

ASSET PURCHASE AGREEMENT

AMONG

AVENIR OPERATING CORP.

AVENIR DIVERSIFIED INCOME TRUST

AVENIR FINANCIAL SERVICES ACQUISITION CORP.

AVENIR FINANCIAL SERVICES LIMITED PARTNERSHIP

ELBOW RIVER RESOURCES LTD.

LARRY RUSKIN

EDWARD MALCOLM

GEORGE PETROPOULOS

EFFECTIVE FEBRUARY 6, 2005

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ASSET PURCHASE AGREEMENT made effective as of February 6, 2005

AMONG:

AVENIR OPERATING CORP., a body corporate having offices in the City of Calgary, in the Province of Alberta ("**Avenir**")

and

AVENIR DIVERSIFIED INCOME TRUST, an incorporated trust having offices in the City of Calgary, in the Province of Alberta ("**Avenir Trust**"), by its Manager, Avenir Operating Corp.

and

AVENIR FINANCIAL SERVICES ACQUISITION CORP., a body corporate having offices in the City of Calgary, in the Province of Alberta (the "**General Partner**")

and

AVENIR FINANCIAL SERVICES LIMITED PARTNERSHIP, a limited partnership having offices in the City of Calgary, in the Province of Alberta (the "**Purchaser**")

and

ELBOW RIVER RESOURCES LTD., a body corporate having offices in the City of Calgary, in the Province of Alberta ("**Elbow River**" or the "**Vendor**")

and

LARRY RUSKIN, an individual resident in the City of Calgary, in the Province of Alberta ("**Ruskin**")

and

EDWARD MALCOLM, an individual resident in the City of Calgary, in the Province of Alberta ("**Malcolm**")

and

GEORGE PETROPOULOS, an individual resident in the City of Calgary, in the Province of Alberta ("**Petropoulos**")

(**Ruskin, Malcolm and Petropoulos** are collectively referred to herein as the "**Shareholders**")

WHEREAS the Shareholders are the beneficial owners of all of the Elbow River Shares;

AND WHEREAS Elbow River has agreed to sell all of the Assets to the Purchaser and the Purchaser has agreed to purchase the same from Elbow River, upon the terms and conditions set forth herein, and the Shareholders have agreed to the same;

NOW THEREFORE, in consideration of the covenants and agreements herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties covenant and agree as set forth below.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

- (a) "**ABCA**" means the *Business Corporations Act* (Alberta), as amended, including the regulations promulgated thereunder;
- (b) "**Accounts Receivable**" means all accounts receivable, notes receivable and other debts due or accruing due to Elbow River in connection with the Business as well as the full benefit of all security for the Accounts Receivable;
- (c) "**Adjustment Statement Date**" has the meaning set forth in Section 2.7(a);
- (d) "**Advisory Agreement**" means the advisory agreement to be entered into between the Purchaser and Ruskin on the terms described in the Letter Agreement;
- (e) "**Affiliate**" has the meaning set out in the ABCA;
- (f) "**Agreement**" means this agreement, including the recitals and all Schedules attached to this agreement, as amended or supplemented from time to time, and "hereby", "hereof", "herein", "hereunder", "herewith", "hereto" and similar terms refer to this agreement and not to any particular provision of this agreement;
- (g) "**Applicable Laws**" means, with respect to any person or property, all federal, provincial, state, municipal and local laws, treaties, statutes, ordinances, regulations, judgments, decrees, injunctions, writs, decisions and orders of any Governmental Authority and rules, regulations, policies and guidelines (in each case, having the force of law), directives, interpretations, licenses, exemptions, approvals and permits of any Governmental Authority, in each case applicable from time to time to such person or property;
- (h) "**Assets**" means all of the right, title and interest of Elbow River in and to the business, properties, assets and rights of every kind and description and wheresoever situate, whether tangible or intangible, and constituting, or used or useful in connection with, or related to, the Business and including, without limitation, the following:
 - (i) all Assumed Contracts;
 - (ii) all Accounts Receivable;
 - (iii) all unfilled or outstanding purchase orders, sales contracts, other commitments, contracts and engagements to which Elbow River is entitled at the Closing and which relate to the Business;
 - (iv) any insurance of Elbow River in respect of those Assets that are currently engaged in the provision of services for a third party;
 - (v) all customer, supplier and distributor lists of or used in connection with the Business;
 - (vi) all Equipment related to the Business as listed on **Schedule 5.1(n)**;
 - (vii) all Inventory related to the Business;

- (viii) all Books and Records related to the Business;
 - (ix) all Intellectual Property Rights;
 - (x) to the extent transferable, all Permits related to the Business;
 - (xi) to the extent transferable, all software used in the Business, excepting accounting software;
 - (xii) all Prepaid Expenses;
 - (xiii) the exclusive right to the Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Vendor and the right to use any words indicating that the Business is so carried on, including all rights to the "Elbow River Resources" name and to Vendor's website, domain name, telephone and fax numbers used in the Business;
 - (xiv) all available supplies, sales literature, promotional literature, and display units related to the Business;
 - (xv) all rights under or pursuant to all warranties, representations and guarantees made by suppliers in connection with the Assets or services furnished to the Vendor pertaining to the Business or affecting the Assets, to the extent such warranties, representations and guarantees (i) are not required by the Vendor to fulfill its obligations under this Agreement and (ii) are assignable; and
 - (xvi) any goodwill associated with the Business;
- (i) "**Assumed Contracts**" means all Contracts, including without limitation, those Contracts listed on **Schedule 5.1(k)** and those employment agreements listed on **Schedule 5.1(aa)**, all of which are included in the Assets and acquired by the Purchaser pursuant to the provisions hereof;
 - (j) "**Assumed Liabilities**" has the meaning specified in Section 2.8;
 - (k) "**Authorizations**" means all authorizations, licenses, permits, rights and privileges, decisions, judgments, directions, entitlements, licenses, orders, consents, approvals, exemptions, registrations and certificates and other authorizations issued by a Governmental Authority pursuant to Applicable Laws and all applications therefor;
 - (l) "**Avenir**" means Avenir Operating Corp., a body corporate incorporated under the laws of the Province of Alberta;
 - (m) "**Avenir Financial Statements**" means the audited consolidated financial statements of Avenir Trust (or its predecessors in interest) for the years ended December 31, 2003, 2002 and 2001 and the unaudited consolidated financial statements of Avenir Trust for the nine month period ending September 30, 2004;
 - (n) "**Avenir Liege and Blaze Report**" means the independent engineering report dated September 7, 2004, evaluating the crude oil, natural gas, natural gas liquids and sulphur reserves attributed to certain of Avenir's properties, known as the "**Liege Property**" and the "**Blaze Property**" as at July 1, 2004, conducted by McDaniel, based on constant and escalating price and cost assumptions;
 - (o) "**Avenir Lightning Report**" means the independent engineering report dated October 15, 2004 evaluating the crude oil, natural gas, natural gas liquids and sulphur reserves attributed to certain of Avenir's properties known as the "**Lightning Property**", as at March 31, 2004, conducted by GLJ, based on constant and escalating price and cost assumptions;
 - (p) "**Avenir McDaniel Report**" means the independent engineering report dated March 26, 2004, evaluating the crude oil, natural gas, natural gas liquids and sulphur reserves of Avenir Trust (prior to the acquisition

of the Lightning Property, Leige Property and Blaze Property) as at December 31, 2003, conducted by McDaniel, based on constant and escalating price and cost assumptions;

- (q) "**Avenir Prime West Report**" means the independent engineering report dated January 19, 2005 evaluating the crude oil, natural gas, natural gas liquids and sulphur reserves attributed to certain of Avenir's properties known as the "**Prime West Properties**", as at December 31, 2004, conducted by GLJ, based on constant and escalating price and cost assumptions
- (r) "**Avenir Trust**" means Avenir Diversified Income Trust, a trust formed under the laws of the Province of Alberta;
- (s) "**Avenir Trust Subsidiary**" means a subsidiary of Avenir Trust within the meaning of the *Business Corporations Act* (Alberta), and without limiting the generality of the foregoing, shall include Avenir Operating Trust, Avenir, Avenir Financial Services Acquisition Corp., Avenir Financial Services Limited Partnership, Avenir Real Estate Acquisition Corp., Cascade Steaming Holdings Corp. and Cascade Services Partnership, and "**Avenir Trust Subsidiaries**" means all of them;
- (t) "**Books and Records**" means (i) all records and lists of the Vendor pertaining to the Assets, (ii) all records and lists pertaining to the Business, including those records and lists pertaining to the customers, suppliers or personnel of the Vendor used in connection with the Business, (iii) all product, business and marketing plans of the Vendor used in connection with the Business and (iv) all files, reports, plans, drawings and operating records of every kind maintained by the Vendor relating to the Business, including, without limitation, copies of the Vendor's Tax returns, accounting ledgers, trial balances and all related accounting source documents (the Vendor will retain the original tax returns, accounting ledgers, trial balances and related accounting source documents at its election);
- (u) "**Business**" means the Vendor's business of marketing and transporting propane, butane and other speciality fuels in the United States, Canada and Mexico, operating under the name "Elbow River Resources Ltd." or any variation thereof;
- (v) "**business day**" means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open for the transaction of banking business in the City of Calgary, Alberta;
- (w) "**Claims**" means any and all debts, costs, expenses, liabilities, obligations, losses (excluding loss of profits) and damages, penalties, proceedings, actions, suits or claims of whatsoever nature or kind including regulatory or administrative (whether or not under common law, on the basis of contract, negligence, strict or absolute liability or liability in tort, or arising out of requirements of Applicable Laws), imposed on, incurred by, suffered by, or asserted against any person or any property, absolute or contingent and, except as otherwise expressly provided herein, includes all reasonable out-of-pocket costs, disbursements and expenses paid or incurred by such person in defending any action and, in the case of a Claim related to Taxes, all interest, penalties, additions to Taxes or additional amounts imposed by any Governmental Authority;
- (x) "**Closing**" means the closing of the transactions contemplated herein;
- (y) "**Closing Date**" means 8:00 a.m., Calgary time, on the date of closing of the Financing, provided that such date shall not be later than April 1, 2005, or on such other date mutually agreed to between the Parties hereto on which the Closing actually takes place;
- (z) "**Commitment Deposit**" has the meaning set forth in Section 2.2(a);
- (aa) "**Confidentiality Agreement**" means the confidentiality agreement dated November 11, 2004 between Avenir Trust and the Vendor;

- (bb) "**Contract**" means any agreement, contract, note, loan, evidence of indebtedness, purchase order, letter of credit, franchise agreement, undertaking, covenant not to compete, employment agreement, license, instrument, obligation or commitment to which the Vendor is a party or is bound and which relates to the Business or the Assets, whether oral or written;
- (cc) "**Deposit**" has the meaning set forth in Section 2.2(b);
- (dd) "**Deposit Escrow Agent**" means Vogel & Company LLP, when acting as the Deposit Escrow Agent with respect to the holding and release of the Deposit;
- (ee) "**Deposit Interest**" has the meaning set forth in Section 2.2(c);
- (ff) "**Deposit Monies**" has the meaning set forth in Section 2.2(c);
- (gg) "**EBITDA**" means earnings before provisions for interest, income taxes, depreciation and amortization, determined in accordance with GAAP;
- (hh) "**Elbow River**" or "**Vendor**" means Elbow River Resources Ltd., a body corporate incorporated under the laws of the Province of Alberta;
- (ii) "**Elbow River Employment Agreements**" means the employment agreements to be entered into between the Purchaser and each of the Elbow River Ongoing Management on terms mutually agreed to between the parties, which shall provide for the engagement by the Purchaser of such individuals for an initial term of three years;
- (jj) "**Elbow River Financial Statements**" means the audited financial statements of the Vendor for the fiscal period ended March 31, 2004 and the fiscal years ended January 31, 2004, 2003 and 2002 and the unaudited financial statements for the Vendor for the six month period ending September 30, 2004 and the eight month period ending September 30, 2003;
- (kk) "**Elbow River Ongoing Management**" means Malcolm and Petropoulos or any one or more of them, as the context may require;
- (ll) "**Elbow River Shares**" means all of the issued and outstanding shares of the Vendor;
- (mm) "**Employee Plans**" means all employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, deferred compensation, profit sharing, termination, severance, change of control, pension, retirement, stock option, stock purchase, stock appreciation, phantom stock, savings, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former employees, officers or directors of the Vendor, or their respective dependents or beneficiaries, maintained, sponsored or funded by or on behalf of the Vendor whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered;
- (nn) "**Employee Severance Obligations**" means up to the Closing Date, any and all accrued and accruing liabilities and obligations of the Vendor, at law or in contract, on account of the termination of the Vendor's employees or contractors, including, without limitation, salary, benefits, vacation pay, bonuses and similar payment obligations;
- (oo) "**Employees**" means all of the employees of the Vendor;
- (pp) "**Employment Letter**" means the written offer of employment made to any Retained Employees whose employment contracts are not assignable to the Purchaser (if any), other than Ruskin and the Elbow River Ongoing Management, as provided in writing to the Vendor prior to Closing in a form mutually agreed to between the Purchaser and the Vendor, which in any event shall, with respect to any particular Retained Employee, be an offer of employment on terms not less favourable than those applicable to the Retained

Employee as at the Closing Date and which shall recognize the Retained Employee's existing seniority with the Vendor;

