OFF THE WALL HOLDINGS (2004) LTD. AND C.I.T. HOLDINGS LIMITED

as Partners

and

CHRISTIAN TOTH AND JAMES WILSON

as the Principals

and

OFF THE WALL

as the Partnership

and

WEST 49 INC.

as Purchaser

ASSET PURCHASE AGREEMENT

APRIL 19, 2005

Note: This asset purchase agreement was negotiated at arms length to provide contractual protections for the benefit of the parties and not for purposes of disclosure to investors or any other purpose. Accordingly, investors and potential investors are cautioned that it would be inappropriate to rely on this document in making an investment decision. All schedules have been omitted for confidentiality reasons.

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ASSET PURCHASE AGREEMENT

Asset Purchase Agreement dated April 19, 2005 between Off The Wall Holdings (2004) Ltd. and C.I.T. Holdings Limited (collectively, the "**Partners**"), Christian Toth and James Wilson (the "**Principals**"), Off the Wall (the "**Partnership**") and West 49 Inc. (the "**Purchaser**").

RECITALS:

(a) The Partnership is a general partnership formed under the laws of British Columbia with Off the Wall Holdings (2004) Ltd. and C.I.T. Holdings Limited (the "**Partners**") as partners; and

(b) The Purchaser wishes to purchase all of the assets used in the business of the Partnership, whether owned by the Partnership or by the Partners.

(c) For tax purposes, the assets are being purchased from the Partnership and since legal title to some of the assets may be held by the Partners, the Partners are parties to this Agreement in order to effect the transfer of legal title to the assets.

ARTICLE 1
INTERPRETATION

Section 1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

"Accounts Receivable" has the meaning specified in Section 2.1(d).

"Adjustment Amount" has the meaning specified in Section 2.8(3).

"Agreement" means this asset purchase agreement and all schedules attached to it; and the expressions **"Article"** and **"Section"** followed by a number mean and refer to the specified Article or Section of this Agreement.

"Ancillary Agreements" means all agreements, certificates and other instruments delivered or given pursuant to this Agreement, including the confidentiality agreement between certain of the Parties dated February 8, 2005.

"Assets" means all property and assets used in the Business of every nature and kind and wheresoever situate, owned by the Partnership and used in the Business or recorded in the name of or as being owned by the Partners or either of them and used in connection with the Business, including (ii) all machinery, equipment, furniture, accessories and supplies of all kinds including those described in Section 4.1(l), (iii) all trucks, cars and other vehicles including those described in Section 4.1(l), (iv) all inventories, (v) all Accounts Receivable and the full benefit of all security for the Accounts Receivable, (vi) all prepaid expenses, (vii) the leasehold interest of the Partnership, including any such interest held in the name of the Partners on behalf of the Partnership, in and to the Leased Properties, (viii) all right, title and interest of the Partnership and the Partners in and to the Intellectual Property owned by or licensed to the Partnership or in the name of the Partners, (ix) the full benefit of all Purchased Contracts and the Leases, and (x) the Books and Records.

"Assumed Liabilities" has the meaning specified in Section 3.1.

" **Assumed Payables"** has the meaning specified in Section 3.1(a).

"Authorization" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over the Person.

"Books and Records" means all information in any form relating to the Business, including books of account, financial and accounting information and records, personnel records, tax records, sales and purchase records, customer and supplier lists, lists of potential suppliers, referral sources, research and development reports and records, production reports and records, equipment logs, operating guides and manuals, business reports, plans and projections, marketing and advertising materials and all other documents, files, correspondence and other information (whether in written, printed, electronic or computer printout form, or stored on computer discs or other data and software storage and media devices).

"Business" means the design, purchase, distribution and retail sale of women's apparel and all activities related thereto. All references to the Business include the Partnership and the Partners in connection with the operation of the business of the Partnership.

"Business Day" means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario or Vancouver, British Columbia.

"Clearance Certificate" has the meaning specified in Section 7.1(m).

"Closing" means the completion of the transaction of purchase and sale contemplated in this Agreement.

