

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

In re:

Upper Valley Commercial Corporation,  
Debtor

Chapter 11  
Case No. 13-13110 JMD

**DISCLOSURE STATEMENT WITH RESPECT TO PLAN  
OF REORGANIZATION OF UPPER VALLEY COMMERCIAL  
CORPORATION DATED APRIL 14, 2014**

Upper Valley Commercial Corporation (the “Debtor”) presents this disclosure statement (the “Disclosure Statement”) pursuant to 11 U.S.C. § 1125(b) and (f),<sup>1</sup> to all known creditors and holders of interests in and to the Debtor, in connection with the Debtor’s Plan of Reorganization Dated February 21, 2014 (defined below). A copy of the Plan has been filed contemporaneously herewith in the United States Bankruptcy Court for the District of New Hampshire.

**I. INTRODUCTION**

The Debtor provides this Disclosure Statement, pursuant to Section 1125 of the Bankruptcy Code to all known creditors and other parties in interest of the Debtor. The purpose of this Disclosure Statement is to provide adequate information so that creditors entitled to vote on the Plan may make an informed voting decision.

A ballot for your use in voting to accept or reject the Plan is enclosed. Instructions for completing and returning the ballot are printed on the ballot itself. **IN ORDER FOR YOUR BALLOT TO COUNT, IT MUST BE RECEIVED AT THE ADDRESS STATED ON THE BALLOT NO LATER THAN 4:30 P.M. (EASTERN TIME) ON MAY 20, 2014.**

The Debtor has done its best to assure that this Disclosure Statement is correct and complete, but no representations or warranties are made in that regard.

**NO REPRESENTATIONS CONCERNING THE FINANCIAL CONDITION OF THE DEBTOR OR THE PLAN ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT SUMMARIZES THE PLAN. FOR A DEFINITIVE UNDERSTANDING OF THE TERMS OF THE PLAN, IT IS RECOMMENDED THAT YOU REVIEW THE PLAN ITSELF. IF THERE IS ANY DISCREPANCY BETWEEN THE DISCLOSURE STATEMENT AND THE PLAN, THE PROVISIONS OF THE PLAN WILL CONTROL.**

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<sup>1</sup> Unless otherwise indicated, all statutory references are to Title 11 of the United States Code.

The following terms shall have the following meanings when used in initially capitalized form in this Disclosure Statement. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in initially capitalized form in this Disclosure Statement that is not defined herein but that is defined in the Bankruptcy Code shall have the meaning assigned to such term in the Bankruptcy Code. Capitalized terms used in this Disclosure Statement, which are not otherwise defined herein, are defined in the Plan.

Accounts Receivable shall mean sums owed to the Debtor by borrowers who have borrowed money from the Debtor on a secured or unsecured basis in the ordinary course of the Debtor's pre-petition operations. As of the Petition date the Debtor was owed \$12,168,250.81 on its Accounts Receivable.

Accounts Receivable Debtors shall mean those individuals or entities that owe money to the Debtor through a loan that the Debtor extended to them during the operation of the Debtor's business.

Administrative Claim shall mean a claim arising and allowable under Section 503(b) of the Bankruptcy Code with respect to the Debtor, including charges against the Debtor's estate under 28 U.S.C. Section 1930.

Allowed with respect to a Claim or Interest, shall mean any Claim or Interest (a) that is the subject of a timely filed proof of claim, or (b) any Claim or Interest that has been listed in the schedules filed with the Bankruptcy Court by the Debtor pursuant to Bankruptcy Code Section 521 and is not listed therein as disputed, unliquidated or contingent; and, in each such case as to which either (i) no objection to the allowance thereof or other similar pleadings has been filed before the Claims Objection Deadline, or (ii) an objection or other similar pleading has been filed and the Claim or Interest has been allowed by a Final Order but only to the extent so allowed.

Allowed Amount shall mean the amount of any Allowed Claim or Allowed Interest.

Bankruptcy Code shall mean 11 U.S.C. Sections 101 et seq., as in effect with respect to the Case on the Petition Date. All Bankruptcy Code references herein are to the Bankruptcy Code, unless otherwise stated.

Bankruptcy Court shall mean the United States Bankruptcy Court for the District of New Hampshire, or any other court with jurisdiction over the Case.

Bar Date shall mean the date established by the Bankruptcy Court as the deadline for filing proofs of claims or interests in the Case, or April 30, 2014. The Bar Date for governmental entities in this case is July 1, 2014.

Case shall mean the Chapter 11 Case of the Debtor now pending in the Bankruptcy Court pursuant to Chapter 11 of the Bankruptcy Code.

Cash shall mean payment, including by check, issued by or on behalf of the Debtor with respect to any payment of collected funds required to be made pursuant to the Plan.

Claim shall mean a claim, as defined in Bankruptcy Code Section 101(5), against the Debtor.

Claims Objection Deadline shall mean that date that is thirty (30) days after the Bar Date.

Class One Claims shall mean Pink Card Claims and Term Note Claims owed by the Debtor to non-Insider and Insider creditors to be repaid by the Debtor pursuant to the Plan. These claims are described in Schedule I of the Plan and Disclosure Statement.

Class Two Claims shall mean Pink Card Claims and Term Note Claims owed by the Debtor to Insider creditors who have agreed to be repaid after payment in full by the Debtor of Allowed Class One Claims, Allowed Class Three Claims and Allowed Class Five Claims.

Class Three Claims shall mean claims by the New Hampshire Bureau of Securities Regulation and the State of New Hampshire Banking Department with respect to any purported pre-petition violation of rules, regulations or laws of the State of New Hampshire.

Class Four Interests shall mean the equity interests in the Debtor owned by Alvin Fadden (47%), David Patten (47%), Jeffrey K. Bruckner (4%) and John Bruckner (2%).

