

**B. Asset Purchase Agreement**

13. The material terms of the APA are as follows:<sup>8</sup>

A. Purchase and Sale of Assets. Upon the terms and subject to the conditions contained in the APA, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, on an “as is, where is” basis except as otherwise expressly set forth in Article 3 of the APA and without any representation or warranty on the part of Seller as to fitness, merchantability or otherwise,

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<sup>8</sup> The summary of the APA is provided for the Court’s convenience only. To the extent that the summary differs in any way from the terms of the APA, the terms of the APA shall control. Capitalized terms used but not defined in this summary shall have the meanings given in the APA.

all right, title and interest of Seller as of the Closing Date in and to the following assets, properties and rights, free and clear of all liens (other than Permitted Liens) to the maximum extent permitted by the Bankruptcy Code. APA, § 1.1.

B. Acquired Assets. The Acquired Assets consist of: (a) Seller's assignable right, title and interest (i) as lessee under those real property leases identified on **Exhibit A-1** attached to the APA, (ii) as lessee under those equipment, personal property and intangible property leases, rental agreements, licenses, agreements and similar arrangements identified on **Exhibit A-2** attached to the APA, and (iii) as a party to those other contracts, orders, purchase orders, licenses, and similar arrangements identified on **Exhibit A-3** attached to the APA; (b) Seller's ownership interest in that certain real property identified on **Exhibit B** attached to the APA and all improvements located thereon, and all improvements owned by Seller located on real property leased by Seller pursuant to the Real Property Leases; provided, however, that the Acquired Assets shall not include any improvements or other interests in real property held by Seller pursuant to a lease, rental agreement, contract, license or similar arrangement that is not included within the Assigned Contracts; (c) all of those items of tangible personal property owned by Seller and identified on **Exhibit C** attached to the APA, including, to the extent assignable under applicable law, all rights under all warranties, representations, and guaranties made by suppliers, manufactures, and contractors in connection or in respect of the Personal Property; provided, however, that the Acquired Assets shall not include any equipment or other tangible personal property held by Seller pursuant to a lease, rental agreement, contract, license or similar arrangement that is not included within the Assigned Contracts; (d) the following property owned by Seller: (i) all rights to insurance proceeds related to damages to the Acquired Assets incurred between the date of the APA and the Closing Date; (ii) all employee books, records and personnel files for Continuing Employees other than medical files and other than those books, records and files prohibited from transfer pursuant to applicable law; and (iii) all operating data and records of the Business, all production reports and records, equipment logs, operating guides and manuals and other similar documents and records as applicable to the Acquired Assets; provided, however, that notwithstanding any provision of the APA to the contrary, in no event shall the Acquired Assets include Seller's rights with respect to any avoidance actions; (e) to the extent assignable, the approvals, agreements, authorizations, permits, licenses, easements, orders, certificates, registrations, franchises, qualifications, leases, rulings, waivers, variances or other forms of permission, consent, exemption or authority identified on **Exhibit D** attached to the APA; and (f) all prepaid assets and deposits, security deposits, deposits with creditors and other deposits to the extent reflected in the Assumed Deposit Amounts (as set forth in Section 1.5(e) of the APA) identified on **Exhibit E** attached to the APA. APA, § 1.1.

C. Excluded Assets. Notwithstanding any other provision of the APA to the contrary, the Acquired Assets shall not include, and Seller shall not transfer to Buyer, any interest in any assets, properties or rights not specifically identified in Section 1.1 of the APA, including the following: (a) cash and cash equivalents (including all marketable securities), all bank accounts, all lock box receipts and lock boxes and all certificates of deposit and other bank deposits owned or held by Seller or any of its Affiliates; (b) Seller's minute books, seals, corporate accounting journals, corporate books of account, financial

