** (§7.18(e)). As more fully set forth in the Purchase Agreement, the ERT shall assume Seller's obligations under Section 7.18(e) of the Purchase Agreement including, without limitation, the obligation to not make any oral or written statement or filing with any Person (including any Governmental Entity) that would reasonably be expected to adversely affect Purchaser's rights to operate the Purchased Assets. Nothing in this paragraph shall prevent the ERT from making any written statement expressly required of it by applicable Environmental Law or Environmental Permits held by the Trust, or to comply with any express reporting requirements under any such Environmental Permit.
- G. **Confidentiality** (§7.22). As more fully set forth in the Purchase Agreement, the ERT shall assume all of Seller's obligations under Section 7.22 of the Purchase Agreement with respect to any Business Confidential Information in its possession.
- H. **Additional Power Requirements** (§7.24). As more fully set forth in the Purchase Agreement, the ERT shall assume all of Seller's obligations under Section 7.24 of the Purchase Agreement to pay for certain electric power comprising Additional Requirements, beyond the first \$15,000,000 of power, at cost.
- I. **Post-Closing Cooperation for Financial Statements** (§7.27). As more fully set forth in the Purchase Agreement, the ERT shall, upon the dissolution of the Reorganized Debtor, assume Seller's obligations under Section 7.27 of the Purchase Agreement with respect to using commercially reasonable efforts, for a period of 12 months after Closing, to cooperate with Purchaser and provide historical information regarding the Purchased Assets in its possession as may be reasonably requested by Purchaser from time to time in preparing financial statements and subject to Purchaser's reimbursement and indemnity obligations.
- J. **Division of Subdivision Parcels** (§7.28). As more fully set forth in the Purchase Agreement, the ERT shall assume Seller's obligations under Section 7.28 of the Purchase Agreement with respect to Subdivision Parcels owned by the ERT, including, without limitation, the obligation to cooperate with Purchaser and use commercially reasonable efforts to take all



appropriate actions and to make all filings necessary under applicable Law to cause such Subdivision Parcels, Deferred Terminal Parcels, and Option Refinery Parcels to be divided and separated into legally separate parcels of real property.

- K. **Additional Cross-Easements** (§7.30). As more fully set forth in the Purchase Agreement, the ERT shall assume Seller's obligations under Section 7.30 of the Purchase Agreement including, without limitation, the obligation to cooperate in good faith to enter into such additional Cross-Easement Agreements as may be reasonably required to facilitate Purchaser's access to the Excluded Real Property to the extent such access is necessary for the reasonable and lawful operation and use of the Purchased Real Property. As more fully set forth in the Purchase Agreement, Purchaser agrees to enter into such additional Cross-Easement Agreements as may be reasonably required to facilitate the ERT's access to real property owned or controlled by the Purchaser to the extent such access is necessary for the ERT to comply with Environmental Law.
- L. **Wind-up Costs** (§7.33). As more fully set forth in the Purchase Agreement, the ERT shall assume Seller's obligations under Section 7.33 of the Purchase Agreement including, without limitation, the obligation to use commercially reasonable efforts to use Trust Funds to fund any Remedial Actions related to Excluded Liabilities and dismantling and disposing of any Retained Refinery Assets or other Excluded Assets and to return any reimbursed Wind-Up Costs to Purchaser if, following Purchaser's reimbursement of such Wind-Up Costs in respect of any Remedial Actions, Seller receives any Trust Funds in respect of such previously reimbursed Remedial Actions.
- II. Option Agreement. With respect to the assets transferred to the ERT under the Plan, the ERT shall assume Seller's obligations under the Option Agreement, dated January 4, 2016, by and between Seller and Purchaser, pursuant to which, among other things, Purchaser has the right to acquire the Option Refinery Property from Seller pursuant to the terms of the Option Agreement.
- III. Shared Services Agreement. The ERT shall assume all of Seller's obligations under the Shared Services Agreement, dated January 4, 2016, by and between Seller and Purchaser, pursuant to which, among other things, Seller is required to pay Purchaser for certain Service Items provided by Purchaser to Seller.
- IV. Cross-Easement Agreement. The ERT shall assume all of Seller's obligations under the Cross-Easement Agreement, dated January 4, 2016, by and between Seller and Purchaser, pursuant to which, among other things, Seller (i) is required to grant Purchaser access to roads located on Seller's property, to the extent such access is necessary for Purchaser to access its own property and (ii) Seller may not erect any barriers restricting such access.
- V. Remediation Access Easement. The ERT shall assume all of Seller's obligations under Easement Agreement, dated January 4, 2016, by and between Seller and Purchaser, pursuant to which, among other things, Seller is required to grant Purchaser access to Seller's property to facilitate any Remedial Action that Purchaser performs.
- VI. Limetree Access Easement. The ERT shall assume all of Seller's obligations under the Easement Agreement, dated January 4, 2016, by and between Seller and Purchaser, pursuant to which, among other things, Seller is required to grant Purchaser access to Seller's property (i) to facilitate Purchaser's performance of any Product Release Prevention Program, (ii) for any purpose in connection with Seller's ownership and operation of the Purchased Assets, and (iii) to facilitate Seller's obligations under the Shared Services Agreement.