Class Five Claims shall mean the Allowed Convenience Class Claims that are less than \$1,000. These claims are described in Schedule I of the Plan and Disclosure Statement.

Confirmation Date shall mean the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.

Confirmation Order shall mean the Order (which need not be a Final Order) confirming the Plan pursuant to Bankruptcy Code Section 1129.

Convenience Class Claims shall mean claims Allowed in an amount less than \$1,000 which shall be paid in full with interest on the Effective Date.

Distribution Date shall mean the Effective Date and the following March 31, June 30, September 30 and December 31, repeating.

Effective Date shall mean the date that is fourteen (14) days after the issuance of a Final Order confirming the Plan.

Encumbrances shall mean all liens, encumbrances, mortgages, hypothecations, pledges, and security interests of any kind whatsoever.

Fee Claim shall mean the Administrative Claim of a professional person for compensation and/or reimbursement of expenses.

Final Order shall mean an order or judgment of any court, administrative agency or other tribunal as entered on its docket as to which (a) the time to appeal or petition for rehearing or certiorari has expired and as to which no appeal or motion for rehearing or petition for certiorari has been timely filed or taken, (b) if such an appeal or motion for rehearing or petition for certiorari has been timely filed or taken, such order or judgment has been affirmed by the highest tribunal in which review was sought or such appeal, motion for rehearing or petition for certiorari was dismissed or otherwise terminated without modification of such order or judgment, and the time has expired within which any further proceeding for review may be commenced.

Insider shall mean a director, officer or person in control of the Debtor or relative of a director, officer or person in control of the Debtor.

Order shall mean an order of the Bankruptcy Court.

Petition Date shall mean December 31, 2013.

Pink Card Claims shall mean the unsecured demand claims of persons who have lent money to the Debtor on an unsecured basis.

Plan shall mean the Debtor's Plan of Reorganization Dated February 21, 2014, as it may be amended or modified by the Debtor from time to time, together with all exhibits, schedules and other attachments thereto, as the same may be amended or modified by the Debtor from time to time, incorporated herein by reference.

Plan Monitoring Committee shall mean a committee of three individuals comprised of the counsel for the official committee of unsecured creditors, counsel for the State of New Hampshire and counsel for unsecured creditor Crystal Farr, or their successors.

Post-Petition Bar Date shall mean the date which is sixty (60) days follow the Confirmation Date. It is the date by which holders of pre-confirmation

administrative claims and/or professional fee claims must be filed with the Bankruptcy Court.

Priority Claim shall mean an Unsecured Claim arising before the Petition Date and allowable under Section 507(a)(2) through 507(a)(9) of the Bankruptcy Code.

Quarterly Available Cash shall mean the total cash held by the Debtor at the end of each annual quarter that is in excess of \$100,000.

Reorganized Debtor shall mean the Debtor, or any successors thereto by merger, consolidation, acquisition, or otherwise, on and after the Effective Date.

Term Note Claims shall mean the unsecured claims of persons who lent money to the Debtor on an unsecured basis pursuant to a term promissory note, including but not limited to those with promissory notes bearing a maturity date of between six months and five years from the date of the loan.

Unsecured Claim shall mean a Claim which arose before the Petition Date and which is not secured by any interest in any property of the Debtor's estate, and shall include a Claim which arises from the rejection of an Executory Contract or Unexpired Lease, within the meaning of Section 365 of the Bankruptcy Code; provided, however, that in order to be an Unsecured Claim, such claim must be evidenced by a proof of claim which has been timely filed by the holder of the Claim (whether or not such proof of claim has been Allowed) prior to the Bar Date, or such Claim must be described on Schedule F filed by the Debtor and not noted as unliquidated, contingent or disputed on such Schedule (whether or not such claim is deemed Allowed).

## **II. SUMMARY OF THE PLAN**

Under the Plan, the Debtor will collect accounts receivables owed to it and use those proceeds to pay its creditors on a quarterly basis. As of the Petition Date, these accounts receivable totaled approximately \$12,168,250.81. The Debtor proposes to pay all of its cash above the sum of \$100,000 to holders of Allowed Class One Claims on a *pro rata* basis, quarterly. Class Five Claims are Convenience Class Claims that are less than \$1,000 which shall be paid upon the Effective Date with interest. Based on the Debtor's financial projection, a copy of which is attached hereto as Schedule II of the Plan and Disclosure Statement, the Debtor anticipates making quarterly payments to the holders of Allowed Class One Claims in the approximate average amount of \$612,000 per quarter. As identified in Schedule II, the Debtor anticipates its quarterly collections will fluctuate between a high of \$1,500,000 to a low of \$118,596. Such payments will be made with interest at the demand note interest rate of 2%.

Once the Allowed Class One Claims are paid in full, 100% of quarterly payments made thereafter will be made to holders of Allowed Class Three Claims until such claims are paid in full.

Once the holders of Allowed Class One Claims, Allowed Class Three Claims and Allowed Class Five Claims are paid in full, the Debtor will be deemed to have satisfied its repayment obligations under the Plan. The Debtor will thereafter begin making payments to holders of Allowed Class Two claims outside of the bankruptcy. The Debtor anticipates payment in full to holders of Allowed Class Two claims. The Class Four Interests shall be satisfied by providing the holders of such interests with stock in the Reorganized Debtor in proportion to the shares owned immediately prior to filing the bankruptcy.

The Plan is a wind-down of its operations under which the Debtor will no longer be entering into new loan transactions (as either a borrower or lender) and will no longer be accepting investors. To the extent that any repayments made under the Plan are inconsistent with the Debtor's pre-petition obligation to any creditor, the repayments under the Plan, or failure to pay according to the pre-petition terms, shall not be considered new borrowing or a "roll-over" with respect to such obligation.