- (qq) "**Encumbrance**" means any claim, lien, pledge, option, charge, security interest, deed of trust, restriction, burden, mortgage, conditional sales agreement, encumbrance or other right of third parties substantially equivalent thereto, whether voluntarily incurred or arising by operation of law, and includes, without limitation, any agreement to give any of the foregoing in the future, and any contingent sale or other title retention agreement or lease in the nature thereof;
- (rr) "**Environmental Law**" means Applicable Laws which regulate or relate to the protection or clean-up of the environment, the manufacture, sale, use, treatment, storage, transportation, handling or disposal of hazardous, toxic or otherwise dangerous substances, Hazardous Substances, wastes or materials (whether gas, liquid or solid), the preservation or protection of waterways, surface water, groundwater, drinking water, air, wildlife, plants or other natural resources, or the health and safety of persons or property including, without limitation, protection of the health and safety of employees;
- (ss) "**Environmental Liabilities**" means all losses, costs, damages, expenses or claims, direct or indirect, arising in connection with ownership or operation of the Assets (including liabilities to compensate third parties and the effects of and costs of complying with any order, direction or claim of any Governmental Authority), resulting from, but not limited to:
- (i) pollution or contamination of or damage to air, the surface and subsurface of the earth, bodies of water (including rivers, streams, lakes and aquifers) and plant and animal life (including human beings) or otherwise to the environment;
 - (ii) use, storage, treatment, transportation and disposal of environmental contaminants;
 - (iii) release, spill, escape or emission of Hazardous Substances;
 - (iv) accrued abandonment and reclamation obligations; or
 - (v) any violation of Environmental Law;
- (tt) "**Equipment**" means all of the furniture, fixtures, furnishings, machinery, automobiles, trucks, spare parts, tools, supplies, equipment and other tangible personal property owned by the Vendor and used in connection with the Business, including without limitation all items listed on **Schedule 5.1(n)**;
- (uu) "**Escrow Agent**" means Burnet, Duckworth & Palmer LLP, when acting as the Escrow Agent under the Time Release Escrow Agreement or Incentive Release Escrow Agreement;
- (vv) "**Escrow Units**" has the meaning set forth in Section 2.3(d);
- (ww) "**Excluded Liabilities**" has the meaning specified in Section 2.9;
- (xx) "**Final Purchase Price Adjustment Statement**" has the meaning set forth in Section 2.7;
- (yy) "**Financing**" means the private placement or public offering by Avenir Trust of Trust Units for net proceeds of not less than \$50,000,000;
- (zz) "**First Purchase Price Adjustment Statement**" has the meaning set forth in Section 2.7;
- (aaa) "**GAAP**" means accounting principles generally accepted in Canada including those set out in the Handbook of the Canadian Institute of Chartered Accountants, at the relevant time applied on a consistent basis;

- (bbb) "**General Partner**" means Avenir Financial Services Acquisition Corp., a body corporate incorporated under the laws of the Province of Alberta;
- (ccc) "**GLJ**" means Gilbert Laustsen Jung Associates Ltd., independent oil and natural gas reserve engineers of Calgary, Alberta;
- (ddd) "**Governmental Authority**" means any:
- (i) national, federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau or agency, domestic or foreign;
 - (ii) subdivision, agent, commission, board or authority of any of the foregoing; or
 - (iii) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;
- (eee) "**GST**" means the goods and services tax payable pursuant to the *Excise Tax Act* (Canada);
- (fff) "**Hazardous Substance**" means any quantity of asbestos in any form, urea formaldehyde, PCBs, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or by-products, any radioactive substance, any toxic, infectious, reactive, corrosive, ignitable or flammable chemical, chemical compound or mixture thereof, any special waste, deleterious substances and any other hazardous substance, material or waste (as defined in or for purposes of any Environmental Law), whether solid, liquid or gas;
- (ggg) "**Incentive Release Escrow Agreement**" means the escrow agreement to be entered into at Closing among Avenir, the Purchaser and the Vendor (with full rights of assignment) on the terms set forth in the Letter Agreement;
- (hhh) "**Indemnitee**" and "**Indemnitor**" have the meanings set forth in Section 8.5(a);
- (iii) "**Intellectual Property Rights**" includes any proprietary right provided under patent law, copyright law, trade-mark law, design patent or industrial design law, semi-conductor chip or mask work law and any other statutory provision or common law principles applicable in relation thereto, and includes all information and technology, including confidential information, trade secrets, improvements (whether or not patentable), inventions, know-how, show-how, designs (including industrial designs), technologies, algorithms, formulas, processes, compositions of matter, computer programs, moral rights, trademarks, service marks, trade names, whether or not registered, and all forms of expressions of ideas and original works or authorship that are the subject-matter of copyrights (which includes written reports, software, videos, manuals, charts, photographs, models and designs), and includes the Intellectual Property Rights associated with the software and technology identified in **Schedule 5.1(o)**;
- (jjj) "**Interim Purchase Price Statement**" means the interim purchase price statement as mutually agreed to between the Purchaser and the Vendor (such statement, when agreed to, to be attached to this Agreement as **Schedule 1.1(aaa)**);
- (kkk) "**Inventory**" means all of the Vendor's inventory held for resale and all of the Vendor's new repair or replacement parts, supplies and packaging items and similar items with respect to the Business, including rolling stock, in each case wherever the same may be located;
- (lll) "**ITA**" means the *Income Tax Act* (Canada);
- (mmm) "**Lands**" means the lands leased by the Vendor, as more particularly set forth in **Schedule 5.1(l)**;
- (nnn) "**Leases**" means the leases for the Leased Facilities;

- (ooo) "**Leased Facilities**" means the lands and premises listed and described in **Schedule 5.1(I)**, in each case leased by the Vendor as tenant which are used in the conduct of the Business, including, without limitation, all rights, easements and privileges appertaining or relating thereto and all fixtures and improvements located thereon owned, leased or used by the Vendor;
- (ppp) "**Letter Agreement**" means the letter agreement effective January 14, 2005 between Avenir Trust, by its Manager, Avenir Operating Corp., and Elbow River respecting the intention of the Vendor and the Purchaser to proceed with the transactions contemplated by this Agreement;
- (qqq) "**Long Term Debt**" means the amount that, in accordance with GAAP consistently applied from period to period, would be reflected on a consolidated basis on a balance sheet of the Vendor prepared as at the Closing Date and would include all bank loan facilities (whether revolving or fixed) established by the bank(s) for the purpose of financing ongoing capital expenditures or operations, but would exclude the current portion of Long Term Debt which would be included in the current liabilities of the Vendor;
- (rrr) "**material adverse change**" or "**material adverse effect**" means, in respect of a person, any change, effect, event, occurrence or state of facts that is, or would reasonably be expected to be, material and adverse to the capital, assets, liabilities (absolute, accrued, contingent or otherwise), business, operations or condition (financial or otherwise) or results of the operations of the business of the person, as a whole (which in the case of the Purchaser shall mean Avenir Trust and each of the Avenir Trust Subsidiaries on a consolidated basis), but shall not include a change resulting from (i) a matter that has been publicly disclosed or which the other Party has been advised in writing prior to the execution of this Agreement, (ii) a change directly resulting from an action taken by one Party to which the other Party hereto consented to in writing, (iii) conditions affecting the oil and gas industry in the jurisdictions in which Avenir, Avenir Trust or the Vendor hold their respective assets, taken as a whole, including, without limitation, changes in commodity prices or taxes, (iv) general economic, financial, currency exchange, securities or commodity market conditions in Canada or elsewhere, or (v) acts of terrorism;
- (sss) "**Material Authorizations**" means those Authorizations set forth in **Schedule 5.1(k)**;
- (ttt) "**McDaniel**" means McDaniel & Associates Consultants Ltd;
- (uuu) "**Non-Competition Agreements**" means the non-competition agreements to be entered into on Closing among Avenir, the Purchaser and each of Elbow River, Ruskin and each member of the Elbow River Ongoing Management, which the Parties intend shall have a term of five years and a geographical restriction of Canada, United States and Mexico;
- (vvv) "**Partnership**" or "**Purchaser**" means Avenir Financial Services Limited Partnership, a limited partnership created under the laws of the Province of Alberta;
- (www) "**Party**" means a party to this Agreement;
- (xxx) "**Permits**" means all licenses, permits, franchises, approvals, authorizations, consents or order of, or filings with, any Governmental Authority, whether foreign, federal, provincial or local, or any other Person, necessary or desirable for the past, present or anticipated conduct of, or relating to the operation of, the Business;
- (yyy) "**Permitted Encumbrances**" means any of the following:
- (i) as applicable, easements, rights of way, servitudes or other similar rights in land including, without limiting the generality of the foregoing, rights of way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light, power, telephone, telegraph or cable television conduits, poles, wires and cables;

- (ii) rights reserved to or vested in any Governmental Authority to control or regulate the business and operations of the Vendor or the Leased Facilities, as applicable, in any manner, and all applicable laws, rules and order of any Governmental Authority;
 - (iii) liens granted in the ordinary course of business to a public utility, municipality or Governmental Authority in connection with operations conducted with respect to the Assets, but only to the extent those liens relate to costs and expenses for which payment is not due;
 - (iv) any registrations against the Assets as a result of the Vendor's credit facility with HSBC Bank Canada, provided that the aggregate principal amount of such facility plus all outstanding letters of credit at Closing shall not exceed the lesser of the balance of such amounts as at February 6, 2005 and \$17,100,000, and provided that any accrued interest on such facility prior to the Closing Date shall be paid by the Vendor, either directly, or with the Vendor's written consent, by a reduction to the Purchase Price; and
 - (v) personal property registrations in favour of each of Trinity Rail Leasing Trust II and GE Railcar Services Inc. with respect to any Assets which are being transferred from the Vendor to the Purchaser hereunder;
- (zzz) "**person**" includes an individual, partnership, firm, trust, body corporate, Governmental Authority, unincorporated body of persons or association;
- (aaaa) "**Prepaid Expenses**" means all prepaid expenses including prepaid business and real property taxes and rent and utility deposits, relating exclusively or primarily to the Business;
- (bbbb) "**Prime Rate**" means the annual rate of interest from time to time in effect at the National Bank of Canada and used by it as a reference rate for pricing commercial loans in Canadian dollars to customers in Canada and commonly referred to as its "prime rate";
- (cccc) "**Pro Rata Basis**" means, as between the Shareholders, their maximum percentage liability as set out in **Schedule 2.3**;
- (dddd) "**Purchase Price**" has the meaning set forth in Section 2.1, as adjusted pursuant to the terms of this Agreement;
- (eeee) "**Purchase Price Adjustment Amount**" means the amount, if any, by which the Purchase Price is adjusted pursuant to the terms of this Agreement, in particular, to give effect to the allocation of the Benefits and Obligations as between the Vendor and the Purchaser as of the Closing Date, as contemplated pursuant to Section 2.6 hereof;
- (ffff) "**Purchaser Indemnified Parties**" has the meaning set forth in Section 8.2;
- (gggg) "**Records**" means all of a person's books, accounts, files and records relating to its business and affairs, whether any of the foregoing are in books, documents, databases or stored by any means, including electronic, magnetic or machine readable form;
- (hhhh) "**Related Person**" means any officer, director or shareholder of a person (or of any corporate shareholder or manager of any shareholder that is a trust), or a member of the immediate family (including spouse, parents, children, siblings and in-laws) of any officer, director or shareholder of a person (or of any corporate shareholder or manager of any shareholder that is a trust), or any corporation or other entity or person controlled by an officer, director or shareholder of any person (or of any corporate shareholder or any manager of any shareholder that is a trust) or an Affiliate of any of the foregoing;
- (iiii) "**Retained Employees**" means each of those employees of the Business;

- (jjjj) **"Royalty Agreement"** means the royalty agreement to be entered into between the Purchaser and certain members of management and/or employees of Elbow River as designated by the Elbow River Ongoing Management with respect to the payment of an ongoing cash royalty equal to 25% of the annual EBITDA of Elbow River in excess of \$10,000,000;
- (kkkk) **"Security"** means those Encumbrances specifically identified in **Schedule 5.1(k)**;
- (llll) **"Shareholders"** means Ruskin, Malcolm and Petropoulos, or any one or more of them as may be affected in the circumstances;
- (mmmm) **"Survival Period"** has the meaning set forth in Section 8.1;
- (nnnn) **"Tax Claims"** means Claims in respect of:
- (i) any liability of the Vendor or a Shareholder for any Taxes which accrued or were the result of transactions occurring or effective on or prior to the Closing Date, including as a result of a Tax assessment, re-assessment or audit for any Tax period ending on or prior to the Closing Date which relate to Taxes which accrued or were the result of transactions that occurred or were effective on or prior to the Closing Date; and
 - (ii) all charges, penalties, late fees or similar administrative charges or penalties associated with any of the foregoing;
- (oooo) **"Taxes"** means all taxes, however denominated, including any interest, penalties or other additions that may become payable in respect thereof, imposed by any federal, provincial, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include all income or profits taxes (including federal income taxes and provincial income taxes), capital taxes (including "large corporations tax" under the ITA), withholding taxes, payroll and employee withholding taxes, employment insurance, social insurance taxes, sales and use taxes, GST, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation and other governmental charges, and other obligations of the same or of a similar nature to any of the foregoing (together with any penalties, interest or other similar amounts thereon);
- (pppp) **"Time Release Escrow Agreement"** means the time release escrow agreement to be entered into on Closing among Avenir, the Purchaser and the Vendor (with full rights of assignment) on substantially the terms described in the Letter Agreement;
- (qqqq) **"Trust Units"** means trust units of Avenir Trust as presently constituted;
- (rrrr) **"TSX"** means the Toronto Stock Exchange; and
- (ssss) **"Vendor Indemnified Parties"** has the meaning set forth in Section 8.3.

1.2 Schedules

The following Schedules form part of this Agreement:

Schedule 1.1(aaa)	Interim Purchase Price Statement
Schedule 2.3	Allocation of Purchase Price and Maximum Vendor and Shareholder Liabilities
Schedule 5.1(l)	Lands and Leased Facilities
Schedule 5.1(k)	Assumed Contracts; Material Authorizations; Bank Accounts; Security; Security to be Discharged
Schedule 5.1(n)	Equipment

Schedule 5.1(o)	Intellectual Property Rights
Schedule 5.1(aa)	Employees and Employment Information
Schedule 5.1(kk)	Pension and Benefit Plans
Schedule 5.1(ll)	Insurance
Schedule 5.3(b)	Organizational Structure of Avenir Trust

1.3 Headings

The division of this Agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

1.4 Section References

Unless the context otherwise requires, references in this Agreement to an Article, Section, paragraph, clause, subclause or Schedule, by number, letter or otherwise refer to the article, section, subsection, paragraph, clause, subclause or schedule, respectively, bearing that designation in this Agreement.

