



Modified Plan. The purpose of the Modified Plan is to address and approve the proposed distribution of the settlement proceeds with British Petroleum through the Deepwater Horizon Claim Center (hereinafter referred to as “BP”).

## **II. BACKGROUND OF THE CASE WITH REGARD TO THE BRITISH PETROLEUM SETTLEMENT FUNDS**

Debtor filed a voluntary petition for relief on July 2, 2012 under Chapter 11 of the United States Bankruptcy Code. The case was closed on or about October 16, 2013 and reopened on or about September 15, 2015. The Debtor’s case is pending before the United States Bankruptcy Court for the Eastern District of Texas, Beaumont Division. Debtor had retained Wesley J. Farrell on October 11, 2010 to pursue a BP Oil Spill Claim. Debtor had no lawsuit pending, but a claim based on business losses through the Deepwater Horizon Claim Center. This claim was not originally scheduled in the Debtors’ property schedules. Once the case was reopened, the Debtor’s Schedules were amended, and Wesley J. Farrell and the law firm of Farrell & Patel was approved by the Court to be employed as special counsel on December 30, 2015 (Doc. 182). On or about August 2015, Debtor’s Claim against BP was approved.

Shortly after reopening the case, Debtor was contacted by counsel for Western Commerce Bank asserting a lien against any settlement proceeds. In reviewing the loan documents and the law regarding said assertion, Debtor agreed that Western Commerce Bank had a valid lien in existence against the proceeds. After ongoing negotiations between the Debtor and Western Commerce Bank, the parties reached an agreement with regard to the settlement proceeds. On or about July 15, 2016, Debtor filed a Motion for Approval of Compromise of Controversies. As a result of a limited objection filed by Super 8 Worldwide, Inc. (“SWI”), the Court entered an Order on or about August 10, 2016 Bifurcating Requests for Relief Sought, wherein approving the proposed settlement and award on attorney fees and costs and setting a Hearing on the debtor’s proposed distribution of net proceeds. The Debtor, Western

Commerce, and the attorney for Super 8 Worldwide, Inc. (“SWI”), on behalf of the unsecured creditor body continued negotiating, and reached an agreement with regard to the distribution of the net settlement funds.

Upon presenting the parameters of the negotiations of the parties, the Court entered an Order on or about December 16, 2016, ordering Debtor to modify its confirmed plan of reorganization, solely as it pertains to the treatment of Classes 3 and 9 and providing supplemental disclosure to those affected classes regarding the Debtors’ proposal for the distribution of the BP net proceeds. For this modified plan to be approved, Class 3 and Class 9 must accept the terms of the plan.

### **III. THE TERMS OF THE MODIFIED PLAN**

An overview of the Modified Plan is set forth below:

Class 3: Western Commerce Bank holds a first lien against several categories of collateral of the Debtor, including the general intangibles of the Debtor. Comment 15 to the Texas Business and Commerce Code §9.109 points out that “once a claim arising in tort has been settled and reduced to a contractual obligation to pay, the right to payment becomes a payment intangible.” Moreover, the confirmed Chapter 11 plan in this case provides that “Western Commerce Bank will retain all liens on real and personal property as well as all other rights granted in the loan documents attached to the Proof of Claim of Western Commerce Bank in existence on the date of filing of these Chapter 11 cases, any liens or other rights granted during the pendency of this case, and any liens described in the Section.” (Debtor’s Modified Third Plan of Reorganization under Chapter 11, Title 11, United States Code, Page 15). Although the confirmed Chapter 11 case provides that Western Commerce is to be paid a secured amount through the plan of \$1,120,000, the settlement proceeds from this proceeding constitute additional collateral of Western Commerce which was not known at the time of plan confirmation. Moreover, the actual filed secured claim of Western Commerce is in the amount of \$1,281,261.63.

Under the agreement of the parties, Western Commerce will be paid the sum of \$130,597.07 from the Net Amount of the Settlement. This payment will not reduce the amount owed Western Commerce pursuant to the terms of the confirmed Chapter 11 Plan, as such payment is based on additional collateral disclosed after confirmation of the approved Chapter 11 Plan. Consequently, the \$130,597.07 payment will not affect any payments due to Western Commerce under the confirmed Chapter 11 plan. Moreover, this disposition is in the best interest of Debtor and other creditors for the reason that Western Commerce holds a lien on the entire amount of the settlement proceeds and only one half of such proceeds are being directly applied to the debt owed to Western Commerce.