The Debtor will retain an independent CPA/Auditor, Christopher Johnson, who will inspect the Debtor's books and records each month for the first six months following Confirmation, then quarterly thereafter for the 36 months following Confirmation. Mr. Johnson will issue a brief report to counsel for the Plan Monitoring Committee, counsel for the Debtor and the US Trustee after each such visit disclosing the amounts collected by the Debtor during such reporting period and identifying any activities that are inconsistent with the Plan.

A Plan Monitoring Committee will be established to both monitor the Debtor's collection efforts under the Plan and to approve or decline any material compromises by the Debtor of Accounts Receivable. The Debtor will retain \$100,000 on a quarterly basis to pay, *inter alia*, fees of its counsel, fees associated with the Plan Monitoring Committee, fees of Mr. Johnson and operating expenses; although it is not anticipated that these fees and costs will collectively total \$100,000 in any given quarter. This reserve fund will be replenished by collections of Accounts Receivable to the extent the funds are used.

The Debtor believes that the Plan Provides for the fair and equitable treatment of all creditor Claims and that the Plan is in the best interests of all creditors and other parties in interest.

### **III. HISTORY AND BACKGROUND OF THE DEBTOR**

The Debtor was formed on December 22, 1964 for the purpose of conducting a finance business to encourage and support various businesses in the Upper Connecticut Valley of New Hampshire. The Debtor has engaged primarily in buying, selling, transferring, assigning, discounting, borrowing money upon and pledging as collateral various types of financial assets, including but not limited to bills of lading, warehouse receipts, trust receipts, conditional sales contracts, chattel mortgages, evidences of

deposit or storage of personal property, pledges of personal property, mortgages on real property, accounts receivable, commercial paper accounts, choses in action, promissory notes and other evidences of indebtedness of persons, firms or corporations.

The primary business of the Debtor has been to lend to retail and wholesale propane companies, but it also lends to other commercial businesses and individuals. To finance its lending, the Debtor borrows from businesses and individuals, resulting in the Pink Card Claims and Term Note Claims.

The Debtor's original incorporators included, among others, Edward C. Patten and Karl T. Bruckner. The Debtor was run by Mr. Patten from December 1964 until his death in May 2013. Mr. Bruckner, an attorney and Haverhill District Court Judge, served as a director of the Debtor and was actively involved from 1964 until his death in 1994. Upon Mr. Patten's death in May 2013, Mr. Patten's son, David Patten, and Debtor employee Alvin Fadden, assumed operation of the Debtor. Prior to Mr. Patten's death, neither David Patten nor Alvin Fadden was actively engaged in management of the Debtor.

### **Events Leading to Bankruptcy**

On September 30, 2013, the New Hampshire Bureau of Securities Regulation advised the Debtor that it was being investigated. David Patten and Alvin Fadden engaged counsel and discovered that some of the Debtor's operations involved the unlicensed sale of securities under New Hampshire law. Although the Debtor was issued a Dealer's certificate by the Securities Division of the New Hampshire Insurance Department on March 15, 1965 for the year ending February 28, 1966, and renewed through the year ending February 28, 1971, which authorized the Debtor to sell securities, the law changed on January 1, 1982 and sales to new investors after this date were not properly licensed.

On October 31, 2013, Debtor's counsel met with the New Hampshire Attorney General's Office, Banking Department, and Bureau of Securities Regulation to discuss the securities law violations and potential banking law violations. Since September 30<sup>th</sup>, 2013, the Debtor has been working actively with these agencies to provide detailed information on the operations and financial health of the Debtor. On December 27, 2013 the Debtor entered into stipulations with the New Hampshire Bureau of Securities Regulation and the State of New Hampshire Banking Department wherein the Debtor essentially agreed to discontinue its borrowing practices (the "Stipulations"). The filing of this case was a condition of avoiding the state's seeking the appointment of a receiver to effectuate the Debtor's wind-down, and the Stipulations were part of that negotiated resolution.



#### **IV. DESCRIPTION OF THE PLAN**

##### **A. *Introduction***

The following description of the Plan is only a summary. Creditors and other parties in interest are urged to carefully read the Plan in full. If the Bankruptcy Court confirms the Plan, the Plan will be binding upon the Debtor, all creditors, and other affected parties.

In Order for any Claim to be paid pursuant to the Plan, the Plan must be confirmed by the Bankruptcy Court and must take effect in accordance with its terms. The hearing at which the Court will consider confirmation of the Plan has been scheduled to take place on **May 27, 2014 at 1:30 p.m.** at United States Bankruptcy Court, 1000 Elm Street, Manchester, New Hampshire. If the Plan is confirmed on that date, the Plan will take effect on the Effective Date as defined in the Plan.

In order for your particular Claim against the Debtor to receive a distribution under the Plan, the Claim must be an Allowed Claim. A Claim is Allowed when it is determined to be valid pursuant to procedures established by the Bankruptcy Code, the Bankruptcy Court and the Plan. For further information in this regard, see Section VII, "Allowance of Claims and Interests," below.

##### **B. *Treatment of Non-Classified Claims***

Under the Plan, certain Priority Claims are not classified. These include Administrative Claims (11 U.S.C. Section 507(a)(1)), and Claims entitled to priority under Sections 507(a)(2) and 507(a)(8) of the Bankruptcy Code. These unclassified Claims will be paid in full on the later of the date that such Claim becomes an Allowed Priority Claim and the date that payment of such Claim is due in accordance with its terms or in accordance with any applicable provision of the Bankruptcy Code.

##### **C. *Classification of Claims under the Plan***

The Plan divides Claims (other than Administrative and unclassified Priority Claims) against the Debtor into four (4) classes and one class of Interests. The Code provides that a plan may place a claim in a particular class if such claim is substantially similar to other claims in that class. 11 U.S.C. §1122(a).