1.5 Gender, Plural and Derivatives

In this Agreement, unless the contrary intention appears, words importing the singular include the plural and vice versa; words importing gender shall include both genders and the neuter. If a term is defined in this Agreement, a derivative of that term shall have a corresponding meaning.

1.6 Date for Actions

In the event that the date on which any action is required to be taken hereunder by any of the Parties is not a business day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a business day in such place.

1.7 Statutes

References in this Agreement to any statute or sections thereof shall include such statute as amended or substituted and any regulations promulgated thereunder from time to time in effect.

1.8 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of the Canada.

1.9 Enforceability

All representations, warranties, covenants and opinions in or contemplated by this Agreement as to the enforceability of any covenant, agreement or document are subject to enforceability being limited by applicable bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally and the discretionary nature of certain remedies (including specific performance and injunctive relief).

1.10 Other Interpretation Matters

- (a) Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.
- (b) The words "hereof", "herein", "hereto", "hereinafter", "hereunder", "hereby" and "similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular section or portion of it.

- (c) Any reference to the knowledge or awareness of any Party means the actual knowledge of such Party and, in case such Party is not an individual, means the actual knowledge of (A) the directors and officers of such Party; or (B) any representative of such Party that is a director or officer of the Vendor; in any case, after having made reasonable inquiry of a director, officer or other senior management of such Party or the accountants or auditors of a Party or the Vendor, as applicable, whomever among such persons would reasonably be expected to possess or to have access to the information as to the applicable subject matter.
- (d) Whenever in this Agreement there is a reference to a breach of a representation, warranty or covenant by a Party which is subject to a materiality qualification the following interpretation rules shall apply:
 - (i) all representations and warranties:
 - (A) that are qualified by a reference to material, material adverse change or material adverse effect, shall be true and correct in all respects, and
 - (B) that are not so qualified shall be true and correct in all respects unless the failure to be true or correct has not had or would not reasonably be expected to have a material adverse effect,it being the intention of the Parties that there shall be only one materiality test applied to any such breach; and
 - (ii) a matter which is individually not material may, if when aggregated with other similar matters which are individually not material, be material and be included as the basis of a Claim for breach.

1.11

For the purpose of determining the annual or cumulative EBITDA of the Business under the Incentive Release Escrow Agreement and the Royalty Agreement, EBITDA shall be determined without any deductions or allocations for head office costs or expenses of Avenir Trust or the Avenir Trust Subsidiaries (other than Elbow River) or deduction for the Royalty under the Royalty Agreement and based on the Business as operated as at the Closing Date, as contemplated by the Letter Agreement.

ARTICLE 2 AGREEMENT OF PURCHASE AND SALE

2.1 Agreement to Purchase and Sell

The Vendor hereby agrees to sell the Assets to the Purchaser and the Purchaser agrees to purchase Assets from the Vendor, for the aggregate purchase price of \$57,800,000, subject to adjustment in accordance with the provisions of Section 2.7 (the "**Purchase Price**") and the further terms and provisions hereof.

2.2 Deposit

- (a) The Parties acknowledge that the Purchaser has delivered to the Deposit Escrow Agent a non-refundable deposit in the amount of \$200,000 (the "**Commitment Deposit**");
- (b) Concurrently with the execution of this Agreement by the Parties, the Purchaser shall deliver an additional \$500,000 (the "**Deposit**") to the Deposit Escrow Agent, to be held by the Deposit Escrow Agent in an interest-bearing solicitor's trust account;
- (c) the Commitment Deposit and the Deposit, together with any interest ("**Deposit Interest**") earned thereon (herein collectively called the "**Deposit Monies**"), shall be applied in accordance with the following terms:

- (i) if Closing occurs, the Deposit Monies shall be paid by the Deposit Escrow Agent to the Vendor on the scheduled Closing Date to satisfy a like amount of the cash portion of the Purchase Price;
- (ii) if Closing does not occur for any reason whatsoever, the Commitment Deposit shall be paid by the Deposit Escrow Agent on behalf of the Purchaser to the Vendor as a \$200,000 commitment fee for the Vendor entering into this Agreement;
- (iii) If Closing does not occur because the Financing has not been completed on or prior to April 1, 2005, and the Vendor and Shareholders are not otherwise in material breach of this Agreement, \$300,000 of the Deposit and associated Deposit Interest shall be paid to the Vendor by the Deposit Escrow Agent on the scheduled Closing Date on behalf of the Purchaser, which amount the Parties hereby agree shall constitute a genuine pre-estimate by the Parties of the damages the Vendor and the Shareholders will suffer if the Financing is not completed;
- (iv) subject to section 2.2(c)(iii), if Closing does not occur due to a breach of this Agreement by the Purchaser and the Vendor and Shareholders are not otherwise in material breach of this Agreement, the Deposit and the Deposit Interest shall be paid to the Vendor by the Deposit Escrow Agent on the scheduled Closing Date, as liquidated damages, which amount the Parties hereby agree shall constitute a genuine pre-estimate of the liquidated damages which will be suffered by the Vendor and the Shareholders if the Closing does not occur due to a breach of this Agreement by the Purchaser; and
- (v) if Closing does not occur for an reason or circumstance other than that described in paragraph 2.2(c)(ii), (iii) or (iv), the Purchaser shall be entitled to the Deposit and Deposit Interest and the Deposit Escrow Agent shall on the scheduled Closing Date pay the Deposit and Deposit Interest to the Purchaser.

The Purchaser acknowledges that Vogel & Company LLP acts as legal counsel to the Vendor in connection with this Agreement. The Purchaser agrees that notwithstanding that Vogel & Company LLP is the Deposit Escrow Agent, Vogel & Company LLP shall be entitled to continue to act on behalf of the Vendor in respect of any matter arising in relation to this Agreement, including any dispute regarding the disposition of the Deposit or Deposit Interest.

- (d) If the Deposit Escrow Agent is notified by either the Purchaser or the Vendor, or otherwise becomes aware that there is a dispute between the Purchaser or the Vendor regarding entitlement to all or part of the Deposit and Deposit Interest, the Deposit Escrow Agent may, in its sole discretion, interplead the matter and thereupon pay the Deposit and Deposit Interest (or that portion thereof as to which there is a dispute as to entitlement) into the court of law in which the matter has been interpleaded.

2.3 Payment of Purchase Price

The Purchaser will pay the aggregate Purchase Price to the Vendor at Closing, based on the Interim Purchase Price Statement, as follows:

- (a) the Commitment Deposit shall be paid to the Vendor at Closing by the Deposit Escrow Agent to satisfy \$200,000 of the cash portion of the Purchase Price;
- (b) the Deposit plus the Deposit Interest shall be paid to the Vendor at Closing by the Deposit Escrow Agent in accordance with Section 2.2 and shall be credited towards the cash portion of the Purchase Price;
- (c) an amount in cash equal to \$51,800,000, less the Deposit plus the Deposit Interest and less the Commitment Deposit, as adjusted by the Purchase Price Adjustment Amount;
- (d) Trust Units having an agreed value, in the aggregate, of \$6,000,000 at a price per Trust Unit equal to the issue price of such Trust Units pursuant to the Financing (the "**Escrow Units**"), with Escrow Units having a

value of \$2,500,000 being deposited in escrow under the Time Release Escrow Agreement and Escrow Units having a value of \$3,500,000 being deposited in escrow under the Incentive Release Escrow Agreement.

The cash portion of the Purchase Price referred to in Section 2.3(c) shall be paid to the Vendor by the Purchaser by wire transfer to the Vendor's bank account on the Closing Date.

2.4 Tax Election

The Purchaser and the Vendor agree that they will make a joint election pursuant to subsection 167(1) of the *Excise Tax Act* (Canada) in prescribed form and that the Purchaser shall file the same within the time prescribed in subsection 167(1.1) of such act. If the election is not available to the Purchaser and the Vendor for any reason, the Vendor shall invoice Purchaser for the goods and services tax associated with the transfer of the Assets and Purchaser will pay the goods and services tax to the Vendor, as well as any interest or penalties for which the Vendor is liable as a result of having made the election hereunder. In addition, if the Canada Revenue Agency regards or deems any portion of the Purchase Price to the proceeds in respect of a restrictive covenant, the Vendor and the Purchaser hereby agree to file a joint election in the form and manner prescribed by the ITA electing to apply Section 56.4(3)(b) of the ITA to such portion the Purchase Price.

2.5 Allocation of Purchase Price

The allocation of the consideration payable by the Purchaser to the Vendor for the Assets shall be as mutually agreed to between the Purchaser and the Vendor and confirmed in writing on or prior to the Closing Date.

2.6 Adjustments

- (a) Subject to Section 2.7 hereof, all benefits and obligations of any kind and nature accruing, payable, paid, received or receivable with respect to the Assets or the Business, and any additional amounts expressly agreed to between the Vendor and the Purchaser (the "**Benefits and Obligations**") shall be apportioned, as of the Closing Date, between the Vendor and the Purchaser in accordance with GAAP, subject to the provisions of this Agreement. All Benefits and Obligations pertaining to work performed or goods or services provided with respect to the Assets or the Business prior to the Closing Date shall be for the account of the Vendor, notwithstanding that such Benefits and Obligations may be payable or receivable, as the case may be, in whole or in part, after the Closing Date. All Benefits and Obligations pertaining to work performed or goods or services provided with respect to the Assets from and after the Closing Date shall be for the account of the Purchaser.
- (b) Notwithstanding the above, all annual rentals and similar payments required to preserve the Permits and all Taxes (other than income taxes) levied with respect to the Assets shall be apportioned between the Vendor and the Purchaser on a per diem basis pro rated annually as of the Closing Date, unless and to the extent that such apportionment is waived in writing by the Vendor.
- (c) An Interim Purchase Price Statement shall be prepared by the Vendor and delivered to the Purchaser no later than three business days prior to Closing, based on the Vendor's and the Purchaser's good faith estimate of all necessary adjustments to be made, and the cash portion of the Purchase Price shall be adjusted on the Closing Date accordingly.

2.7 Final Calculation of Purchase Price Adjustment Amount

- (a) The Purchaser and the Vendor working together shall prepare, by a date not later than (i) ninety calendar days after the Closing Date a statement (the "**First Purchase Price Adjustment Statement**") setting out the first calculation of the Purchase Price Adjustment Amount (with the intent that the Purchaser and Vendor address all receivables and payables which have been received or paid to such date), and (ii) the first anniversary of the Closing Date a statement (the "**Final Purchase Price Adjustment Statement**")

setting out the final calculation of the Purchase Price Adjustment Amount. Each such date is referred to herein as an "**Adjustment Statement Date**". The Purchaser and the Vendor shall not be obligated to make any adjustments to the Purchase Price Adjustment Amount after the Adjustment Statement Date for the Final Purchase Price Adjustment Statement unless such adjustments have been specifically requested, by notice in writing, by such date. For greater certainty, except as expressly agreed between the Vendor and the Purchaser and set out in the Interim Purchase Price Statement, no amount shall be adjusted for capital acquisitions or dispositions, Long Term Debt or environmental liabilities after the Closing, the Purchaser's right to make any Claim in respect of such matters being limited to its rights for any breach of any representation or warranty made by the Vendor and the Shareholders within the applicable Survival Period.

- (b) In each case, if the Purchase Price Adjustment Amount is:
- (i) positive, the Purchaser will pay the Purchase Price Adjustment Amount to the Vendor as a portion of the Purchase Price in cash; and
 - (ii) negative, the Vendor will (and the Shareholders shall cause the Vendor to), pay the Purchase Price Adjustment Amount to the Purchaser

together with, in either case, interest on the amount payable thereon from the Closing Date to the date of payment at the Prime Rate from time to time in effect, and the Purchase Price shall be adjusted accordingly.

- (c) Unless disputed pursuant to Section 2.7(d), all adjustments shall be settled by payment by the party required to make payment hereunder within ten business days of being notified of the determination of the amount owing.
- (d) If there is a dispute regarding the final calculation of the Purchase Price Adjustment Amount that the Purchaser and Vendor are unable, through good faith negotiations, to resolve within thirty calendar days following the initial determination of such amount, then the dispute will be submitted for determination to Deloitte & Touche LLP (or if Deloitte & Touche LLP refuses to so act, then to such independent national accounting or auditing firm that the Purchaser and Vendor may agree, provided that if they cannot agree, as is appointed on application by any Party to the Court of Queen's Bench of Alberta, and in either case, references herein to Deloitte & Touche LLP shall be deemed to be such agreed upon or Court appointed firm). The determination of Deloitte & Touche LLP of the matters in dispute will be final and binding upon the Purchaser and Vendor and will not be subject to appeal, absent manifest error. Deloitte & Touche LLP will be deemed to be acting as experts and not as arbitrators. The procedure to be followed by the Parties with respect to the determination will be determined by Deloitte & Touche LLP, in its sole discretion. Each Party will provide Deloitte & Touche LLP access to all relevant Records and to the appropriate personnel to assist in the determination of the Final Purchase Price Adjustment Statement. The costs and expenses of Deloitte & Touche LLP will be shared 50% by the Purchaser, on the one hand, and 50% by the Vendor, on the other hand. Each Party will otherwise bear its own fees and expenses in connection with the resolution of the dispute.