The amount of \$105,597.06 (hereafter referred to “escrow funds”) will be paid to Western Commerce for benefit of Debtor and deposited into a separate account at Western Commerce to partially cover expenses related to a conversion of Debtor’s hotel to a Choice Group hotel and branded as Quality Inn and Suites. The Approved Chapter 11 Plan required the Debtor to have a franchise flag on or before December 31, 2016. By agreement with Western Commerce Bank, this deadline will be extended to December 31, 2017. Western Commerce will cooperate in paying all bills in connection with completing the Property Improvement Plan (PIP) as follows:

(1) Any request for payments by Venus Hospitality, LLC in connection with the PIP on this property, and agreed to by Western Commerce Bank, and after funding as described in paragraph (2) below will be paid by a check disbursed by Western Commerce Bank from the controlled account to be set up and paid to any third party provider for PIP items that both parties agree to pay.

(2) Seventy Five (75%) percent of any request for payment from the funds in the controlled account will be distributed from the litigation funds until such funds have been exhausted. The remaining twenty five (25%) percent will be deposited into the account

by the Debtor or principal of the Debtor. No payments will be made until such funding by Debtor has occurred.

For example, if Debtor needs to expend \$2,500.00 for draperies, the Debtor will contribute \$625.00, in order for Western Commerce to release the remaining \$1,875.00 to cover said cost.

(3) Venus Hospitality, LLC will receive the monthly bank statements and copies of each cancelled check in connection with the disbursements in order for the Debtor to monitor said PIP disbursements.

(4) If the funds are exhausted prior to the completion of PIP items or any other expenses necessary to obtain the Quality Inn & Suites flag, all remaining costs will be the full responsibility of the Debtor. Once all PIP items have been completed, any remaining funds from Debtor's portion of the settlement will be paid over to the Debtor.

Class 9: The amount of \$75,000.00 from the net settlement proceeds will be distributed to the general unsecured creditors in addition to the funds currently being distributed by the Chapter 11 Plan. Western Commerce will distribute the funds to the unsecured creditors. The funds will be divided pro-rata and issued within 30 days of the entry of the Order approving this Settlement. A proposed schedule of the pro-rated payments is attached herein as *Exhibit A*.

#### **IV. IMPLEMENTATION AND ARGUMENT FOR THE MODIFIED PLAN**

The distribution of the Settlement Funds was negotiated between the Debtor and the secured creditor, Western Commerce Bank (holding a valid lien against the funds) as a way to assist the Debtor in completing its Property Improvement Plan ("PIP") in order to secure a new flag, preferably a conversion to either a Super 8 Motel or a Choice Group Hotel, and branded as Quality Inn and Suites. This is a benefit to not only the Debtor, but also to the unsecured creditors. As demonstrated in Articles

V and VI of the Supplemental Disclosure Statement, the Debtor believes that the distributions to the unsecured creditors would be less if Western Commerce chose to fully exercise its lien rights. Should this Modified Plan not be confirmed, Western Commerce asserts that it is fully secured, and would be entitled to attorney fees as approved by the Court. This could potentially yield no funds to the unsecured creditors. The estimates below are based on Western Commerce Bank's calculations of interest without approval of attorney fees. The Debtor believes that the Modified Plan provides the Debtor's general unsecured creditors with a distribution, having a value greater than the amount that those holders would receive if the Class 3 creditor fully exercises its lien under the loan with the Debtor.

Class 3 and Class 9 will be entitled to vote separately to accept or reject the Modified Plan.

**V. DISTRIBUTION BREAKDOWN UNDER THE PLAN  
AS MODIFIED IF APPROVED BY CLASS 9**

If the Modified Plan is confirmed, the distribution of the Debtor's settlement funds are estimated to be distributed as follows:

*Amounts of the Settlement Previously Approved on August 10, 2016*

Amount of Settlement or Recovery	\$418,925.50
Expenses	(\$3,000.00)
Attorney's Fees to Farrell & Patel	(\$104,731.37)
Net Amount of Settlement available for the Estate (to be held by Western Commerce)	\$311,194.13

*Amounts to be Distributed under the Modified Plan as Proposed:*

Net Amount of Settlement to be distributed	\$311,194.13
Net Amount to Western Commerce Bank-Amounts to be added to Class 3	(\$130,597.07)
Net Amount to Escrow for "PIP" Benefitting Debtor	(\$105,597.06)
Amount to be distributed to General Unsecured Creditors	\$ 75,000.00

Estimated distributions to the Class 9 creditors is attached herein as *Exhibit A*.