"Closing Date" means April 30, 2005 or such earlier or later date as the Purchaser and the Managing Partner may mutually agree in writing.

"Contract" means any agreement, contract, licence, undertaking, engagement or commitment of any nature, written or oral, other than leases of real property.

"Contractual Rights" has the meaning specified in Section 2.5.

"Damages" means any loss, liability, damage (including incidental and consequential damages and lost profits) or expense (including legal fees and expenses) whether resulting from any action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party or any cause, matter, thing, act, omission or state of facts not involving a third party.

"Deposit" has the meaning specified in Section 2.5(1).

"Direct Claim" means any cause, matter, thing, act, omission or state of facts not involving a Third Party Claim which entitles an Indemnified Person to make a claim for indemnification under this Agreement.

"Draft Statement of Working Capital" has the meaning specified in Section 2.7(1).

"Effective Time" means 12:01 a.m. (Vancouver time) on the Closing Date.

"Employees" means those individuals listed on Schedule 4.1(cc) who are employed in the Business.

"Employee Plans" means all the employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, pension, retirement, stock option, stock purchase, stock appreciation, profit sharing, employee ownership, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former directors, officers or employees of the Business maintained, sponsored or funded by the Business, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered under which the Partnership or the Partners may have any liability, contingent or otherwise, other than the Canada Pension Plan, the Medical Services Plan of British Columbia, and other similar health and benefit plans established under Law.

"Environmental Laws" means all applicable Laws and agreements with Governmental Entities and all other statutory requirements relating to public health or the protection of the environment and all Authorizations issued pursuant to such Laws, agreements or statutory requirements.

"Escrow Agent" has the meaning specified in Section 2.6(b).

"Escrow Agreement" has the meaning specified in Section 2.6(b).

"**Escrow Certificate**" has the meaning specified in Section 2.8(2).

"Excluded Liabilities" has the meaning provided in Section 3.2.

"Financial Statements" means the financial statements of the Partnership for the fiscal year ending February 26, 2005 and February 28, 2004, consisting of a balance sheet and the accompanying statement of income, partners' capital accounts and cash flow for the year then ended and all notes thereto.

"GAAP" means accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants, at the relevant time applied on a consistent basis.

"Governmental Entity" means (i) any international, multinational, national, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above, and/or (iv) any stock exchange.

"Indemnified Person" means a Person with indemnification rights or benefits under Section 10.3 or Section 10.4, or otherwise under this Agreement.

"Indemnifying Party" means a Party against which a claim may be made for indemnification under this Agreement, including pursuant to Article 10.

"Intellectual Property" means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications and integrated circuit topographies; (vi) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, service marks and the goodwill associated with any of the foregoing; (vii) software other than "off the shelf" software purchased on a retail basis by the Business; and (viii) any other intellectual property and industrial property.

"Interim Period" means the period between the close of business on the date of this Agreement and the Closing.

"Inventories" has the meaning specified in Section 2.1(c).

"Laws" means any and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, principles of common and civil law and equity, orders, decrees, rules, regulations and municipal by-laws whether domestic, foreign or international, (ii) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, and awards of any Governmental Entity and (iii) policies, practices and guidelines of, or Contracts with, any Governmental Entity, in each case binding on or affecting the Person referred to in the context in which the word is used.

"Leased Properties" means the lands and premises listed and described in Schedule 4.1 (q) by reference to their municipal address and, where provided in the lease, their proper legal description.

"Leases" means the leases of the Leased Properties described in Schedule 4.1(q).

"Lien" means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation.

"Managing Partner" means Off the Wall Holdings (2004) Ltd.

"Material Contracts" means Purchased Contacts in an amount greater than $10,000 or not terminable at will and without obligation or penalty.

"Notice" has the meaning specified in Section 13.1.

"Ordinary Course" means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the normal day-to-day operations of the Person.

"Parties" means the Partnership, the Partners and the Purchaser and any other Person who may become a party to this Agreement.

"**Partners**" means Off the Wall Holdings (2004) Ltd. and C.I.T. Holdings Limited.

"**Partnership**" means Off the Wall.