2.8 Assumption of Liabilities

Upon the terms and subject to the conditions contained herein, at the Closing, the Purchaser shall assume and thereafter pay, perform, discharge and satisfy all obligations and liabilities accruing, arising out of, or relating to events or occurrences happening from and after the Closing Date under, and only under, and with respect to (i) the Assumed Contracts, (ii) the assumed Benefits and Obligations, and (iii) any and all applicable federal and provincial sales taxes, goods and services taxes, excise taxes and all other Taxes (other than income taxes of the Vendor), duties and other like charges properly paid upon and in connection with the conveyance and transfer of the Assets to the Purchaser (the "**Assumed Liabilities**"), and will indemnify the Vendor and the Shareholders against such liabilities. In addition, at the Closing, the Purchaser shall accept all liability and responsibility for all Retained Employees, (i) in the case of the Elbow River Ongoing Management, on the terms set out in the Elbow River Employment Agreements, (ii) in the case of Ruskin, on the terms set out in the Advisory Agreement, and (iii) in the case of all Retained Employees other than Ruskin and the Elbow River Ongoing Management, on the terms set out in the Employment Letters or the Assumed Contracts, as applicable, and all such liabilities shall, collectively, be an

Assumed Liability for the purposes hereof. Other than as expressly set forth herein, or in the Elbow River Employment Agreements, the Advisory Agreement, the Assumed Contracts or the Employment Letters, the Vendor shall be liable and responsible for any employees, including all Employee Severance Obligations, for all employees or consultants of the Vendor who are terminated from their employment for any reason by the Vendor before the Closing Date.

2.9 Excluded Liabilities

In general, the Parties hereto intend that the Purchaser shall be entitled to all Benefits and Obligations from the operation of the Assets subsequent to the Closing Date, and shall also be responsible for all costs therefor. However, until the Closing Date, the Vendor shall be responsible for the operation of the Assets and the actions of the employees and contractors of the Vendor. Accordingly, notwithstanding any other provision of this Agreement, except for the Assumed Liabilities expressly specified in Section 2.8 or set out in the Interim Purchase Price Statement, the Purchaser shall not assume, or otherwise be responsible for, any of the Vendor's liabilities or obligations, whether actual or contingent, matured or unmatured, liquidated or unliquidated, known or unknown, or related or unrelated to the Business or the Assets (collectively, "**Excluded Liabilities**") (or if the Vendor does assume any such Excluded Liabilities, then the same shall be expressly set out in the Interim Purchase Price Statement and shall form an adjustment to the aggregate Purchase Price), which Excluded Liabilities include, without limitation:

- (a) Any liability or obligation to or in respect of any employees or former employees of the Vendor including, without limitation, (i) any employment agreement, whether or not written, between the Vendor and any person, which shall have been asserted prior to the Closing Date or is based on acts or omissions which occurred prior to the Closing Date, unless otherwise specifically addressed in the Advisory Agreement, the Elbow River Employment Agreements, the Assumed Contracts or specifically agreed to in writing between the Purchaser and the Vendor, (ii) any liability under any Employee Plan at any time maintained, contributed to or required to be contributed to by or with respect to the Vendor or under which the Vendor may incur liability, or any contributions, benefits or liabilities therefor, or any liability with respect to the Vendor's withdrawal or partial withdrawal from or termination of any Employee Plan, which shall have been asserted prior to the Closing Date or is based on acts or omissions which occurred prior to the Closing Date, unless otherwise specifically addressed in the Advisory Agreement, the Elbow River Employment Agreements, the Assumed Contracts or the Employment Letters, or as specifically contemplated pursuant to Section 7.1 of this Agreement, and (iii) any claim under labour relations or employment standards legislation, any disability claim or any claim under any unemployment compensation or worker's compensation law or regulation or under any federal or provincial human rights and/or employment discrimination law or regulation, which shall have been asserted prior to the Closing Date or is based on acts or omissions which occurred prior to the Closing Date;
- (b) Any liability or obligation of the Vendor or the Shareholders in respect of Taxes of the Vendor or of the Shareholders, respectively;
- (c) Any liability or obligation of the Vendor in respect of accounts payable of the Vendor relating to the Business or the Assets and which arose or accrued before the Closing Date or are otherwise unrelated to the Business or the Assets;
- (d) Any liability arising from any injury to or death of any person or damage to or destruction of any property, whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from defects in products leased, rented or sold or services performed by or on behalf of the Vendor or any other person or entity prior to the Closing Date or arising from any other cause including, without limitation, any liabilities arising (on a date of occurrence basis or otherwise) prior to the Closing Date relating to the use or misuse of the Vendor's products or Equipment or to traffic accidents;
- (e) Any liability or obligation of the Vendor arising out of or related to any action against the Vendor or any action which adversely affects the Assets and which shall have been asserted prior to the Closing Date or to the extent the basis of which shall have arisen prior to the Closing Date;

- (f) Any liability or obligation of the Vendor or Shareholders resulting from entering into, performing its obligations pursuant to or consummating the transactions contemplated by, this Agreement;
- (g) Any liability or obligation related to the Leased Facilities arising or accruing prior to the Closing Date; and
- (h) Any Environmental Liability or obligation.

ARTICLE 3 CLOSING

3.1 Place of Closing

Closing shall take place in Calgary, Alberta, at the offices of Burnet, Duckworth & Palmer LLP on the Closing Date, or at such other place as may be agreed upon by the Parties.

3.2 Vendors' and Shareholders' Deliveries at Closing

At Closing, the Vendor and the Shareholders shall deliver the following to the Purchaser:

- (a) limited releases of the directors, officers and Shareholders of the Vendor in a form reasonably satisfactory to the Purchaser to the effect that such persons have no claims (other than for agreed compensation) against the Assets or the Business at Closing;
- (b) the Non-Competition Agreements duly executed by each of the Vendor, Ruskin, the Elbow River Ongoing Management;
- (c) the Elbow River Employment Agreements duly executed by each of the Elbow River Ongoing Management;
- (d) the Advisory Agreement duly executed by Ruskin;
- (e) the Time Release Escrow Agreement duly executed by the Vendor, with rights of assignment as contemplated by the Letter Agreement;
- (f) the Incentive Release Escrow Agreement duly executed by the Vendor, with rights of assignment as contemplated by the Letter Agreement;
- (g) the Royalty Agreement duly executed by the Elbow River Ongoing Management and such individuals as may be designated from time to time by the Elbow River Ongoing Management;
- (h) assignment agreements respecting the existing employment agreements of the existing employees of the Vendor, duly executed by the Vendor;
- (i) a certified copy of a resolution of the directors and the Shareholders of the Vendor authorizing the entry into this Agreement and the transactions contemplated hereby, and the transfer of the Assets to the Purchaser;
- (j) consents to the transfer of the Assets to the Purchaser from each party holding Security over the same;
- (k) the consent of the Vendor's landlord to the transfer of the Vendor's existing office lease to the Purchaser (or, if the landlord will not consent to such transfer, an assignment of the lease executed by the Vendor in favour of the Purchaser, with an indemnity of the Purchaser to the Vendor with respect to the obligations under such lease); and

- (l) such other documents as may be specifically required under this Agreement or as may be reasonably requested by the Purchaser upon reasonable notice to the Vendor and the Shareholders.

3.3 Avenir's and Purchaser's Deliveries at Closing

At Closing, Avenir and the Purchaser shall deliver the following to the Vendor and the Shareholders:

- (a) the Purchase Price (by way of certified cheques and the duly issued Escrow Units), pursuant to and in accordance with the provisions of Section 2.2;
- (b) the Non-Competition Agreements duly executed by Avenir and the Purchaser;
- (c) the Elbow River Employment Agreements duly executed by the Purchaser;
- (d) the Advisory Agreement duly executed by the Purchaser;
- (e) the Time Release Escrow Agreement duly executed by Avenir and the Purchaser;
- (f) the Incentive Release Escrow Agreement duly executed by Avenir and the Purchaser;
- (g) the Royalty Agreement duly executed by Avenir and the Purchaser;
- (h) the approval of the TSX with respect to the issuances of the Escrow Units pursuant to the provisions hereof;
- (i) an assumption agreement with respect to the Assumed Liabilities;
- (j) limited releases in favour of the directors, officers and Shareholders of the Vendor for acts taken by such individuals prior to the Closing;
- (k) assignment agreements respecting the assignment of all the employment contracts of the existing employees of the Vendor duly executed by the Purchaser;
- (l) a certified copy of a resolution of the directors of Avenir and the General Partner, on its on behalf and on behalf of the Purchaser, authorizing the entry into this Agreement and the transactions contemplated hereby; and
- (m) such other documents as may be specifically required under this Agreement or as may be reasonably requested by the Vendor and the Shareholders upon reasonable notice to the Purchaser.

ARTICLE 4 CONDITIONS OF CLOSING

4.1 Vendor's and Shareholders' Conditions

The Vendor's and the Shareholders' respective obligations to complete the transactions contemplated by this Agreement are subject to satisfaction or waiver of the following conditions on or by the Closing Date:

- (a) the Escrow Units shall be conditionally approved by the TSX for issuance by Avenir Trust and listed on the TSX, such conditional approval to be acceptable to the Vendor and the Shareholders, acting reasonably;
- (b) all regulatory approvals and third party consents in respect of the transactions contemplated by this Agreement shall have been obtained;

- (c) the Vendor and the Shareholders shall have completed their business, financial and legal due diligence of Avenir Trust and the Avenir Trust Subsidiaries, and shall be satisfied, in their sole discretion, as to the viability of such business and with Avenir Trust's title to or beneficial interest in its assets (on a consolidated basis);
- (d) the representations and warranties of Avenir, Avenir Trust and the Purchaser set forth in Section 5.3 shall be true and correct at and as of the date of this Agreement and the Closing Date, with the same force and effect as if made then in each case;
- (e) Avenir, Avenir Trust and the Purchaser shall have performed or complied with all of the terms, covenants and conditions of this Agreement to be performed or complied with by Avenir, Avenir Trust and the Purchaser at or prior to the Closing Date;
- (f) Avenir and the Purchaser shall have furnished each of the Vendor and the Shareholders with such certificates of Avenir and the Purchaser, the officers Avenir and of the Purchaser and others to evidence compliance with such conditions to Closing as may be reasonably requested by the Vendor and the Shareholders including, without limitation, a certificate of each of Avenir (on its own behalf and on behalf of Avenir Trust) and the Purchaser, signed by the President and Chief Executive Officer, or the Chief Financial Officer of each of Avenir and the General Partner with the Purchaser, dated the Closing Date, stating that (a) the person signing such certificate has made or has caused to be made such investigations as are necessary to permit such person to certify the accuracy of the information set forth therein, (b) the representations and warranties Avenir, Avenir Trust and of the Purchaser contained in this Agreement are true and correct in all material respects on the date hereof and with the same effect as though made on the date of such certificate, and (c) Avenir, Avenir Trust and the Purchaser have performed and complied in all material respects with all agreements, covenants and conditions contained in this Agreement to be performed or complied with by them prior to the date of Closing;
- (g) there shall be no claims or proceedings threatened or pending involving the Avenir Trust or the Avenir Trust Subsidiaries or their respective assets which claims or proceedings in the aggregate would have a material adverse effect on Avenir Trust's business, taken as a whole;
- (h) Avenir and the Purchaser shall have tendered all deliveries to be made by them pursuant to Section 3.3;

provided that, if any term, covenant or condition of Avenir or the Purchaser to be performed or complied in all material respects with on or prior to the Closing Date shall not have been performed or complied with on or prior to the Closing Date, the Vendor and the Shareholders shall either: (i) rescind this Agreement by notice in writing to Avenir and the Purchaser, and the Vendor and the Shareholders shall thereupon be released from all obligations hereunder and, unless the term, covenant or condition for which the Vendor and the Shareholders have rescinded this Agreement was reasonably capable of being performed or complied with by Avenir or the Purchaser, Avenir and the Purchaser shall also be released from all obligations hereunder; or (ii) waive, in writing, compliance of any such term, covenant or condition in whole or in part, without prejudice to any of its rights of rescission in the event of non-performance of any other term, covenant or condition in whole or in part.

4.2 Avenir's and Purchaser's Conditions

Avenir's and the Purchaser's obligation to complete the transactions contemplated under this Agreement is subject to the satisfaction or waiver of the following conditions on or by the Closing Date:

- (a) Avenir Trust shall have completed the Financing;
- (b) the Escrow Units shall be conditionally approved by the TSX for issuance by Avenir Trust and listed on the TSX, such conditional approval to be acceptable to Avenir, acting reasonably;
- (c) all regulatory Approvals, shareholder approvals and third party consents in respect of the transactions contemplated by this Agreement shall have been obtained;

- (d) the Purchaser shall have received the Elbow River Financial Statements, in form and substance reasonably satisfactory to the Purchaser, acting reasonably;
- (e) the Purchaser shall have completed its business, financial and legal due diligence of the Assets and the Business of the Vendor and shall be satisfied, acting reasonably, with the Vendor's beneficial interest in the Assets;
- (f) the representations and warranties of the Vendor and the Shareholders set forth in Sections 5.1 and 5.2 shall be true and correct at and as of the date of this Agreement and the Closing Date, with the same force and effect as if made then in each case;
- (g) each of the Vendor and the Shareholders shall have performed or complied with all of the terms, covenants and conditions of this Agreement to be performed or complied with by them at or prior to the Closing Date;
- (h) each of the Vendor and the Shareholders shall have furnished the Purchaser with such certificates of officers of the Vendor and the Shareholders and others to evidence compliance with such conditions to Closing as may be reasonably requested by the Purchaser including, without limitation, a certificate of the Vendor and each Shareholder, as applicable, signed by a duly authorized officer of the Vendor and each Shareholder, dated the date of the Closing, stating that (a) the person signing such certificate has made or has caused to be made such investigations as are necessary to permit such person to certify the accuracy of the information set forth therein, (b) the representations and warranties of the Vendor and the Shareholders contained in this Agreement are true and correct in all material respects with the same effect as though made on the date of such certificate, and (c) the Vendor and each Shareholder, as the case may be, has performed and complied in all material respects with all agreements, covenants and conditions contained in this Agreement to be performed or complied with by it prior to the date of Closing;
- (i) there shall be no claims or proceedings threatened or pending involving the Vendor, the Shareholders or the Assets which claims or proceedings in the aggregate would, in the opinion of the Purchaser, have a material adverse effect on the Assets or the Business, taken as a whole; and
- (j) from and after the date of this Agreement to the Closing Date, there shall not have been any material change in the Assets, or any of them, or the operation or maintenance thereof, which in the sole opinion of the Purchaser, would materially and adversely affect the value of the Assets, taken as a whole;

provided that, if any term, covenant or condition of the Vendor or the Shareholders to be performed or complied with on or prior to the Closing Date shall not have been performed or complied with on or prior to the Closing Date, the Purchaser shall, at its sole option, either: (i) rescind this Agreement by notice in writing to the Vendor and the Shareholders, and the Purchaser and Avenir shall thereupon be released from all obligations hereunder and, unless the term, covenant or condition for which the Purchaser has rescinded this Agreement was reasonably capable of being performed or complied with by the Vendor or a Shareholder, as applicable, then such parties shall also be released from all obligations hereunder; or (ii) waive, in writing, compliance of any such term, covenant or condition in whole or in part, without prejudice to any of its rights of rescission in the event of non-performance of any other term, covenant or condition in whole or in part.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Vendor and Shareholders