Schedule I of the Plan and Disclosure Statement describes the classification of Claims and amounts the Debtor proposes to pay each such Creditor under the Plan. The Debtor will not reclassify, re-characterize, object to or take any adverse action with respect to any of the Claims identified in Schedule I, except to the extent any such Creditor files a proof of claim that deviates materially from Schedule I, the Debtor may file an objection to such Claim as provided for herein. Subject only to the preceding sentence, all Claims listed in Schedule 1 are undisputed, non-contingent and liquidated.



The Debtor has proposed to pay the State of New Hampshire after payment of Class One claims because the State's interest in consumer protection is fostered by payment to holders of Class One Claims prior to payment of any fines or penalties. Moreover because the State has yet to file a claim and since its claim may be subject to objection litigation, it would be inequitable to hold up payments to holders of Class One until the State's claims is filed and resolved. Finally, since the Debtor is proposing a 100% plan, such subordination is not overly burdensome to the state. The Plan provides that no party may seek further subordination of or re-characterize the State's claims.

Distributions to holders of Allowed Claims under the Plan are in full settlement and satisfaction of those claims, including any interest accrued thereon. Following is a list of the five (5) classes of Claims and Interests:

Class One shall consist of the Allowed Pink Card Claims and Term Note Claims owed by the Debtor to non-Insider and Insider creditors.

Class Two shall consist of the Allowed Pink Card Claims and Term Note Claims owed by the Debtor to Insider creditors who have agreed to be repaid outside of the plan once the holders of Allowed Class One Claims and Allowed Class Three Claims are paid in full.

Class Three shall consist of claims by the New Hampshire Bureau of Securities Regulation and the State of New Hampshire Banking Department with respect to any purported pre-petition violation of rules, regulations or laws of the State of New Hampshire by the Debtor. The State of New Hampshire has yet to assess any fines or penalties against the Debtor and has yet to file a proof of claim, although the State has conveyed information suggesting that its Claims will approximate \$600,000. The Debtor intends to oppose such Claims and will have until midnight on 12/31/2014 to file such opposition. The Debtor has retained the McLane law firm to represent it in such action, to the extent necessary. The State and the Debtor each preserve all claims and defenses against the other.

Class Four shall consist of the equity interest in the Debtor owned by Alvin Fadden (47%), David Patten (47%), Jeffrey K. Bruckner (4%) and John Bruckner (2%).

Class Five shall consist of Convenience Class Claims which are less than \$1,000.

**D. *Treatment of Classified Claims and Interests***

Class One, Class Two, Class Three, and Class Five are impaired under the Plan within the meaning of Bankruptcy Code Section 1124. The treatment of classes of Claims and Interest are as follows:

Class One. The Allowed Pink Card Claims and Term Note Claims owed by the Debtor to non-Insider and Insider creditors shall be repaid by the Debtor over a period of approximately 36 months. The Debtor will make quarterly payments in the amount of its

Quarterly Available Cash to holders of Allowed Class One Claims on a *pro rata* basis. These claims will be repaid with interest at the demand note interest rate of 2%. These claims are impaired.

Class Two. The Allowed Pink Card Claims and Term Note Claims owed by the Debtor to Insider creditors shall be repaid outside of the bankruptcy plan once the holders of Allowed Class One Claims and Allowed Class Three Claims are paid in full. These claims are subordinated to Class One, and Class Three Claims. These claims are described in Schedule I of the Plan and Disclosure Statement. These claims are impaired.

Class Three. Class Three Claims will be paid in full. These Claims will be subordinated to the claims of holders of Allowed Class One Claims, and payments to the holder of Allowed Class Three Claims, with interest at the demand note rate of 2%, will commence once the holders of Allowed Class One and Class Five claims are paid in full.

Class Four. The holders of interests in Class Four shall retain their current equity interest by being issued stock in the Reorganized Debtor. Because Classes One through Three shall receive on account of their Claims payment of a value, as of the effective date of the plan, equal to the amount of their Allowed Claims, the Plan satisfies 11 U.S.C. §1129(b)(2)(B)(i) to the extent necessary.

Class Five. The holder of Allowed Convenience Class shall be paid in full on the Effective Date, with interest.

## **V. MEANS FOR EXECUTION OF THE PLAN**

### ***A. Financing of the Plan Obligations and Post-Petition Operation***

The funds necessary for the Debtor to execute and implement the Plan will come from collection of the Accounts Receivable. Based on the terms of the Accounts Receivable Notes and communications with the Accounts Receivable debtors, the Debtor anticipates collecting the majority of the Accounts Receivable within the next thirty-six (36) months according to Schedule II of the Plan and Disclosure Statement. In fact the Debtor is already proceeding with its collection plans identified in Schedule II; the Debtor has already collected \$1,648,892 from Parke J. Patten, Inc. d/b/a Patten's Gas resulting in the Debtor eliminating its secured debt of \$1,150,393 and receiving cash in the amount of \$501,204. The Debtor has also received \$369,060 from Island Propane, Inc., \$106,483 from Island Properties Improvement, LLC, and \$503,149 from Proctor Gas, each of which paid the Debtor all amounts owed. At the present time the Debtor has approximately \$1,702,000 available in cash for distribution to its creditors.

The Debtor does not believe it will have to materially compromise any of the Accounts Receivable obligations to meet the collections identified in Schedule II. That is not to say that the Debtor does not anticipate that some of the Account Debtors will have difficulty either making their payments or refinancing, but the Debtor believes there are more than enough good and collectible Accounts Receivable to satisfy payments

under the Plan, even accounting for difficult credits (which are identified in Schedule II). The Debtor will not be allowed to compromise or settle any of the Accounts Receivable obligations owed by Insiders or companies owned or controlled by Insiders without written approval from the Plan Monitoring Committee. Likewise, the Debtor may not compromise any Accounts Receivable obligations owed by Non-Insiders in an amount greater than 40% without written approval from the Plan Monitoring Committee. By way of example if the Debtor is owed \$100,000 by a non-Insider, the Debtor may not accept less than \$60,000 in compromise of that claim without approval of the Plan Monitoring Committee.