**VI. ESTIMATED DISTRIBUTIONS WITHOUT CLASS 9 APPROVAL**

If the Plan as proposed is not confirmed as proposed, the distribution of the Debtor's settlement funds are based on the amounts owed to Western Commerce Bank. As Western Commerce holds a

valid lien against the proceeds of the net settlement funds, the amount of the Settlement would be added to the secured portion of the claim.

Amounts Being Paid under Class 3 of the Plan	\$1,120,000.00
<u>Net Amount of Settlement</u>	<u>\$ 311,194.13</u>
Total	\$1,431,194.13
Amount of Proof of Claim as of the Petition Date	\$1,281,261.63

These amounts would seemingly leave an over payment in favor of Western Commerce Bank in the amount of \$149,932.50, which should flow to the unsecured creditors. However, Western Commerce's lien entitles it to interest on the full amount of the proof of claim. Had the BP claim/settlement been disclosed as of the petition date, the claim of Western Commerce would have been fully secured, and interest calculated on the full amount of the claim as opposed to the agreed secured amount of \$1,120,000.00.

The amounts due Western Commerce are estimated as follows (as provided by Western Commerce):

Unsecured portion of Western Commerce Claim	\$161,261.63
Accrued Interest on Western Commerce Principal from Petition Date-Confirmation 7/2/2012 – 7/15/2013 (Principal of \$1,247,214.86 for 377 days @6.25%)	\$ 80,513.69
Interest on difference between principal owed on date of filing and principal to be paid under confirmed plan (\$1,247,214.86 from 8/14/2013 – 8/22/2016)	\$ 20,182.73
<u>Total Additional Amounts Due Western Commerce</u>	<u>\$261,958.05</u>

These figures only include accrued interest. Western Commerce asserts that because of its oversecured status, it would also potentially be entitled to attorney fees as approved by this Court. As such, if the Modified Plan is not approved as proposed, the Plan would be modified with higher distributions to Western Commerce and less to the unsecured creditors.

*Without granting of attorney fees, the distribution would be estimated as follows:*

Net Amount of Settlement	\$311,194.13
<u>Additional Amount owed to Western Commerce Bank-Amounts would be added Class 3</u>	<u>\$261,958.05</u>
Amount to be distributed to General Unsecured Creditors	\$ 49,236.08

This would remove Western Commerce from Class 9. Proposed distributions should the modified plan be denied are attached herein as *Exhibit B*.

## **VII. VOTING PROCEDURES AND REQUIREMENTS**

The Debtor is seeking the acceptance of the Plan by Classes 3 and 9 of the impaired creditors. Ballots, with respect to the Modified Plan, will be accepted by the Debtor until 5:00 p.m., Central Time, on \_\_\_\_\_, 2017 (the "Voting Deadline"). The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be received by the Debtor's counsel no later than 5:00 p.m., central time on \_\_\_\_\_, 2017 at Maida Law Firm, PC, 4320 Calder Avenue, Beaumont, Texas 77706.

After carefully reviewing this Supplemental Disclosure Statement, please indicate your vote on the enclosed ballot and return it to Maida Law Firm, P.C., 4320 Calder Avenue, Beaumont, Texas 77706. In voting for or against the Modified Plan, please use only the ballot sent to you with this Disclosure Statement (except as set forth below). Please complete and sign your ballot in accordance with the instructions set forth on the ballot.

## **VIII. CONFIRMATION OF THE PLAN**

Section 1129(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Modified Plan. By order of the Bankruptcy Court, the Confirmation Hearing on the Modified Plan has been scheduled for \_\_\_\_\_, 2017, at \_\_\_\_\_ .m Central Time, in the United States Bankruptcy Court, Beaumont, Texas. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjournment thereof.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Any objection to confirmation of the Plan must be made in writing and filed in



the Bankruptcy court and served upon the parties entitled to service, together with proof of service on or before \_\_\_\_\_, 2017.

### **IX. CONCLUSION**

Class 3 and Class 9 holders of claims against the Debtor are urged to vote to accept the Plan and to evidence their acceptance by returning their ballots so that the ballots will be received by \_\_\_\_\_, 2017.

Dated: January 25, 2017

Venus Hospitality, LLC

By: /s/ Ragini Prajapati  
Ragini Prajapati, President

**Girirajan Mohan, Individually**

By: /s/ Girirajan Mohan  
Girirajan Mohan

**Ragini Prajapati, Individually**

By: /s/ Ragini Prajapati  
Ragini Prajapati

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