and other records, and any other document relating to the organization, maintenance or existence of Seller as a corporation; (c) except to the extent otherwise expressly provided in Section 1.1(d)(i) of the APA, all rights, claims, causes of action, recoveries and rights of reimbursement of Seller or its Affiliates, including, but not limited to, any avoidance actions and any rights, claims, causes of action, recoveries and rights of reimbursement (i) against Seller's prepetition secured lenders or post petition secured lenders; (ii) against Seller's officers, employees, directors, equity holders, agents, managers, professionals, representatives or affiliates or insiders (as those terms are defined in the Bankruptcy Code); (iii) arising under chapter 5 of the Bankruptcy Code or similar state laws; or (iv) relating to the Excluded Assets or Excluded Liabilities; (d) all of Seller's and its Affiliates' rights arising under the APA or any document ancillary thereto, or in connection with the transactions contemplated thereby; (e) all accounts receivable arising out of the operation of the Business prior to the Closing Date, and all rights, claims and causes of action relating or pertaining to the foregoing; (f) any employee benefit plans (including, without limitation, any pension plans, retirement plans, medical plans and any other employee benefit plan, program, policy, arrangement or agreement, or any other such benefits (whether funded or unfunded, written or oral, qualified or nonqualified, whether or not subject to ERISA)), and all assets, rights amendments, documents and financial matters relating thereto or associated trusts or other funding mechanisms maintained by Seller or its Affiliates; (g) except to the extent otherwise expressly provided in Section 1.1(d)(i) of the APA, the insurance policies of Seller and its Affiliates, all claims arising thereunder, the credits and prepaid premiums thereunder and all of Seller's and its Affiliates' rights and proceeds thereunder; (h) all intellectual property not specifically included in the Acquired Assets, including all trademarks, service marks and trade names of Seller; (i) any Tax refund, Tax rebate or Tax reimbursement due to Seller or its Affiliates or any U.S. Tax net operating loss of Seller; (j) any supplier rebate or credit that relates to or arises out of services performed or materials processed, delivered or collected prior to the Closing Date; provided, however, that Buyer shall be entitled to receive any supplier rebate or credit that relates to or arises out services performed or materials processed, delivered or collected on or after the Closing Date; (k) any lease, rental agreement, contract, agreement, license or similar arrangement not identified in **Exhibits A-1, A-2 or A-3** of the APA and/or which has been rejected in the Case or terminated or expired prior to the Closing Date in accordance with its terms or in the ordinary course of the Business; (l) all prepaid assets and deposits, security deposits, deposits with creditors and other deposits of any kind or nature whatsoever, other than those which are expressly included within the Acquired Assets pursuant to Section 1.1(f) of the APA; (m) except to the extent otherwise expressly provided in Section 1.1(d)(ii) of the APA, all personnel files and employee medical files; and (n) any other asset not included within the definition of Acquired Assets. APA, § 1.2.

D. Assumed Liabilities; Excluded Liabilities. Upon the terms and subject to the conditions contained in the APA, Buyer shall, effective as of the Closing Date, assume and timely perform and discharge in accordance with their terms, and indemnify Seller in respect of all liabilities or obligations (whether absolute, contingent, or otherwise and including, without limitation, any such liabilities or obligations arising under Environmental, Health, and Safety Laws) that relate to or arise out of the ownership or operation of the Acquired Assets on and after the Closing Date, including such liabilities pursuant to the Assigned Contracts and including those liabilities with respect to employees