Each of the Vendor and the Shareholders, jointly (and not severally, or jointly and severally), but subject to the maximum liabilities of each Shareholder as set out in **Schedule 2.3**, represents and warrants to the Purchaser that:

Corporate Standing, Power and Authorizations

- (a) the Vendor is duly organized and validly existing under the law of the jurisdiction of its incorporation has the corporate power and capacity to own or lease its property and assets and to carry on its business as now conducted by it and is duly qualified to carry on business in each jurisdiction in which the nature of its business or the property or assets owned or leased by it makes such qualification necessary;
- (b) the execution and delivery of this Agreement and all documents to be delivered pursuant hereto, the performance of the terms hereof and thereof and the consummation of the transactions contemplated herein and therein do not and will not:
 - (i) result in the breach of or violate any term or provision of the articles, by-laws or other governing documents of the Vendor,
 - (ii) conflict with, result in a breach of, constitute a default under, or accelerate or permit the acceleration of the performance required by, any agreement, instrument, licence, permit or authority to which the Vendor is a party, by which it is bound or to which any of its property or assets is subject,
 - (iii) give to any person any interest or right, including any right of purchase, termination, cancellation or acceleration under any such agreement, instrument, license, permit or authority, or
 - (iv) violate any provision of law or administrative regulation or any judicial or administrative order, award, judgment or decree applicable to the Vendor or any of its property or assets;

Finder's Fees

- (c) the Vendor has not incurred any obligation or liability, contingent or otherwise, for brokerage fees, finder's fees, agent's commission or other similar forms of compensation payable by it or the Purchaser with respect to the transactions contemplated herein (provided that the Vendor confirms that Elbow River is party to a financial advisory agreement with CIBC World Markets Inc. pursuant to which CIBC World Markets Inc. will be paid an advisory fee by Elbow River if the transactions contemplated by this Agreement are completed);

Material Liabilities and Claims

- (d) there are no known or reasonably anticipated liabilities, whether contingent or otherwise, of any kind whatsoever, whether or not determined or determinable, other than as set out in the Elbow River Financial Statements or which have not had and would not reasonably be expected to have a material adverse effect on the Vendor on a consolidated basis, and since the date hereof, there has been no change, condition, event or occurrence which, in the reasonable judgment of the Vendor or the Shareholders, has resulted in or is reasonably likely to result in a material adverse change in the Vendor;

Subsidiaries

- (e) the Vendor has no subsidiaries or agreements of any nature to acquire any subsidiary, or to acquire or lease any other business operations out of the ordinary course;

Compliance With Laws

- (f) with such exceptions as have not had and would not reasonably be expected to have a material adverse effect, and to the knowledge of the Vendor and Shareholders, the Vendor:
 - (i) has conducted and is conducting its business in compliance in all material respects with all Applicable Laws and, in particular, all material applicable licensing and environmental legislation,

regulations or by-laws or other lawful requirements of any governmental or regulatory bodies applicable to it in each jurisdiction in which it carries on its business;

- (ii) holds all licenses, registrations and qualifications in all jurisdictions in which it carries on a material portion of its business which are necessary to carry on its business as now conducted, and all such material licenses, registrations or qualifications are valid and existing and in good standing; and
 - (iii) has not received any notice of proceedings relating to the revocation or modification of any such licenses, certificates, authorities, permits, consents or qualifications which, if the subject of an unfavourable decision, ruling or finding would materially and adversely affect the conduct of the business, operations, financial condition, or income of any of them;
- (g) no dissolution, winding-up, bankruptcy, liquidation or similar proceedings have been commenced or to the Vendor's or the Shareholders' knowledge, are pending or proposed in respect of the Vendor;

Records and Financial Statements

- (h) to the knowledge of the Vendor and the Shareholders, the Books and Records of the Vendor are true and correct in all material respects;
- (i) to the knowledge of the Vendor and the Shareholders, the Elbow River Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with that of prior periods (except as stated therein) and present fairly the financial position of the Vendor as of the date provided therein and the results of operations and the changes in financial position for the periods then ended;
- (j) except as set out in the Elbow River Financial Statements, to the knowledge of the Vendor and the Shareholders, the Vendor is not a party to or bound by any agreement of guarantee, indemnification, assumption or endorsement or any other like commitment of the obligations, liabilities (contingent or otherwise) or indebtedness of any other person (other than the Vendor);

Assets

- (k) **Schedule 5.1(k)** contains a complete list of the Assumed Contracts; Material Authorizations and Bank Accounts maintained by the Vendor;
- (l) **Schedule 5.1(l)** contains a complete list of the Lands and Leased Facilities owned or leased by the Vendor for the purpose of carrying on its business;
- (m) there is no Security registered or unregistered against the Assets of the Vendor, other than the Security set forth in **Schedule 5.1(k)**;
- (n) **Schedule 5.1(n)** sets forth the a general description and the location of all Equipment as of the Closing Date. All of the Equipment listed on **Schedule 5.1(n)** which is material for the operation of the Business is, and on the Closing date will be, fully operational and accounted for;
- (o) **Schedule 5.1(o)** sets out all of the Intellectual Property Rights owned or used by the Vendor which are material to its business, and the Vendor owns or has the right to use all Intellectual Property Rights material to its business and to the Vendor's and the Shareholders' knowledge, the Intellectual Property Rights do not infringe upon the Intellectual Property Rights of any third party and there are no third party claims of infringement of which the Vendor or the Shareholders are aware;
- (p) the Vendor does not pay, and following Closing, the Purchaser will be obligated to pay, any royalties or other fees in connection with the license or use of the Intellectual Property Rights currently owned or licensed by or used by the Vendor in connection with its business;

- (q) the Vendor is and will be on the Closing Date, the legal and beneficial owner of the Assets, with good and marketable title thereto, free and clear of all Encumbrances other than the Permitted Encumbrances, and the Vendor has not encumbered or alienated the Assets or any interest therein, other than as contemplated by this Agreement;
- (r) the Vendor has been receiving all revenues to which it is entitled by virtue of its ownership of the Assets;
- (s) all Permits required for the conduct of the operation of the Business and the owning of the Assets have been obtained, are validly issued and are in good standing;
- (t) subject to Permitted Encumbrances, the Purchaser may, upon Closing, take possession of, hold, own and operate the Assets, excluding any agreements which are unassignable on their terms, without lawful interruption by the Vendor or any person claiming by, through or under the Vendor;
- (u) the Vendor has provided the Purchaser with access to all Material Contracts and neither the Vendor nor, to the Vendor's or the Shareholders' knowledge, any counterparty or counterparties to such Material Contracts, are in default of the terms of any Material Contracts in any material respect and any non-material defaults do not have a material adverse effect on the Business;

Leased Facilities

- (v) the Vendor does not own any real property used in connection with the Business. The Vendor enjoys peaceful and undisturbed possession of the Leased Facilities and is not in default of any material terms or conditions of the Leases. There are no subleases, licenses, occupancy agreements, options, rights, concessions or other agreements or arrangements, written or oral, where the Vendor grants to any person the right to use or occupy the Leased Facilities or any portion thereof. The Leased Facilities are supplied with utilities and other services necessary for the operation of the Business;
- (w) the Leased Facilities and all Equipment are (i) insured to the extent and in a manner customary in the industry, (ii) to the knowledge of the Vendor, structurally sound with no known material defects, (iii) in good operating condition and repair, subject to ordinary wear and tear, (iv) not in need of maintenance or repair except for ordinary routine maintenance and repair, the cost of which would not be material, (v) sufficient for the operation of the Business as presently conducted, and (vi) operated and maintained in conformity, in all material respects, with all applicable regulations relating thereto currently in effect. None of the improvements is subject to any commitment or other arrangement for their sale or use by any Affiliate of the Vendor or third parties;
- (x) to the knowledge of the Vendor, all Leased Facilities have received all required approvals of Governmental Authorities (including without limitation Permits and a certificate of occupancy or other similar certificate permitting lawful occupancy of the Leased Facilities) required in connection with the operation thereof. No alteration, repair, improvement or other work has been ordered, directed or requested in writing to be done or performed to or in respect of the Leased Facilities or to any of the plumbing, heating, elevating, water, drainage or electrical systems, fixtures or works by any municipal, provincial or other competent authority, which alteration, repair, improvement or other work has not been completed, and the Vendor knows of no written notification having been given to it of any such outstanding work being ordered, directed or requested, other than those that have been complied with;
- (y) all accounts for work and services performed and materials placed or furnished upon or in respect of the Leased Facilities at the request of the Vendor have been fully paid and satisfied, and, to the knowledge of the Vendor, no person is entitled to claim a lien against the Leased Facilities or any part thereof, other than current accounts in respect of which the payment due date has not yet passed;

Employment

- (z) **Schedule 5.1(aa)** sets forth (i) a list of all employees of the Vendor (except Larry Ruskin) who are engaged in the Business and their wage rates or salaries, as of the date of this Agreement, and (ii) the dates of employment for such employees;
- (aa) all staff salaries, remuneration, benefits (including, without limitation, any benefits or entitlements under the Employee Plans), deductions, contributions, holiday or vacation pay (including sick leave) and workers' compensation payments for all employees of the Vendor have been fully accrued or paid and satisfied as at the date of this Agreement;
- (bb) to the knowledge of the Vendor and the Shareholders, there are no claims pending or threatened by any present or former employees of the Vendor against the Vendor for any reason whatsoever including, without limiting the generality of the foregoing, for any unpaid wages, bonuses, commissions or any other compensation. The Vendor is up to date in making Employment Insurance payments, payments pursuant to the Canada Pension Plan, Income Tax withholding payments and workers' compensation payments and payments to any other pension or insurance programs to which the Vendor may be a party, including the payment of any union or association dues or fitness plans, arrangements or agreements to which the Vendor is a party or by which it is bound;
- (cc) there is not, and will not be at the time of Closing, any trade union or association certified by competent authority or recognized by the Vendor as bargaining agent for any employees of the Vendor or any of its Affiliates, and the Vendor and its Affiliates are not, and will not be at the time of Closing, a party to any collective agreement with any labour union or association of employees;
- (dd) there are not any outstanding orders under applicable federal or provincial occupational health and safety legislation affecting the Vendor or its Affiliates;
- (ee) except as may otherwise be approved by the Purchaser in writing, the Vendor will not at the Closing Date have any outstanding liabilities for payment of wages, sick pay, salaries, pensions, for contributions or entitlements under any employee benefit plan (including, without limitation, the Employee Plans) or for any other compensation, current or deferred under any labour or employment contract, whether oral or written, except for (i) vacation days and bonus amounts which shall specifically be addressed by the Purchaser and the Vendor in the Interim Purchase Price Statement and, as applicable, the First Purchase Price Adjustment Statement and Final Purchase Price Adjustment Statement and shall be an adjustment to the aggregate Purchase Price and (ii) normal accruals for wages, vacation pay, salaries or other similar expenses and normal day to day operating expenses and except for contracts terminable at the option of the Vendor upon a notice no longer than one month, and the Vendor will not have any outstanding liabilities to any employee arising under any applicable statute or regulation including, without limitation, any employment standards, human rights, workers' compensation or occupational health and safety legislation, or under the ITA;
- (ff) except as set forth in **Schedule 5.1(aa)**, the Vendor is not a party to any written contract: (i) for the employment of any officer or individual employee; (ii) that provides for any agreed upon severance payment or any other form of compensation in the event of the termination of employment of any officer or individual employee, or in the event of a change of control of the Vendor; (iii) that provides for any bonus or incentive payment or any other form of compensation to any employee in the event that they remain in their employment for a period of time; (iv) with any labour or trade union; or (v) for consulting services on an ongoing basis which cannot be terminated without penalty or additional compensation within 30 days of the Closing Date;
- (gg) to the knowledge of the Vendor and the Shareholders, the Vendor is in compliance in all material respects with all applicable statutes and regulations in Canada, under provincial and federal authority, respecting employment and employment practices, terms and conditions of employment in wages and hours and is not engaged in unfair labour practice. To the knowledge of the Vendor, (i) there is no unfair labour practice or other complaint against the Vendor or any of its Affiliates pending before any governmental authority,

board or agency; (ii) there is no labour strike, dispute, slowdown or stoppage pending or, to their knowledge, threatened against, or affecting the Vendor or any of the Vendor subsidiaries or any of their material properties or assets; and (iii) no arbitration proceeding arising out of or under any collective bargaining agreement is pending or threatened

Pension and Benefit Plans

- (hh) **Schedule 5.1(kk)** sets forth all the employee benefits, welfare, bonus, profit sharing, deferred compensation, stock option, stock purchase or stock compensation, retirement, hospitalization insurance, medical and dental insurance, disability insurance or similar plans or practices relating to the employees (the "Employee Plans") which as of the date hereof are currently maintained or contributed to, or any time within the last five (5) calendar years were maintained or contributed to, by the Vendor or any of its Affiliates or in which any employee or former employee is or was eligible to participate and with respect to which the Vendor or any of its Affiliates has any actual or potential liability;

Insurance

- (ii) **Schedule 5.1(II)** describes all policies of insurance currently in force (including the insurer, type of insurance and period of coverage) to which the Vendor is a party or under which the Vendor, or any assets, operations and personnel of the Business is or has been insured;
- (jj) the Vendor has paid all accumulated premiums due or has accrued same as a liability and has otherwise performed substantially all of its material respective obligations under each such current insurance policy;

Environmental Matters

- (kk) to the Vendor's and the Shareholders' knowledge, there has not been:
- (i) any release, spill or emission that is reportable by the Vendor or the owner of the lands affected thereby under Applicable Laws regarding the environment and that has not been reported, or
 - (ii) any material violation by the Vendor of any Applicable Laws regarding the environment;
- (ll) the Vendor has not received any written communication, nor, to the Vendor's and the Shareholders' knowledge, has the owner of any lands which may be affected, received any written communication, to the effect that it (or the current owner, as applicable) is not in compliance with any Applicable Laws regarding the environment;
- (mm) to the Vendor's and the Shareholders' knowledge all Records of the Vendor relating to environmental compliance are complete and accurate in all material respects;

Related Party Transactions

- (nn) the Vendor has not entered into any material business arrangement or relationship with a Related Person within the past 24 months;
- (oo) the Vendor is not a party to any contract or agreement (whether written or oral) under which it is obligated to purchase goods or services from, or provide goods and services to, any Related Person;
- (pp) no Related Person owns, holds title to, licenses or permits use of, any of the Assets of the Vendor or any Authorizations relating to the business of the Vendor; and
- (qq) the Vendor does not have any loans or other indebtedness outstanding which have been made to or from any of its shareholders, officers, directors or employees, past or present, or any person not dealing at arm's

length with the Vendor or by any of them to or from the Vendor for which the Purchaser will have any liability on or following Closing.