Schedule III attached hereto provides a detailed analysis of the types of obligations that make up the Accounts Receivable and the nature of collateral securing those obligations. It should be noted that many of the Accounts Receivable Debtor obligations mature well outside of the plan period, such as Walker Motor Sales (2020), Jackson Mitchell (2043), Freedom Propane (2021), Derrick & Abby O'Donnell (2043), and others. Because of the Debtor's standing in the community and based on communications with these Accounts Receivable Debtors, the Debtor is confident that the Accounts Receivable Debtors will refinance or otherwise pay off the obligations to the Debtor in accordance with Schedule II, well in advance of their legal obligations to do so. The Debtor does not believe an outside Chapter 7 Trustee would be able to so timely collect on these obligations and thus would not be able to pay off the unsecured creditors as quickly or as completely as the Debtor can.

The Debtor owns two pieces of real property. The Bath, NH property is valued on the Debtor's schedules at \$375,000 and in North Haverhill, NH is valued on it schedules at \$220,000. The Debtor has recently been approached by a third party about selling the North Haverhill, NH property and is pursuing same. At the same time the Debtor will also start the process of selling the Bath property. The proceeds from these sales will be paid to creditors according to Schedule II.

During the Plan the Debtor anticipates incurring monthly expenses of \$14,274 as described in Schedule IV, while collecting monthly interest and rent totaling \$24,600, leaving a monthly positive cash flow (without collecting any Accounts Receivable) of \$10,326. These figures include the fees of Mr. Johnson, an independent auditor, described below, the Plan Monitoring Committee and counsel for the Debtor. The Debtor will adhere to this budget.

#### **B. *Post-Petition Management***

The Debtor will employ David Patten and Janice Brown to collect the Accounts Receivable during the course of the Plan and make distributions in accordance with the Plan. The Debtor will pay Mr. Patten on a quarterly basis 3% of the gross amount of Accounts Receivable he collects. Given the Debtor's projected collections of \$7,526,484 during the Plan, Mr. Patten would be paid \$225,794, which equates to \$75,264 *per annum* if he performs as expected; obviously if he collects less, he will be paid less. The Debtor will pay Mrs. Brown \$41,800 per year for her services. Mr. Patten is an equity

owner of the Debtor and is the single largest creditor of the Debtor, being owed \$2,955,000.

Mr. Patten has elected to be treated as a Class II creditor, which means he will not be repaid *anything* on his claim until holders of Allowed Class I (unsecured creditors), Allowed Class III (State of NH) and Allowed Class V (Convenience Class) creditors are paid in full; Mr. Patten is personally motivated to collect as much as possible as soon as possible. Mr. Patten's claim arises from a series of deposits he made with the Debtor over the years; like many other members of his community, Mr. Patten has always placed all of his earnings into the Debtor. The Debtor believes Mr. Patten and Mrs. Brown are uniquely qualified to collect on the Accounts Receivable because of their close personal familiarity with the Accounts Receivable debtors and/or the employees of Accounts Receivable debtors. Mrs. Brown has worked for the Debtor for over 31 years; Mr. Patten for over 28 years. It should also be noted that the other large equity owner of the Debtor, Alvin Fadden, personally paid \$2,000 to a creditor of UVCC post-petition because the recipient is a widow who has no other source of money and would have suffered terribly without it; Mr. Fadden made this payment out of his own pocket without using any assets of the Debtor, without expecting re-payment or any other consideration.

### **C. *Third Party Oversight***

The Debtor has full faith that Mr. Patten and Mrs. Brown will discharge their obligations under the Plan with the utmost diligence and honesty. However, because Mr. Patten is an Insider of the Debtor, is an equity interest holder and a Claim holder of the Debtor, third-party oversight is warranted. Therefor the Debtor will retain an outside CPA, Christopher Johnson, to periodically monitor collections of the Accounts Receivable and the management of the proceeds. Mr. Johnson will inspect the Debtor's books and records each month for the first six months following Confirmation, then quarterly thereafter for the 36 months following Confirmation. Mr. Johnson will issue a brief report to the Plan Monitoring Committee and the US Trustee after each such visit disclosing the amounts collected by the Debtor during such reporting period and identifying any activities that are inconsistent with the Plan. Mr. Johnson will also be able to communicate directly with the Plan Monitoring Committee regarding his findings. For these services Mr. Johnson will be paid \$200 per hour by the Debtor.

The Plan Monitoring Committee will monitor the Debtor's collections of its Accounts Receivable depicted in Schedule II. If at the end of any calendar quarter during the Plan the Debtor has recovered projected Accounts Receivable (on a cumulative basis) that is less than 75% of the Debtor's projected collections (on a cumulative basis), or if the Plan Monitoring Committee believes that cause otherwise exists for such, the Plan Monitoring Committee may, but is not required to, file a motion with the Court requesting the appointment of a Chapter 11 trustee or take such other action as it deems to be in the best interest of the Debtor's estate. The Debtor will compensate the Plan Monitoring Committee members each at the rate of \$200 per hour.