and benefits expressly made the obligation of Buyer pursuant to Section 9.6 of the APA. Notwithstanding any of the terms of the APA to the contrary,, Buyer shall not assume, and Seller shall remain solely and exclusively liable and responsible for the following: (i) any liabilities or obligations (whether absolute, contingent, or otherwise and including, without limitation, any such liabilities or obligations arising under Environmental, Health, and Safety Laws) that relate to or arise out of the ownership or operation of the Acquired Assets prior to the Closing Date; (ii) any liabilities, obligations, claims, actions or proceedings, whether or not contingent and whether or not asserted on or prior to the Closing, that relate to any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, profits, customs, duties, franchise, withholding, employment, real property, personal property, sales, use, transfer, registration, estimated, or other taxes, fees, levies, duties, imposts or charges of any kind, including any interest, penalty, or addition thereto, whether disputed or not of Seller or its Affiliates or in respect of any occurrences, events or periods prior to the Closing Date, provided, that for the avoidance of doubt, the foregoing shall in no way limit Buyer's obligations to pay Transfer Taxes and Fess in accordance with Section 9.3 of the APA; (iii) any liabilities or obligations which relate to or arise out of the ownership or operation of the Excluded Assets, whether before, on or after the Closing Date; (iv) any liabilities or obligations with respect to employees and benefits except those expressly made the liability or obligation of Buyer pursuant to Section 9.6 of the APA; and (v) all Worker Adjustment and Retraining Notification Act of 1988 ("WARN Act") claims. APA, § 1.3.

E. Consideration. Subject to the terms and conditions set forth in the APA and in reliance upon the representations and warranties of the Parties set forth therein, in exchange for the Acquired Assets, (i) Buyer shall pay to Seller cash consideration equal to \$12,050,000, which amount shall be payable as set forth in Sections 1.5(b) and 1.5(c) of the APA, plus (ii) Buyer shall pay the Assumed Deposit Amount and shall assume the Assumed Liabilities. As of the Closing Date or such later date as the Bankruptcy Court may permit, subject to the proviso set forth in this sentence, Seller shall satisfy or make adequate provision for the satisfaction of all cure obligations due and owing under the Assigned Contracts which the Bankruptcy Court orders to be paid as a condition to Seller's (or, to the extent applicable, its Affiliate Debtor's) assumption and assignment to Buyer of the Assigned Contracts pursuant to and in accordance with Section 365 of the Bankruptcy Code; provided, however, that the non-debtor party to any such Assigned Contract may agree to a lesser amount.

Moreover, (a) Ad Valorem Taxes for 2009 and (b) all rent, prepaid expenses and other similar items of expense relating to the Acquired Assets (including, without limitation, any prepaid insurance under any of the Assigned Contracts), shall be prorated between Seller and Buyer as of the Closing Date pursuant to Section 1.5(e)(i) and (ii) of the APA, respectively. APA, § 1.5.

F. Closing Date. Subject to the terms and conditions set forth in the APA, the Closing shall occur, as promptly as practicable, and at no time later than the fifth Business Day following the date on which the closing conditions set forth in Articles 6 and 7 of the APA have been satisfied or waived, where applicable, or at such other date as Proposed Buyer and Sellers may mutually agree. APA, § 2.1.

G. Deposit. Prior to or concurrently with the mutual execution and delivery of the APA, Seller and Buyer shall execute and deliver the escrow agreement attached to the APA as **Exhibit G**, and Buyer shall deposit into escrow with an escrow agent or company reasonably designated by Seller an amount equal to \$596,250 in immediately available funds, in accordance with the terms of the Escrow Agreement. The Escrow Agent shall hold and disburse the Deposit (and any interest accrued thereon) in accordance with the terms of the Escrow Agreement. Buyer and Seller shall each pay fifty percent (50%) of the Escrow Agent's fees and expenses charged in connection with the Escrow Agreement. APA, § 1.5(b).

In the event the APA is terminated for any reason other than pursuant to Section 8.1(h) or 8.1(i) of the APA, the Deposit, together with all interest accrued thereon, shall be returned to Buyer by the Escrow Agent. In the event the APA is terminated pursuant to Section 8.1(h) or 8.1(i) of the APA, the Deposit, together with all interest accrued thereon, shall be delivered to Seller by the Escrow Agent without prejudice or waiver of any other or further rights available to Seller. APA, § 8.2(b).