5.2 Representations of Shareholders

Each Shareholder, severally (and not jointly or jointly and severally), represents and warrants to the Purchaser and subject to their maximum liabilities as set out in **Schedule 2.3**, that:

Authorizations

- (a) the execution and delivery of this Agreement and all documents to be delivered pursuant hereto, the performance of the terms hereof and thereof and the consummation of the transactions contemplated herein and therein do not and will not:
 - (i) conflict with, result in a breach of, constitute a default under, or accelerate or permit the acceleration of the performance required by, any agreement, instrument, licence, permit or authority to which he is a party, by which he is bound or to which any of his property or assets is subject,
 - (ii) give to any person any interest or right, including any right of purchase, termination, cancellation or acceleration under any such agreement, instrument, license, permit or authority, or
 - (iii) violate any provision of law or administrative regulation or any judicial or administrative order, award, judgment or decree applicable to him or the Assets, as applicable;
- (b) this Agreement has been duly executed and delivered by him and all documents to be delivered by him pursuant hereto will be duly executed and delivered and this Agreement does and such documents will constitute legal, valid and binding obligations of him enforceable in accordance with their respective terms;

Finder's Fees

- (c) he has not incurred any obligation or liability, contingent or otherwise, for brokerage fees, finder's fees, agent's commission or other similar forms of compensation payable with respect to the transactions contemplated herein for which the Purchaser will have any obligation or liability;

Material Liabilities and Claims

- (d) there are no actions, suits, investigations, proceedings or claims, commenced or to his knowledge, contemplated, at law or in equity or before or by any court or other Governmental Authority which would have a material adverse effect on the completion of the transactions contemplated hereby; and there are no grounds upon which any such action, suit, investigation, proceeding or claim may be commenced with a reasonable likelihood of success;

Assets

- (e) he does not hold any property, whatsoever, in the name of, on behalf of, or in trust for, the Vendor; and

General

- (f) he has not knowingly omitted to disclose any information, documents or materials to Avenir or the Purchaser that are material on a consolidated basis to the Business, and all information, documents and materials provided to the Purchaser is, to the best of his knowledge, correct in all material respects as of the date of its creation.

5.3 Representations and Warranties of Avenir, Avenir Trust and the Purchaser

Avenir, Avenir Trust and the Purchaser jointly and severally represent and warrant to the Vendor and the Shareholders that:

Corporate Standing, Power and Authorizations

- (a) Avenir Trust and each of the Avenir Trust Subsidiaries is duly organized and validly existing under the law of the jurisdiction of its incorporation and has the trust, corporate or partnership power and capacity to own or lease its property and assets and to carry on its business as now conducted by it and is duly qualified to carry on business in each jurisdiction in which the nature of its business or the property or assets owned or leased by it makes such qualification necessary;
- (b) Avenir is wholly owned by Avenir Trust and the Purchaser is an indirect wholly-owned subsidiary of Avenir Operating Trust and has no subsidiaries. **Schedule 5.3(b)** hereto sets out the current organizational structure of Avenir Trust, with approximately 80% of Avenir Trust's current asset value allocated to its oil and gas assets, which are owned by and operated through Avenir;
- (c) Avenir Trust has been duly constituted as a trust under the laws of Alberta and has all requisite power and authority to carry on its business as now conducted and to own Avenir and the Purchaser;
- (d) Avenir, the Purchaser and Avenir Trust, as the case may be, have all requisite power and authority to enter into this Agreement and all documents to be delivered pursuant hereto and to issue the Escrow Units forming part of the aggregate Purchase Price to the Vendor and the other persons designated to received them and to perform their obligations hereunder and thereunder;
- (e) the execution and delivery of this Agreement and all documents to be delivered pursuant hereto, the performance of the terms hereof and thereof and the consummation of the transactions contemplated herein and therein do not and will not:
 - (i) result in the breach of or violate any term or provision of the articles, by-laws or other governing documents of Avenir, the Purchaser, Avenir Trust or any Avenir Trust Subsidiary;
 - (ii) conflict with, result in a breach of, constitute a default under, or accelerate or permit the acceleration of the performance required by, any agreement, instrument, licence, permit or authority to which Avenir, the Purchaser, Avenir Trust or any Avenir Trust Subsidiary is a party, by which any thereof is bound or to which any of their property or assets is subject,
 - (iii) give to any person any interest or rights, including any right of purchase, termination, cancellation or acceleration under any agreement, instrument, licence, permit or authority, or
 - (iv) violate any provision of law or administrative regulation or any judicial or administrative order, award, judgment or decree applicable to Avenir, the Purchaser, Avenir Trust or any Avenir Trust Subsidiary or any of their respective property or assets;
- (f) this Agreement has been duly authorized, executed and delivered by Avenir and the Purchaser and all documents to be delivered by Avenir, the Purchaser or Avenir Trust pursuant hereto will be duly executed and delivered and this Agreement does and such documents will constitute legal, valid and binding obligations of Avenir, the Purchaser or Avenir Trust, as the case may be, enforceable in accordance with their respective terms;

Escrow Units

- (g) the Escrow Units to be issued pursuant to the terms of this Agreement shall be issued as fully paid and non-assessable, free and clear of any Encumbrances or rights of third parties, voting trusts, unanimous or other

shareholder agreements, proxies and other interests, claims or demands of every kind or nature whatsoever (other than such as may be created by, through or under the Vendors) and good title to Escrow Units will vest in the Vendors and they shall be listed on the TSX, except as may be restricted by the Time Release Escrow Agreement, by the fact that the Trust Units will be legended to the effect that they may not be transferred for a period of four months and one day from the date of issue, or by any applicable securities laws relating to insider trading generally;

- (h) as of the date hereof, the authorized capital of Avenir Trust consists of an unlimited number of Trust Units, of which 11,671,524 Trust Units are issued and outstanding. Except as set forth in the immediately preceding sentence, and except for 202,396 Trust Units issuable pursuant to Avenir Trust's Incentive Option Plan, there are no options, warrants or other rights, agreements or commitments of any character whatsoever requiring the issuance, sale or transfer by Avenir Trust of any Trust Units of or any securities convertible into, or exchangeable or exercisable for, or otherwise evidencing a right to acquire, any Trust Units nor are there any outstanding stock appreciation rights, phantom equity or similar rights, agreements, arrangements or commitments based upon the book value, income or other attribute of Avenir Trust. All outstanding Trust Units have been duly authorized and validly issued, are fully paid and non-assessable;

Financial Matters

- (i) to the knowledge of Avenir and the Purchaser, the Avenir Financial Statements have been prepared in accordance with GAAP and applied on a basis consistent with that of prior periods and fairly present the financial position of Avenir Trust (on a consolidated basis) for the period to which they relate;

Securities Law Matters

- (j) Avenir Trust has filed with the Canadian securities authorities all documents and materials required to be filed under applicable securities laws and such documents and materials (including all exhibits and schedules to, and documents incorporated by reference in, those documents and materials), to the extent comprising Avenir Trust's public record (including those filed on the System for Electronic Document Analysis and Retrieval System (SEDAR)), do not, as of the date of such document, contain any misrepresentation (as that term is defined in the *Securities Act* (Alberta)) and the same comply in all material respects with applicable legal and stock exchange requirements;
- (k) no order ceasing or suspending trading in securities of Avenir Trust or prohibiting the issue or sale of securities by Avenir Trust, Avenir or the Purchaser has been issued and, to the knowledge of Avenir and the Purchaser, no proceedings for this purpose have been instituted, are pending, contemplated or threatened by any securities commissions or similar authority;
- (l) the form of certificate representing Trust Units has been duly approved by Avenir as manager of the Avenir Trust and comply with the provisions of the laws of its constating jurisdiction and the requirements of the TSX;
- (m) Avenir Trust is a reporting issuer (or equivalent) in each of the provinces of Canada, other than Quebec, and is (i) not in default of its obligations under the securities laws of such provinces; and (ii) in material compliance with the rules and policies of the TSX;

Subsidiaries

- (n) neither Avenir nor Avenir Trust (i) has any material subsidiaries except Avenir Operating Trust, an unincorporated commercial trust formed pursuant to the laws of the Province of Alberta and which is wholly owned by Avenir Trust, Avenir Financial Services Acquisition Corp., Avenir Financial Services Limited Partnership, Avenir Real Estate Acquisition Corp., Avenir Energy Services Corp. and Cascade Services Partnership and (ii) is a party to any agreement of any nature to acquire any subsidiary or to acquire or lease any other business operations out of the ordinary course;

Engineering Reports

- (o) Avenir has made available to McDaniel, prior to the issuance of each of the Avenir McDaniel Report and the Avenir Liege and Blaze Report, and has made available to GLJ, prior to the issuance of the Avenir Lightning Report and the Avenir Prime West Report, for the purposes of preparing such reports, all information requested by McDaniel and GLJ, which information did not contain any misrepresentation at the date thereof. Except as otherwise disclosed in writing to the Vendor, Avenir has no knowledge of a material adverse change in any information provided to McDaniel or GLJ since the date that such information was so provided;

Title

- (p) although it does not warrant title, Avenir does not have reason to believe that Avenir does not have title to or the irrevocable right to produce and sell its petroleum, natural gas and related hydrocarbons (for the purposes of this clause, the foregoing are referred to as the "**Interests**") and does represent and warrant that the Interests are free and clear of adverse claims created by, through or under Avenir, except for those arising in the ordinary course of business, which are not material in the aggregate, and, to the knowledge of Avenir after due inquiry, Avenir holds its Interests under valid and subsisting leases, licenses, permits, concessions, concession agreements, contracts, subleases, reservations or other agreements;

General

- (q) with such exceptions as have not had and would not reasonably be expected to have a material adverse effect), Avenir, the Purchaser, Avenir Trust or any Avenir Trust Subsidiary:
- (i) have conducted and are conducting their business in compliance in all material respects with all Applicable Laws and, in particular, all material applicable licensing and environmental legislation, regulations or by-laws or other lawful requirements of any governmental or regulatory bodies applicable to Avenir, the Purchaser, Avenir Trust and each Avenir Trust Subsidiary in each jurisdiction in which Avenir, the Purchaser, Avenir Trust and the Avenir Trust Subsidiaries carry on their business;
 - (ii) hold all licenses, registrations and qualifications in all jurisdictions in which they carry on a material portion of their business which are necessary to carry on their business as now conducted, and all such material licenses, registrations or qualifications are valid and existing and in good standing; and
 - (iii) have not received any notice of proceedings relating to the revocation or modification of any such licenses, certificates, authorities, permits, consents or qualifications which, if the subject of an unfavourable decision, ruling or finding would materially and adversely affect the conduct of the business, operations, financial condition, or income of any of them;
- (r) Avenir, the Purchaser, Avenir Trust and each Avenir Trust Subsidiary each has all requisite power and authority to carry on its business as now conducted by it and to own, lease and operate its material assets;
- (s) Avenir Trust is a mutual fund trust for purposes of the ITA and entitled to the benefits of such status under the ITA;
- (t) to the knowledge of Avenir and the Purchaser, the minute books of Avenir and the Purchaser are complete and contain all the resolutions of their respective directors (including any committee of directors) and shareholders as the case may be;
- (u) to the knowledge of Avenir and the Purchaser, all interests in properties of Avenir, the Purchaser, Avenir Trust or the Avenir Trust Subsidiaries that are owned, leased or held by Avenir, the Purchaser, Avenir Trust or the Avenir Trust Subsidiaries are so owned, held or leased with good and marketable title, and any

agreements pursuant to which Avenir, the Purchaser, Avenir Trust or the Avenir Trust Subsidiaries hold any such interest in such properties are in good standing in all material respects according to their terms;

- (v) to the knowledge of Avenir and the Purchaser, each of Avenir, the Purchaser, Avenir Trust and each Avenir Trust Subsidiary has all of the right, title and interest in and to its property interests, free and clear of all encumbrances, claims or demands of any kind whatsoever other than royalty interests to Avenir Trust and those disclosed in Avenir Financial Statements or arising in the ordinary course of Avenir's, the Purchaser's, Avenir Trust's or the Avenir Trust Subsidiaries' business or relating to ordinary course of business financings, except those as would not be expect to have a material adverse effect on Avenir Trust (on a consolidated basis);
- (w) there has not been any material adverse change in the assets, liabilities or obligations (absolute, contingent or otherwise) of Avenir Trust (on a consolidated basis) from the position set forth in Avenir Financial Statements, and there has not been any material adverse change in Avenir Trust (on a consolidated basis) since December 31, 2003 which has not been publicly disclosed; and since December 31, 2003 there have been no material facts, transactions, events or occurrences which could reasonably be expected to materially adversely affect Avenir Trust (on a consolidated basis) which have not been disclosed in SEDAR filings;
- (x) there are no actions, suits, proceedings or inquiries, to Avenir's or the Purchaser's knowledge, pending or threatened, against or affecting Avenir Trust or any Avenir Trust Subsidiary, at law or in equity or before or by any Governmental Authority or any court which in any way could reasonably be expected to materially adversely affect Avenir Trust or the Purchaser (on a consolidated basis), or any of their material properties or assets;
- (y) to the knowledge of Avenir, Avenir Trust and each Avenir Trust Subsidiary have filed all necessary tax returns and notices and have paid all applicable taxes of whatever nature to the tax-year ended December 31, 2003 to the extent such taxes have become due or have been alleged to be due, and neither Avenir or the Purchaser is aware of any tax deficiencies or interest or penalties accrued or accruing, or alleged to be accrued or accruing, thereon with respect to any of them where, in any of the above cases, it could reasonably be expected to result in any material adverse change on Avenir Trust (on a consolidated basis);
- (z) Olympia Trust Company, at its principal office in Calgary, Alberta and Toronto, Ontario has been duly appointed as the transfer agent and registrar for all of the outstanding Trust Units; and
- (aa) neither Avenir nor the Purchaser has knowingly omitted to disclose any information, documents or materials to the Vendor and the Shareholders that are material on a consolidated basis to Avenir Trust or any of its respective businesses, and all information, documents and materials provided to the Vendor and the Shareholders is, to their knowledge, correct in all material respects as of the date of its creation.