### **D. *Preferential Transfers***

The Debtor's records reflect a number of payments by the Debtor to creditors, some Insiders and some non-Insiders, in the months leading up to the Petition Date. Of course because the Debtor was acting as a *de-facto* bank, most of these were actually more akin to withdrawals by depositors (it was in fact their money). These include the following:

- a. The CHAF Trust (Charlotte Fadden) withdrew \$44,000 between January and December 2013 (Alvin Fadden is the beneficiary of this trust but will receive no funds from it until Mrs. Fadden's death);
- b. James Walker withdrew \$50,816.00 from his personal account and asked the Debtor to write two checks to the Boston Red Sox on his behalf, totaling the same amount.
- c. UVCC demanded payment in full from John L. Rancourt in the amount of \$31,189.10; Mr. Rancourt withdrew this from his personal account and paid the Debtor in full.
- d. Edwin and Kay Blaisdell withdrew \$207,655.01 in November, 2013;
- e. Michael Polli withdrew \$52,799 in November, 2013;
- f. Island Propane, Inc. borrowed \$106,000 from the Debtor to pay directors and management Fees;
- g. Debtor paid Alvin Fadden payroll of \$105,001.95 (all Pre-Tax) which Mr. Fadden signed over to UVCC, and applied as a reduction to his debt to the Debtor;
- h. Mr. Fadden withdrew funds for living expenses, including \$7,000 payable to Diana Fadden and the \$560.00 payable to Swenson Insurance Agency.
- i. Debtor paid \$2,980.00 to American General Life for key man life insurance;
- j. The Debtor cashed a handful of small checks throughout the year to replenish its \$10,000 Petty Cash fund;
- k. Fadden Automotive, Inc. withdrew approximately \$18,000 of its own money during 2013;
- l. Mr. Patten deposited with the Debtor all of his interest earned from the Debtor of \$121,333.03 in 2013; he withdrew approximately \$56,333.03 during 2013 for living expenses. Mr. Patten also deposited \$30,000 of other income with the Debtor.

It must be understood that the Debtor had no intention of filing bankruptcy until late December, 2013. Up until that point the Debtor had *never* failed to honor a withdrawal request by any of its creditors. Moreover, most of the Accounts Receivable Debtors had revolving lines of credit with the Debtor and routinely borrowed and repaid funds during the course of the year. Although the transfers outlined above might technically be recoverable by the Debtor as so-called Preferences under the Bankruptcy Code, where a plan proposes to pay creditors 100% of their Allowed Claims, recovering such transfers makes little sense because the party who is compelled to repay the money would then be allowed to file an unsecured claim against the Debtor for the very same amount it had to pay back. Put another way, the Debtor would have to pay a lawyer to pursue these claims only to have to repay the money to the party it had pursued. It could cost the Debtor significant legal fees, perhaps even in excess of what is recovered, and at best only slightly accelerate the repayment period described in Schedule II. Finally, the Debtor believes that all such transfers were so-called ordinary course of business transfers and thus are most likely defensible by the recipients. Therefore, the Debtor will not pursue any preference claims against the parties listed above.

The Debtor is not aware of any unsecured corporate notes which have been given to any third party, including friends or family, without consideration. Edward Patten frequently opened savings accounts for his grandchildren upon the event of their birth and would contribute to it upon their later birthdays, but would do so with his own money.

To the extent that a Class One Claim holder either directly or indirectly through an entity it controls is an Accounts Receivable Debtor, distributions to such creditor shall be postponed until such time as payment of the receivable is made in full. Alternatively, the Debtor may apply such amount to be distributed to offset such holder's Account Receivable.

## **VI. EXECUTORY CONTRACTS**

Under the Bankruptcy Code, the Debtor has the right to either reject or assume any contract that was "executory" on the Petition Date. While definitions of "executory" vary, the most widely accepted definition is that an executory contract is one where there is material performance remaining on the part of both the Debtor and the other party to the contract as of the Petition Date. The right of the Debtor to "assume" or "reject" means that the Debtor has three options: (i) to reject the contract, which dates such rejection to the moment before the Petition Date, with the consequence that the other party to the contract has the right to present an unsecured claim for the damages it incurs by reason of such rejection; (ii) to assume the contract, with the consequence that the contract continues in accordance with its terms with the Debtor, all defaults are cured, and no damage claims are presented; or (iii) to assume the contract upon negotiated amended terms and provisions.



Under the Plan, unless an executory contract is the subject of a motion to assume the contract and the motion is pending as of the Effective Date or is otherwise dealt with by an Order of the Bankruptcy Court entered on or prior to the Effective Date, any and all executory contracts and unexpired leases of the Debtor shall be deemed rejected as of the Effective Date.

Under the Plan the Debtor will reject the executory contracts with Derrick O'Donnell for commercial property the Debtor rents to Mr. O'Donnell. The Debtor will begin efforts to sell the property and will enter into a month-to-month lease agreement with Mr. O'Donnell until such sale is completed.

The Debtor will also assume the executory contract for the lease of its headquarters with David Patten. That rental rate is \$2,000, which basically covers the expenses of the real property (nothing is actually paid to Mr. Patten). The Debtor believes this is market rate. There are no cure amounts required to be paid by the Debtor for such assumptions.

## **VII. ALLOWANCE OF CLAIMS AND INTERESTS**

The Bankruptcy Code provides for pre-petition claims to be asserted in two ways. First, a creditor may file a proof of claim with the Bankruptcy Court on the appropriate official form. Notice will be mailed to all known creditors of the Debtor informing them of the deadline (the "Bar Date") for filing proofs of claim. Second, a creditor is excused from the requirement of filing a proof of claim if the creditor's claim is listed in the schedules of liabilities filed by the Debtor with the Bankruptcy Court, if it is not listed therein as an obligation that is disputed, unliquidated or contingent, and the creditor agrees with the scheduled amount and nature of the Claim. Those claims amounts are also reflected in Schedule I attached hereto.

Holders of Administrative Claims entitled to priority under the Bankruptcy Code arising before the Confirmation Date and still outstanding sixty (60) days thereafter will be required to file a proof of claim or an application for compensation with the Bankruptcy Court on or before such 60<sup>th</sup> day (the "Post-Petition Bar Date"). Administrative Claims by a professional person for compensation and/or reimbursement of expenses, a Fee Claim, must be submitted to the Bankruptcy Court on or before the Post-Petition Bar Date.