H. Non-Solicitation Periods. From the Execution Date until the date the Procedures Order is entered by the Bankruptcy Court, and following entry of the Approval Order, Seller shall not, and shall not permit any of its officers, directors, employees, Affiliates, representatives or agents to, directly or indirectly, solicit, initiate or knowingly encourage any offer or proposal for, or any indication of interest in an acquisition of the Acquired Assets or Business; provided, however, that nothing in Section 5.5 of the APA shall prohibit Seller, during the portion of the Non-Solicitation Period preceding the entry of the Approval Order, from responding to any unsolicited inquiries from or engaging in discussions with the official committee appointed in the Case or engaging in discussions with any third parties in consultation with such official committee. Seller shall promptly notify and provide copies to Buyer of any offer, proposal or indication of interest, or communication with respect thereto, delivered to or received from any third party. APA, § 5.5.

I. Break-Up Fee; Allowable Expense Reimbursements. In the event the APA is terminated pursuant to Section 8.1(c), then, in addition to the return of the Deposit pursuant to subsection 8.2(b) of the APA, Seller shall pay to Buyer, as promptly as practicable following the consummation of the Competing Transaction, (i) an amount in cash equal to the Reimbursable Expenses, and (ii) a cash fee in the amount set forth in the Procedures Order. In the event the APA is terminated pursuant to Section 8.1(e) or 8.1(f), then, in addition to the return of the Deposit pursuant to subsection (b) of the APA, Seller shall pay to Buyer, as promptly as practicable following the termination of this Agreement an amount in cash equal to the Reimbursable Expenses. APA, § 8.2(c) and (d); Sale Procedures Order, at ¶ 16.

**B. Processing Agreement**

14. The material terms of the Processing Agreement are as follows:<sup>9</sup>

A. Services Provided. Throughout the term of this Agreement, Processor shall process, sort, bale and load all recovered material delivered by ABITIBI to the Processing Center in accordance with the terms of the Processing Agreement, including, without limitation, (a) the ABITIBI quality specifications set forth in Appendix A attached thereto, as such Appendix A may be amended by the parties from time to time in accordance with the Processing Agreement, and (b) the baling specifications set forth in Appendix B attached thereto. ABITIBI shall bear the expense for the delivery of ABITIBI recovered material to the Processing Center. Processor shall, at its own cost and expense, keep the delivery area clear of all obstruction that could unreasonably inhibit access by ABITIBI. Processing Agreement, at § 2.

B. Term. The Term of the Processing Agreement shall commence as of the date of the Closing (as defined in the Purchase Agreement) (the “Effective Date”) and, unless sooner terminated as otherwise provided in this Agreement, shall remain in effect for three (3) years after the Effective Date. Upon the expiration of such initial three (3) year term, this Agreement shall continue on a year-to-year basis unless terminated by either party giving the other at least six (6) months’ written notice prior to the three-year anniversary. Processing Agreement, at § 1.

C. Tonnage. Abitibi shall deliver the following tons to Processor for Processing: (a) Two-thirds (2/3’s) of Abitibi’s Retriever Business tons collected by or on behalf of Abitibi in the Houston and Arlington metropolitan areas; and (b) 100% of Abitibi’s Retriever Business tons collected by or on behalf of Abitibi in the San Antonio metropolitan markets. Processing Agreement, at § 3.

D. Processing Fee: In consideration for Processor’s performance of services hereunder, during the term of this Agreement ABITIBI shall pay to Processor a processing fee, which is set forth in the Processing Agreement, for each ton of ABITIBI recovered material delivered by ABITIBI to the Processing Center. Materials delivered by ABITIBI to the Processing Center may include ONP as well as non-ONP. Processing Agreement, at § 6.

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<sup>9</sup> The summary of the Processing Agreement is provided for the Court’s convenience only. To the extent that the summary differs in any way from the terms of the Processing Agreement, the terms of the Processing Agreement shall control. Capitalized terms used but not defined in this summary shall have the meanings given in the Processing Agreement. Concurrently herewith, the Debtors have filed a motion to seal portions of the Processing Agreement due to the confidential and proprietary nature of such provisions.