Due Diligence

- (bb) the Purchaser, Avenir and Avenir Trust possess the experience and sophistication as investors which are adequate for the evaluation of the merits and risks associated with the Assets and the Business; and
- (cc) prior to Closing, the Purchaser and Avenir will have carried out and completed a comprehensive business, financial, legal and due diligence review of the Assets and Business.

ARTICLE 6 COVENANTS

6.1 Post Closing Covenants of Avenir and the Purchaser

Each of Avenir and the Purchaser shall ensure that:

- (a) subject to normal corporate direction of the board of directors of Avenir, and subject to the Elbow River Employment Agreements, Elbow River Ongoing Management and such other management employees as are appointed from time to time, shall continue to have day-to-day operational control of the business formerly conducted by the Vendor. Without limiting the generality of the foregoing, Elbow River Ongoing Management and such other management employees from time to time shall, within operating and capital budgets approved by Avenir's board of directors, have the right to hire and fire employees, make capital expenditure and operating decisions (including pricing) and control related regulatory matters;
- (b) it will fulfil and complete all post-closing filings required in connection with the issue of the Escrow Units, including all requisite filings with the TSX and the Alberta Securities Commission;
- (c) it will use its reasonable and commercial best efforts to maintain its status as a reporting issuer in good standing in the provinces of Alberta and Ontario from the date hereof until at least the date which is one year after the expiry of the last of any hold or escrow periods applicable to any of such securities issued to the Vendor hereunder or held under the Time Release Escrow Agreement or the Incentive Release Escrow Agreement;
- (d) subject to Section 7.1 hereof, existing employees of the Vendor shall continue to be entitled to employee benefits substantially similar to those they currently enjoy and will, if transferred to the then current employee benefit programs of the Purchaser, be given past service credit under such benefit plans for all of their service time at the Vendor. The Purchaser intends to maintain all existing employees of the Vendor as at Closing;
- (e) the management, employees and staff of Elbow River shall be entitled to participate in the Incentive Option Plan of Avenir Trust at levels commensurate with those option participation levels for existing employees of Avenir;
- (f) it will use all reasonable and commercial best efforts to ensure that Avenir Trust maintains its status as a mutual fund trust under the ITA from the date hereof until at least the date which is one year after the expiry of the last of any hold or escrow periods applicable to any of the Escrow Units issued to the Vendor hereunder or held under the Time Release Escrow Agreement or Incentive Release Escrow Agreement and, in the event Avenir Trust loses such status, each of Avenir and the Purchaser agrees that, in respect of any Claim against the Vendor or any of the Shareholders for any breach of any representation, warranty or covenant hereunder, the value of any Escrow Units transferred to it or others held under the Time Release Escrow Agreement or Incentive Release Escrow Agreement shall be deemed, for the purposes of such Claim, to be equal to the weighted average trading price of Trust Units for the five trading days prior to public disclosure of the loss of mutual fund trust status by Avenir Trust; and
- (g) Avenir shall ensure the due and prompt performance of all of the Purchaser's and Avenir Trust's obligations under this Agreement or any document it issues or is a party to in accordance with or pursuant to the terms of this Agreement.

ARTICLE 7 EMPLOYEE MATTERS

7.1 Employees of the Vendor

- (a) The Vendor will continue to employ all employees now employed by the Vendor as at the date of this Agreement up to the Closing Date, upon the same terms of employment as the employees presently enjoy, and the Vendor will not materially change the employment or the terms and conditions of employment of the employees without the express written consent of the Purchaser. This provision shall have no effect on the Vendor's right to terminate the employment of any employee for just cause from the date of this Agreement to the Closing Date. The Vendor shall be solely liable and responsible for any employees whose employment is terminated for any reason prior to the Closing Date including, without limitation, any claims by such terminated employees for wages, salary, bonuses, commissions, other compensation,

pensions, pension contributions, employment benefits (including, without limitation, any benefits or entitlements under the Employee Plans), overtime or sick pay, severance pay, payments upon a change of control, accrued vacation pay or any other payment or compensation arising upon termination of employment, and any claims arising under any applicable statute or regulation including, without limitation, any employment standards, human rights, workers' compensation and occupational health and safety legislation, or under the ITA.

- (b) Except as expressly contemplated herein, the Vendor and the Shareholders shall be responsible for and shall indemnify and save harmless the Purchaser and Avenir from and against all claims by any employees including, but not limited to, wages, salaries, bonuses, commissions, other compensation, pensions or other benefits, overtime or sick pay for all employees, severance payments, payments upon change of control, and accrued vacation pay for employees due or accrued with respect to any period up to the Closing Date.
- (c) If any employment contracts of the Retained Employees are not assignable, then the Purchaser agrees to make an offer of employment to such Retained Employees by way of Employment Letter that is mutually agreeable to the Vendor and the Purchaser, and the Purchaser agrees to hire all such employees who accept the offers. The Purchaser shall also compensate the Vendor for any Retained Employees who remain on the Vendor's payroll and under the Vendor's benefit plans for a period of time following the Closing Date, in the amount of any salary or wages paid to such Retained Employees by the Vendor, and the cost to the Vendor of providing coverage to such Retained Employees under its benefit plans, during the period from 12:01 a.m. on the Closing Date until such time as the Retained Employee is placed on the Purchaser's payroll and receives benefit coverage under the Purchaser's benefit plans, such amount to be paid within 30 days of the Retained Employees ceasing to be on the Vendor's payroll and benefit plans. The Purchaser agrees to use all reasonable diligence to place any Retained Employees on the Purchaser's payroll and to provide benefit coverage to any Retained Employees under the Purchaser's benefit plans as soon as possible following the Closing Date, and in any case, within ten (10) business days. The Vendor shall be liable and responsible for any employees that do not accept the Purchaser's offer of employment, or who are terminated from their employment for any reason by the Vendor prior to the Closing Date. The Vendor shall also permit any Retained Employees, and any employees of the Business who may become Retained Employees, to remain on the Vendor's payroll and under the Vendor's benefit plans following the Closing Date, until such time as the Retained Employee is placed on the Purchaser's payroll and receives benefit coverage under the Purchaser's benefit plans, or until the employee refuses the Purchaser's offer of employment, whichever occurs later. The Vendor shall also cooperate with the Purchaser with respect to the retention of any employees to whom the Purchaser proceeds to make an offer of employment.

ARTICLE 8 INDEMNITIES AND SURVIVAL

8.1 Survival

The representations, warranties, covenants and agreements herein and in any document delivered pursuant hereto shall survive the Closing and remain in full force and effect provided that no Party shall be liable in respect of any representation, warranty, covenant or agreement unless the Party seeking to rely upon such representation, warranty, covenant or agreement shall have given notice to the Party who made such representation, warranty, covenant or agreement of its intention to make such Claim on or before:

- (a) in the case of all Claims other than Tax Claims the date which is 12 months following the Closing Date;
- (b) in the case of a Tax Claim, the date which is the earlier of:
 - (i) the date that such Tax Claim is statute barred under Applicable Laws (i.e. until the expiration of the period, if any, during which an assessment, reassessment or other recognized form of document assessing liability for Taxes under Applicable Laws relating to Taxes in respect of any taxation year to which any applicable representations or warranties relate could be issued, provided that no Party shall file any waiver or other document extending such period without the express prior written consent of the Party against whom a Claim is being made); and

- (ii) six years after the Closing Date; and
- (c) in the case of a Claim relating to the post-closing covenants of Avenir or the Purchaser pursuant to Section 6.1, the date which is six years after the Closing Date,

(as applicable, the "**Survival Period**").

8.2 Vendor's and Shareholders' Indemnities

With respect to Claims made by Avenir or the Purchaser (collectively, the "**Purchaser Indemnified Parties**") within the applicable Survival Period, but subject to the limitations set forth in Schedule 2.3 and Section 8.4:

- (a) the Vendor and the Shareholders will jointly indemnify the Purchaser Indemnified Parties from and against, and save and hold each Purchaser Indemnified Party harmless from all Claims against or affecting a Purchaser Indemnified Party resulting from or attributable to a breach of a representation or warranty set forth in Section 5.1;
- (b) each of the Vendor and the Shareholders will severally indemnify the Purchaser Indemnified Parties from and against, and save and hold each Purchaser Indemnified Party harmless from all Claims against or affecting a Purchaser Indemnified Party resulting from or attributable to a breach of a covenant by such Party under this Agreement; and
- (c) each Shareholder will severally indemnify the Purchaser Indemnified Parties from and against, and save and hold each Purchaser Indemnified Party harmless from all Claims against or affecting a Purchaser Indemnified Party resulting from or attributable to a breach of a representation or warranty set forth in Section 5.2.

8.3 Purchaser's Indemnities

Avenir, Avenir Trust and the Purchaser will, with respect to Claims made within the applicable Survival Period, subject to Section 8.4, indemnify the Vendor and the Shareholders, and any of their successors or permitted assignees, or heirs, or legal representatives (collectively, the "**Vendor Indemnified Parties**") from and against, and save and hold each Vendor Indemnified Party harmless from, all Claims against or affecting a Vendor Indemnified Party resulting from or attributable to any misrepresentation or breach of warranty made by Avenir, the Purchaser, or a breach by Avenir, the Purchaser or Avenir Trust of any of the covenants or agreements to be performed by Avenir, the Purchaser or Avenir Trust.

8.4 Limitations on Indemnity and Liability

Notwithstanding anything to the contrary contained in this Agreement:

- (a) no Party will be liable hereunder for any damages, costs, expenses, injuries, losses or other liabilities of an indirect, special or consequential nature suffered by any other Party or claimed by a third party against any other Party, or any exemplary or punitive damages, costs or expenses or loss of profits suffered by any other Party;
- (b) any Parties against whom a breach of representation, warranty or covenant is being asserted by another Party shall have reasonable opportunity, not to exceed 10 business days unless otherwise agreed by the affected Parties, to remedy any alleged breach of a representation, warranty or covenant which is capable of being remedied before any indemnification obligation will arise;
- (c) Avenir and the Purchaser will not be liable for any Claims exceeding the aggregate Purchase Price;

- (d) no Shareholder will be liable hereunder for any Claim that relates to a misrepresentation or breach of warranty or a breach of a covenant or agreement that relates to a several (and not a joint and several) representation, warranty, covenant or agreement made by another Shareholder;
- (e) no Shareholder will be liable hereunder for more than the amount stipulated in **Schedule 2.3** set opposite its or his name; provided that the foregoing limitation shall not apply to a Shareholder's liability for any Tax Claims;
- (f) the amount of liability for any Tax Claim shall be reduced by the value of any tax benefit that an affected Party, or any of its Affiliates or Subsidiaries, may be entitled to receive or arising as a result of the Tax Claim (taking into account when such Tax benefits arise);
- (g) no Claim for indemnity shall be made hereunder unless the aggregate amount of the Claims exceed \$250,000, at which time the affected Parties shall be entitled to claim the full amount of the Claim and no Claim shall be made against the Shareholders for any losses covered by insurance as of the Closing Date or which would have been covered by insurance if the Purchaser had continued to maintain insurance carried by the Vendor at the Closing Date;
- (h) the Vendor and the Shareholders shall not be liable for any Claim if there is a specific, identifiable provision in the Elbow River Financial Statements, as applicable, or in the related working papers for such statements, for the matter in question and then, only to the extent so identified therein;
- (i) the results of the due diligence review referred to Section 5.3(cc) shall modify the representations and warranties provided by the Vendor and the Shareholders hereunder; and
- (j) neither the Vendor nor any Shareholder shall be liable for any non-tax Claim hereunder if the Business achieves EBITDA of \$9.5 million for the fiscal year of the Business ended March 31, 2006.

8.5 Third Party Indemnity Claim Provisions

The following provisions will apply to any Claim for indemnification arising out of a Claim by a third party:

- (a) promptly upon becoming aware of any matter that may give rise to a third party Claim, the Party entitled to be indemnified (the "**Indemnatee**") shall provide the indemnifying Party (the "**Indemnitor**") with written notice of the Claim specifying, to the extent the information is available, the factual basis for the Claim and the amount thereof, or if an amount is not then determinable, an estimate of the amount;
- (b) the Indemnatee shall not negotiate, settle, compromise or pay (except in the case of a judgment) any Claim which relates to rights asserted by a third party except with the prior written consent of the Indemnitor, such consent not to be unreasonably withheld; and
- (c) the Indemnitor may, at its option, assume carriage of negotiations respecting the compromise or settlement of any third party Claim and the conduct of the related legal, administrative or other proceedings, but the Indemnatee shall have the right and shall be given the opportunity to participate in the defence of any Claim which relates to rights asserted by a third party and to consult in relation to the settlement thereof and the conduct of related legal, administrative or other proceedings, at its sole cost and expense, and in any event the Indemnatee shall cooperate with the Indemnitor in such defence, including by providing access to such information as is in the Indemnatee's possession or power to obtain as is necessary or desirable for such defence.