Once a Claim (other than a Fee Claim) has been properly asserted, it will automatically be Allowed unless an objection is timely filed by an interested party, usually the Debtor itself, against the Claim. If it is your claim, you will be sent a copy of any objection. You will then have an opportunity to submit a reply and, if appropriate, to be heard by the Bankruptcy Court. Fee Claims will be allowed only by a Bankruptcy Court Order. The Plan provides that no distribution will be made on account of any Claim as to which an objection is filed until the objection is resolved.



In general, bankruptcy courts enforce deadlines for the assertion of Claims. Therefore, if you are required to file a proof of claim by the Bar Date or an application for compensation or proof of claim with regard to an Administrative Claim before the Post-Petition Bar Date, but fail to do so, your Claim may be disallowed and may not be paid even if the Claim would otherwise have been entitled to payment.

#### **VIII. INJUNCTION AND STAY**

Under the Plan, entry of the Confirmation Order will constitute an injunction applicable to all persons, staying and enjoining the enforcement or attempted enforcement by any means of all liens, claims and debts (i) discharged pursuant to the Plan and/or (ii) not discharged but relating to the Debtor. In the event of a default under the Plan, which default is not cured in accordance with any applicable grace period, and unless the Bankruptcy Court orders otherwise, such injunction shall be deemed dissolved without further Order of the Bankruptcy Court.

#### **X. ALTERNATIVES TO THE PLAN; LIQUIDATION ANALYSIS**

There are two alternatives to the Plan, a proceeding under Chapter 7 bankruptcy, or a state receivership. The chapter 7 alternative to the Plan is the liquidation of the Debtor's assets in a proceeding under Chapter 7 of the Bankruptcy Code, and the distribution of the net proceeds thereof to unsecured creditors in the order of priority and manner provided under the Bankruptcy Code. In general, this would require administrative expense creditors, including administrative expense creditors in the Chapter 11 case and in the Chapter 7 case (with the latter having priority) to get paid first, with the balance distributed to unsecured creditors on a *pro rata* basis. Under a state receivership a third party receiver (likely unfamiliar with this particular business, its clients, and creditors) would be appointed by the state to take control of all of the debtors' property with the authority to liquidate assets and wind-down business affairs. The chapter 7 trustee or state receiver would charge legal fees and/or receive a commission for these services.

Because of the close relationship the Debtor has with the Accounts Receivable Debtors, it is unlikely that a trustee (whether in bankruptcy or through a state receivership) would be capable of collecting as much from the Accounts Receivable Debtors, or do so more quickly as the Debtor will be able to do itself while in chapter 11 bankruptcy. A receiver or Chapter 7 Trustee could not compel the Class II "Hold" creditors to wait for payment until Class I and Class III are paid in full. That would increase the amount of claims payable under the Plan by \$4,550,783, which would likely result in a less than 100% plan, or at the very least a payout that takes several years longer. Theoretically a Chapter 7 Trustee could liquidate the personal property assets of the Debtor. A typical discount for the liquidation of assets by a trustee is 25%. Since the Debtor has office equipment and an automobile worth \$13,627 it is possible that a chapter 7 trustee could bring in \$10,220.25 ( $\$13,627 \times .75$ ) into the estate in the short-run. However, the Debtor believes that any such temporary gains would be more than offset by the legal difficulties the trustee would have collecting on the Accounts

Receivable. By way of example, the Debtor has already collected \$1,648.892 from Parke J. Patten, Inc. d/b/a Patten's Gas resulting in the Debtor eliminating its secured debt of \$1,150,393 and receiving cash in the amount of \$501,204.

Based on the foregoing, the Debtor believes that confirmation of the Plan will result in an enhanced return to creditors and is in the best interest of the Debtor's creditors.

## **X. ACCEPTANCE AND CONFIRMATION OF THE PLAN**

### **A. *Acceptance by Impaired Classes***

The Bankruptcy Code provides that any class of creditors or stockholders whose rights are "impaired" (in general terms, not fully honored) under a proposed plan of reorganization has the right to vote, as a class, to accept or reject the Plan. Under the Plan, Claims that have been objected to and not allowed shall have no right to vote with respect to the acceptance or rejection of the Plan, except as otherwise ordered by the Bankruptcy Court. A class of creditors accepts the Plan if more than one-half of the ballots that are timely received from members of the class, representing at least two-thirds of the dollar amount of Claims for which ballots are timely received, are cast in favor of the Plan. If a plan impairs any class of claims, then, among other requirements, at least one impaired class of claims must vote to accept the Plan, without counting claims of Insiders, in order for it to be confirmed.

If any impaired class of claims does not accept the Plan (but one impaired class does accept the plan), the Bankruptcy Court may still confirm the Plan at the request of the Debtor if the Plan "does not discriminate unfairly" and is "fair and equitable" as to the non-accepting class.

Under the Plan, Classes One, Three, Four and Five are impaired and entitled to vote. Under the Code, votes of Insiders are not counted for confirmation purposes.

### **B. *Best Interest of Creditors Test***

To obtain confirmation of the Plan, the Debtor must also satisfy the so-called "best interest of creditors" test embodied in Section 1129(a)(7) of the Bankruptcy Code. This test requires that the Plan provide each non-accepting creditor with at least as much value as would a liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. The Debtor believes that the Plan satisfies this test because, for the reasons described above, the Plan would provide to any non-accepting creditor a dividend equal to or greater than the dividend such creditor would receive through liquidation of the Debtor.

## **XI. Voting and Objecting to Plan**

### **A. Voting**

Prior to the Confirmation Hearing, certain creditors will have an opportunity to vote to accept or reject the Plan. Pursuant to the Bankruptcy Code, holders of Claims in Classes 1, 3, 4 and 5 (the "Voting Classes") are entitled to vote on the Plan because these Classes are "impaired" under the Plan within the meaning of Bankruptcy Code Section 1124, but will nonetheless receive distributions under the Plan. The impairment of a Claim or Interest generally occurs if the legal, equitable, or contractual rights of the holder are altered. Holders of Class 5 interests (Equity) will receive stock in the reorganized debtor in full satisfaction of their claims.

