

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 FEBRUARY 21, 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 \_\_\_\_\_, 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.**

---

<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 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 One and Two Payment Formula shall mean the ratio of payments under the Plan to holders of Class One Claims and Class Two claims where 80% of such payment is made to holders of Class One Claims and 20% of such payment is simultaneously made to holders of Class Two Claims according to the amount of such Allowed Claims on a *pro rata* basis.

Class Two Claims shall mean Pink Card Claims and Term Note Claims owed by the Debtor to 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 Three 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 Two Claims and Allowed Class Four Claims. These claims are described in Schedule I of the Plan and Disclosure Statement.

Class Four 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 Five 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 Six Claims shall mean convenience claims of non-insider creditors under \$1,000.

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.

Distribution Date shall mean the date which is ten (10) days after 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.

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 and Class Two Claims on a *pro-rata* basis according to the Class One and Two Payment Formula, which is 80% of the total quarterly payment to holders of Allowed Class One Claims and 20% of the total quarterly payment to holders of Allowed Class Two Claims. Class Six Claims are convenience class claims under the amount of \$1,000 which shall be paid upon the Effective Date, without 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 and Class Two Claims in the approximate average amount of \$573,000 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 \$280,105. Such payments will be made without interest.

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

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

Allowed Class Six Claims, which are convenience claims of non-insider creditors under \$1,000, will be paid in full upon the Effective Date, without interest.

Once the holders of Allowed Class One Claims, Allowed Class Two Claims and Allowed Class Four 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 Three claims outside of the bankruptcy. The Debtor anticipates payment in full to holders of Allowed Class Three claims. The Class Five 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 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 April 1, 2014 at 11:00 a.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 five (5) classes. 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:

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

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

Class Three 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, Allowed Class Two Claims and Allowed Class Four Claims are paid in full.

Class Four 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.

Class Five 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 Six shall consist of convenience class claims of non-Insiders which are less than \$1,000.

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

Class One, Class Two, Class Three, Class Four and Class Six 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 creditors shall be repaid by the Debtor over a period of approximately 36 months, without interest. The Debtor will make quarterly payments on Allowed Class One Claims in the amount of 80% of its Quarterly Available Cash. These claims are described in Schedule I of the Plan and Disclosure Statement. 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 by the Debtor over a period of approximately 36 months, without interest. The Debtor will make quarterly payments on Allowed Class Two Claims in the amount of 20% of its Quarterly Available Cash until Class One Claims are paid in full at which point Class Two Claims will receive 100% of the available cash until Class Two Claims are paid in full. These claims are described in Schedule I of the Plan and Disclosure Statement. These claims are impaired.

Class Three. 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, Allowed Class Two Claims and Allowed Class Four Claims are paid in full. These claims are subordinated to Class One, Class Two Claims and Class Four Claims. These claims are described in Schedule I of the Plan and Disclosure Statement. These claims are impaired.

Class Four. Class Four Claims will be paid in full, without interest. These Claims will be subordinated to the claims of holders of Allowed Class One Claims and Allowed Class Two Claims, and payments to the holder of Allowed Class Four will commence once the holders of Allowed Class One and Class Two claims are paid in full.

Class Five. The holders of interests in Class Five Interests shall retain their current equity interest by being issued stock in the Reorganized Debtor. Because Classes One through Four 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 Six. The holder of Allowed Convenience Class shall be paid in full on the Effective Date, without 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. Schedule III attached hereto provides a detailed analysis of the types of obligations which make up the Accounts Receivable and the nature of collateral securing those obligations.

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 \$50,000 per year and Mrs. Brown \$41,800 per year for these 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 III creditor, which means he will not be repaid *anything* on his claim until holders of Allowed Class I and Allowed Class II creditors are paid in full; Mr. Patten is personally motivated to collect as much as possible as soon as possible. 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.

By way of comparison to Mr. Patten, a Chapter 7 trustee would be awarded a statutory commission of at least \$280,689 for distributions under the plan (based on payment of \$5,548,787 for Class I and Class II claims), plus accrue significant attorney and paralegal fees. Moreover, a trustee likely would be less effective at collecting the Accounts Receivable. The Debtor therefore believes in the exercise of its business judgment that Mr. Patten and Mrs. Brown are the best use of the Debtor's resources to collect the Accounts Receivable.

The Debtors records reflect a number of payments by the Debtors to creditors, some Insiders and some non-Insiders in the months leading up to the Petition Date. Although such transfers might technically be recoverable by the Debtor, where a plan proposed to pay creditors 100% of their Allowed Claims, recovering such so-called preferential transfers makes little sense; it could cost significant legal fees, perhaps even in excess of what is recovered, and at best only slightly accelerate the repayment period described in Schedule II. Moreover the parties who repaid such transfers would themselves have claims in the bankruptcy which would have to be repaid. Finally, the Debtor believes that all such transfers were so-called ordinary course of business transfers and are thus most likely NOT recoverable.

## **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 assume the executory contracts with Derek O’Donnell for commercial property the Debtor rents to Mr. O’Donnell. The Debtor will also assume the executory contract for the lease of its headquarters with David Patten. That rental rate is \$2,000. 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.

Holder 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 considerable fees 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. Converting the case to a case under Chapter 7 or to a state receivership would serve no purpose and would add additional administrative expenses to the case. 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, Two, Three, Four and Six are impaired.

**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, 2, 3, 4 and 6 (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, 2, 3, 4 and 6), 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 \_\_\_\_\_ 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 Bankruptcy Court by 4:30 p.m., Eastern Time, on \_\_\_\_\_, and served so as to be received on that date by the persons listed in the preceding section of this Disclosure Statement.

## **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.

February 21, 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