**ARTICLE 9
NOTICES**

9.1 Notices

Any notice, consent, waiver, direction or other communication required or permitted to be given under this Agreement by a Party to any other Party shall be in writing and shall be delivered by hand delivery or facsimile transmission, addressed to the Party to whom the notice is to be given, at its address for service herein. Any notice, consent, waiver, direction or other communication aforesaid shall, if hand delivered or delivered by telex or facsimile transmission, be deemed to have been given and received on the date on which it was hand delivered or delivered by facsimile transmission to the address provided herein (if prior to 4:30 p.m. (local time at the place of delivery) on a business day and, if not, the next succeeding business day).

9.2 Address for Service

The address for service of each of the Parties shall be as follows:

- (a) if to Avenir or the Purchaser:

Avenir Operating Corp.
Suite 300, 808 – 1st Street SW
Calgary, Alberta T2P 1M9

Attention: Mr. William M. Gallacher
Facsimile: (403) 237-0903

with a copy to:

Burnet, Duckworth & Palmer LLP
1400, 350 - 7th Avenue S.W.
Calgary, Alberta T2P 3N9

Attention: Mr. J.G. (Jeff) Lawson
Facsimile: 403-260-0337

- (b) if to the Vendor or the Shareholders:

Elbow River Resources Ltd.
Suite 3990, Bankers Hall
855 – 2nd Street SW
Calgary, Alberta T2P 4J7

Attention: Mr. Larry Ruskin

Larry Ruskin
1311 Cabot Street SW
Calgary, Alberta T2T 3S2

Attention: Mr. Larry Ruskin

Edward Malcolm
320 Macewan Park View NW
Calgary, Alberta T3K 4G7

Attention: Mr. Edward Malcolm

George Petropoulos
237 – 9th Avenue NW
Calgary, Alberta T2M 0B2

Attention: Mr. George Petropoulos

in each case with a copy to:

Vogel & Company LLP
1050, 10201 South Port Road NW
Calgary, Alberta T2W 4X9

Attention: J.R. MacDonald
Facsimile: (403) 253-8036

or such other address as may be designated by notice to the other Parties.

ARTICLE 10 MISCELLANEOUS

10.1 Future Disclosure

The Parties agree that they will keep the terms and existence of this Agreement confidential and not disclose the terms or existence of this Agreement to any person without the prior written consent of other Parties or as otherwise required by law and will not issue or allow others under their influence of control to issue any press release or other information to the public regarding this Agreement, the transactions contemplated by this Agreement or the subject matter of this Agreement; provided, however that any Party may issue a press release after consulting the other Parties if the issuing Party is advised by its legal counsel that such press release is necessary or advisable to fulfill disclosure obligations imposed by law or the rules of any national securities exchange.

10.2 Disclosure of Personal Information

The Parties acknowledge and agree that:

- (a) all personal information disclosed to them is subject to the *Personal Information Protection and Electronic Documents Act* (Canada), the *Personal Information Protection Act* (Alberta), or other applicable privacy legislation, and none of the Parties will use or disclose any personal information except in accordance with applicable privacy legislation; and
- (b) any personal information disclosed to a Party prior to the execution of this Agreement was necessary to enable them to determine whether to proceed with the transactions contemplated by this Agreement.

10.3 Costs

All legal and other costs and expenses incurred by a Party in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party that incurred the same, except with respect to the costs of completing the audit of the Vendor's financial statements, which costs shall be borne by the Purchaser.

10.4 Entire Agreement

This Agreement, together with all documents to be delivered pursuant hereto and the Confidentiality Agreement, constitutes the entire agreement between the Parties, and cancels and supersedes all prior agreements and understandings between the Parties, with respect to the subject matter hereof, provided that the terms of the Letter Agreement, so far as the same delineate the terms of various ancillary agreements to be provided hereunder, including the Royalty Agreement, Incentive Release Escrow Agreement and Time Release Escrow

Agreement, shall continue to govern the terms of agreement between the Parties until such definitive ancillary agreements are finalized.

10.5 Construction

This Agreement was negotiated by the Parties with the benefit of legal representation and any rule or construction of law requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation of this Agreement.

10.6 Further Assurances

Each Party shall, from time to time, and at all times hereafter, at the request of another Party, but without further consideration, do all such further acts and execute and deliver all such further documents and instruments as shall be reasonably required in order to fully perform and carry out the terms and intent hereof.

10.7 Time

Time shall be of the essence in this Agreement.

10.8 Amendments

This Agreement may only be amended by a written instrument signed by the Parties.

10.9 Governing Law

This Agreement shall be governed by, and be construed in accordance with, the laws of the Province of Alberta and federal laws of Canada applicable therein but the reference to such laws shall not, by conflict of laws rules or otherwise, require the application of the law of any jurisdiction other than the Province of Alberta.

10.10 Attornment

Each Party hereby irrevocably attorns to the jurisdiction of the Courts of the Province of Alberta in respect of all matters arising under or in relation to this Agreement.

10.11 Severability

If any one or more of the provisions or parts thereof contained in this Agreement should be or become invalid, illegal or unenforceable in any respect in any jurisdiction, the remaining provisions or parts thereof contained herein shall be and shall be conclusively deemed to be, as to such jurisdiction, severable therefrom and:

- (a) the validity, legality or enforceability of such remaining provisions or parts thereof shall not in any way be affected or impaired by the severance of the provisions or parts thereof severed; and
- (b) the invalidity, illegality or unenforceability of any provision or part thereof contained in this Agreement in any jurisdiction shall not affect or impair such provision or part thereof or any other provisions of this Agreement in any other jurisdiction.

10.12 Waiver

No waiver by any Party shall be effective unless in writing and any waiver shall affect only the matter and the occurrence thereof specifically identified and shall not extend to any other matter or occurrence.

10.13 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns. Each of the Vendors shall be entitled to the benefit of the representations, warranties and covenants of Avenir and the Purchaser in this Agreement.

10.14 Assignment

This Agreement may not be assigned by any Party without the prior written consent of the other Parties.

10.15 Limitations of Liability

The Parties hereto acknowledge that the obligations of Avenir Trust hereunder shall not be personally binding upon Avenir or any of the unitholders of Avenir Trust and that any recourse against Avenir Trust or any unitholder in any manner in respect of any indebtedness, obligation or liability of Avenir Trust arising hereunder or arising in connection herewith or from the matters to which this agreement relates, if any, including without limitation claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Trust Fund (as defined in the trust indenture of Avenir Trust dated as of September 24, 2002 as amended from time to time).

10.16 Execution in Counterpart

This Agreement may be executed in any number of counterparts with the same effect as if all signatories to the counterparts had signed one document, all such counterparts shall together constitute, and be construed as, one instrument and each of such counterparts shall, notwithstanding the date of its execution, be deemed to bear the date first written above. A signed counterpart provided by way of facsimile transmission shall be as binding upon the parties as an originally signed counterpart.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as of the date first written above.

AVENIR OPERATING CORP.

Per: (Signed) "William M. Gallacher"
William M. Gallacher

AVENIR DIVERSIFIED INCOME TRUST, by
its Manager, Avenir Operating Corp.

Per: (Signed) "William M. Gallacher"
William M. Gallacher

ELBOW RIVER RESOURCES LTD.

Per: (Signed) "Larry Ruskin"
Larry Ruskin

(Signed) "J.R. MacDonald"
Witness

(Signed) "J.R. MacDonald"
Witness

(Signed) "J.R. MacDonald"
Witness

**AVENIR FINANCIAL SERVICES
ACQUISITION CORP.**

Per: (Signed) "William M. Gallacher"
William M. Gallacher

**AVENIR FINANCIAL SERVICES LIMITED
PARTNERSHIP**

Per: (Signed) "William M. Gallacher"
William M. Gallacher

(Signed) "Larry Ruskin"
LARRY RUSKIN

(Signed) "Edward Malcolm"
EDWARD MALCOLM

(Signed) "George Petropoulos"
GEORGE PETROPOULOS

SCHEDULE 1.1(AAA)

INTERIM PURCHASE PRICE STATEMENT

SCHEDULE 2.3

**ALLOCATION OF PURCHASE PRICE AND MAXIMUM VENDOR AND SHAREHOLDER
LIABILITIES**

Cash Portion of Purchase Price

100% to Vendor.

Escrow Unit Portion of Purchase Price

100% to Vendor, provided that the Escrow Units will be deposited in escrow pursuant to the Incentive Release Escrow Agreement and the Time Release Escrow Agreement, which delivery shall constitute good delivery of the Escrow Units to the Vendor.

Maximum Vendor and Shareholder Liabilities

Vendor	Larry Ruskin	Edward Malcolm	George Petropoulos
100% of aggregate Purchase Price	80% of aggregate Purchase Price	10% of aggregate Purchase Price	10% of aggregate Purchase Price

Note:

for clarity, aggregate liability shall be limited to the aggregate Purchase Price and there shall be no duplication of the amounts payable as between the Vendor and the Shareholders.

SCHEDULE 5.1(L)

LANDS AND LEASED FACILITIES

Office Lease

[Text deleted intentionally pursuant to Section 12.2(2) of National Instrument 51-102]

SCHEDULE 5.1(K)

**ASSUMED CONTRACTS; MATERIAL AUTHORIZATIONS; BANK ACCOUNTS; SECURITY;
SECURITY TO BE DISCHARGED**

**Credit Facilities Agreement Between Elbow River Resources Ltd. and HSBC Bank Canada (the "Bank")
August 31, 2004**

**Rail Car Lease Agreement Between PLM Investment Management Inc. ("PLM") and Elbow River
November 1, 1988 as amended from time to time**

**Rail Car Lease Agreement Between Industries Leasing Company and Elbow River August 2004, as amended
from time to time**

**Rail Car Lease Agreement Between Trinity Rail Leasing Trust II and Elbow River November 29, 2004 as
amended from time to time**

**Rail Car Lease Agreement Between Elbow River and GE Rail Services Inc. ("GE") February 27, 2001 as
amended from time to time**

Summary of all Leased Rail Cars

Storage and Terminalling Services Agreements Between Provident Energy Ltd. ("Provident") and Elbow River December 29, 2004, April 20, 2004 and March 29, 2004

Storage Agreement Between EnerPro Midstream Corp. ("EnerPro") and Elbow River April 1, 2004, Revised August 19, 2004

Storage Agreement Between Marysville Underground Storage Terminal ("Marysville") and Elbow River June 9, 2003

Allowance Contract Between Burlington Northern and Santa Fe Railway Company ("BNSF") and Elbow River April 29, 2004

Commodity Buy-Sell Agreements

Swap Agreement Between BP Products North America Inc. and Elbow River Resources Ltd. July 31, 2003

Swap Agreement Between Louis Dreyfus Energy Services L.P. ("Louis Dreyfus") and Elbow River Resources Ltd. July 1, 2003

Security to be Discharged

[Text deleted intentionally pursuant to Section 12.2(2) of National Instrument 51-102]

SCHEDULE 5.1(N)

EQUIPMENT

Office Equipment and Furnishings

Includes leasehold improvements, office furniture, computers, computer accessories, printers, telephone systems, photocopiers, facsimile machines, office supplies, artwork, decorations, kitchen appliances, kitchen supplies, and air purifiers.

SCHEDULE 5.1(O)

INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights owned by Elbow River:

[Text deleted intentionally pursuant to Section 12.2(2) of National Instrument 51-102]

Intellectual Property Rights used by Elbow River:

[Text deleted intentionally pursuant to Section 12.2(2) of National Instrument 51-102]

SCHEDULE 5.1(AA)

EMPLOYEES AND EMPLOYMENT INFORMATION

[Text deleted intentionally pursuant to Section 12.2(2) of National Instrument 51-102]

SCHEDULE 5.1(KK)

PENSION AND BENEFIT PLANS

Pension Plan

Elbow River does not have a pension plan.

Benefit Plan

Elbow River has a benefit plan which provides employees with health insurance, dental insurance, long-term disability insurance and life insurance.

Bonus Plans

[Text deleted intentionally pursuant to Section 12.2(2) of National Instrument 51-102]

SCHEDULE 5.1(LL)

INSURANCE

Insurance Coverage Through Rogers Insurance Ltd.

Insurer: Rogers Insurance Ltd.
Suite 330, 1000 Centre Street North
Calgary, Alberta
T2E 7W6

Locations Insured: Anywhere in Canada or the USA

Policies: Commercial General Liability \$1,000,000
Subject to:
Terrorism exclusion
Cyber Risk Exclusion
Asbestos Exclusion
Mould Exclusion
Misrepresentation of Date Exclusion
Pollution Exclusion (Hostile Fire Exception)
US Employer's Liability Exclusion
Employment Practise Liability Exclusion
Erisa Exclusion
Rate for this insurance is \$68,000 per year.
Policy Period: June 30, 2004 to Issuance of Policy

Excess Liability \$4,000,000
Subject to:
Failure to Supply Exclusion
Terrorism Exclusion
Cyber Risk Exclusion
Asbestos Exclusion
Mould/Fungus Exclusion
Punitive Damage Exclusion
Absolute Pollution Exclusion (Hostile Fire Exception)
US Employer's Liability Exclusion
Employment Practise Liability Exclusion
Silica Exclusion
Rate for this insurance is \$50,000 per year.
Policy Period: June 30, 2004 to June 30, 2005

Assignment: Assignment of interest shall not bind the insurer until its consent is endorsed hereon.

Any existing office contents insurance policy of Elbow River.

SCHEDULE 5.1(LL)

ORGANIZATIONAL STRUCTURE OF AVENIR TRUST