The Plan may be confirmed even if it is not accepted by each of the Voting Classes. The Bankruptcy Code defines "acceptance" with respect to a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the claims in such class whose holders cast ballots. If the Plan is not accepted by all classes of impaired creditors (i.e., Classes 1, 3, 4 and 5), the Debtor nonetheless will seek to have the Plan confirmed, because the Debtor believes the Plan is "fair and equitable" and does not "unfairly discriminate" against any non-accepting Class of creditors or stockholders, as provided in Bankruptcy Code Section 1129.

The Debtor is providing copies of this Disclosure Statement and Ballots, which include detailed voting instructions, to all known holders of Claims in the Voting Classes. If you are entitled to vote as the holder of an Allowed Claim in one of the Voting Classes, you may vote by completing the enclosed Ballot and timely returning the Ballot in the enclosed envelope to the address identified on your Ballot. Ballots must be returned to counsel for the Debtor at the address set forth on the envelope enclosed with your Ballot. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing.

**YOUR BALLOT MUST BE RETURNED AND RECEIVED NO LATER THAN May 20<sup>th</sup>, 2014 AT 4:30 P.M. EASTERN TIME (THE "VOTING DEADLINE"), OR IT WILL NOT BE COUNTED IN CONNECTION WITH CONFIRMATION OF THE PLAN. IN NO CASE SHOULD A BALLOT BE DELIVERED TO THE BANKRUPTCY COURT.**

All votes to accept or reject the Plan must be cast by using the appropriate form of Ballot. Only votes using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise.

All Ballots must be actually received by the Debtor's counsel by the Voting Deadline at the following address:

The Tamposi Law Group, PC  
Attention: Peter Tamposi, Esq.  
159 Main St.  
Nashua, NH 03060

For questions about voting procedures, the amount of your Claim, or the packet you reviewed, please contact:

Peter Tamposi, Esq.  
603-204-5513  
[peter@thetamposilawgroup.com](mailto:peter@thetamposilawgroup.com)

## **B. Deadline For Objecting to Confirmation of The Plan**

All creditors and stockholders are entitled to be heard with respect to confirmation of the Plan, even if they are not eligible to vote to accept or reject the Plan. Objections to confirmation of the Plan must be filed with the United States Bankruptcy Court, 1000 Elm St, Manchester, NH 03101 by 4:30 p.m., Eastern Time, on May 20<sup>th</sup>, 2014, and served so as to be received on that date. Such objections should also be served on the following parties:

Upper Valley Commercial Corporation	The Tamposi Law Group, P.C. 159 Main Street Nashua, NH 03060 <a href="mailto:Peter@tlgnh.com">Peter@tlgnh.com</a>	Attn: Peter N. Tamposi, Esq.
Committee of Unsecured Creditors	Bernstein Shur 670 North Commercial St. Suite 108 PO Box 1120 Manchester, NH 03105-1120 <a href="mailto:jrood@bernsteinshur.com">jrood@bernsteinshur.com</a>	Attn: Jennifer Rood, Esq.
United States Trustee for the District of New Hampshire	Office of the United States Trustee 1000 Elm Street, Manchester, NH 03101 <a href="mailto:Ann.Marie.Dirsa@usdoj.gov">Ann.Marie.Dirsa@usdoj.gov</a>	Attn: Anne Marie Dirsa, Esq.

## **XII. FINANCIAL PROJECTIONS**

In connection with the Plan, the Debtor has prepared certain projections of its future performance. Attached hereto as Schedule II of the Plan and Disclosure Statement is financial projections of the Debtor which demonstrate a more than adequate capability to pay its creditors under the Plan. Schedule III provides greater detail as to the nature of the Accounts Receivable the Debtor will collect to fund the Plan.

The Projections reflect significant assumptions, including various assumptions with respect to the anticipated future collection of the Accounts Receivable, which in some cases will require the Accounts Receivable Debtors to refinance the debt to pay the Debtor. This of course requires certain conditions that are beyond the control of the Debtor, but the Debtor's principals have spoken with most of the Accounts Receivable Debtors and believe the Projections are a realistic prediction (i.e. not a best case scenario)

of the Debtor's future performance. Any future changes in these conditions may materially impact the Reorganized Debtor's ability to achieve the Projections.

THEREFORE, WHILE THE PROJECTIONS ARE BASED ON THE DEBTOR'S GOOD FAITH ESTIMATES, ACTUAL RESULTS MAY VARY MATERIALLY FROM THE PROJECTED RESULTS. NO REPRESENTATION, GUARANTY, OR WARRANTY CAN BE MADE OR IS MADE WITH RESPECT TO THE ACCURACY OF THE PROJECTIONS OR THE ABILITY OF THE DEBTOR TO ACHIEVE THE PROJECTED RESULTS.

### **XIII. CONCLUSION AND RECOMMENDATION**

The Debtor believes that the Plan represents the best possible means of satisfaction of all creditor Claims, and is fair and equitable to all parties. The Debtor hopes that all impaired creditors will vote to accept the Plan.

Respectfully submitted,  
UPPER VALLEY COMMERCIAL  
CORPORATION  
By its Attorneys,  
THE TAMPOSI LAW GROUP, P.C.

April 14, 2014

By: /s/ Peter N. Tamposi  
Peter N. Tamposi, Esquire  
BNH #04931  
159 Main Street  
Nashua, New Hampshire 03060  
(Tel) (603) 204-5513  
(Fax) (603) 204-5515

#### Schedules

Schedule I:	Classification of Claims
Schedule II:	Anticipated Accounts Receivable
Schedule III:	Account Debtor Analysis
Schedule IV:	Monthly Cash Flow Analysis
Schedule V:	Distribution Summary (form)