"**Partnership Agreement**" means the partnership agreement of the Partnership dated January 25, 1994, as amended.

"Permitted Liens" means Liens for Taxes not yet due and delinquent.

"Person" means a natural person, partnership, limited partnership, limited liability partnership, corporation, limited liability corporation, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

"Principals" means Christian Toth and James Wilson.

"Public Statement" has the meaning specified in Section 13.4.

"Purchase Price" has the meaning specified in Section 2.4.

"Purchase Price Shortfall" has the meaning specified in Section 2.8(4).

"Purchased Assets" has the meaning specified in Section 2.1.

"**Purchased Contracts"** has the meaning specified in Section 2.1(f).

"Purchaser" means West 49 Inc.

"Replacement Plans" has the meaning specified in Section 12.2.

"Required Consents" has the meaning specified in Section 4.1(e).

"Statement of Working Capital" has the meaning specified in Section 2.7(4) or Section 2.7(5), as the case may be**.**

"Tax Act" means the *Income Tax Act,* R.S.C. 1985 (5th Supp.) c.1, and the regulations thereunder, each as amended.

"Tax Returns" means any and all returns, reports, declarations, elections, notices, forms, designations, filings, and statements (including estimated tax returns and reports, withholding tax returns and reports, and information returns and reports) filed or required to be filed in respect of Taxes.

"Taxes" means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Entity, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers' compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify or compensate any other Person or as a result of being a transferee or successor in interest to any party.

"**Term Loan**" has the meaning specified in Section 2.8(1).

"Third Party Claim" means any action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party against an Indemnified Person which entitles the Indemnified Person to make a claim for indemnification under this Agreement.

"Transferred Employees" means those Employees who accept the Purchasers' offer of employment made pursuant to Section 12.1(1).

"Working Capital" has the meaning specified in Section 2.8(1)**.**

Section 1.2 Gender and Number.

Any reference in this Agreement to gender includes all genders. Words importing the singular number only shall include the plural and vice versa.

Section 1.3 Headings, etc.

The provision of a Table of Contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

Section 1.4 Currency.

All references in this Agreement to dollars or to $ are expressed in Canadian currency, unless otherwise specifically indicated.

Section 1.5 Certain Phrases, etc.

In this Agreement (i) the words "including", "includes" and "include" mean "including (or includes or include) without limitation", and (ii) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of".

Section 1.6 Knowledge.

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of the Partners and/or the Principals, it shall be deemed to refer to the knowledge of each of the Partnership, the Principals and the Partners. The knowledge of one shall be deemed to be the knowledge of all. The Partners and the Principals confirm that, except where specifically qualified or limited otherwise herein, they have made due and diligent inquiry of such Persons (including, where applicable, appropriate officers or employees of the Partnership and the Partners) as they consider necessary as to the matters that are the subject of the representations and warranties.

Section 1.7 Accounting Terms.

All accounting terms not specifically defined in this Agreement are to be interpreted in accordance with GAAP.

Section 1.8 Incorporation of Schedules.

The schedules attached to this Agreement form an integral part of it for all purposes of this Agreement.

Section 1.9 References to Persons and Agreements.

Any reference in this Agreement to a Person includes its successors and assigns (subject to any limitations on assignment provided herein). Any reference to this Agreement or any other agreement or document is a reference to this Agreement or such other agreement or document as it may have been, or may from time to time be, amended, restated, replaced, supplemented or novated, and shall include all schedules to it.

Section 1.10 Statutes.

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted.

Section 1.11 Non-Business Days.

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment shall be made or such action shall be taken on or not later than the next succeeding Business Day.

ARTICLE 2
PURCHASED ASSETS AND PURCHASE PRICE

Section 2.1 Purchase and Sale.

Subject to the terms and conditions of this Agreement, the Partnership agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Partnership on the Closing Date, effective as of the Effective Time, the undertaking and all of the property and assets of every kind and description and wheresoever situate of the Business other than the Excluded Assets (collectively, the assets being acquired are the "**Purchased Assets**"), including:

(a) **Machinery, Equipment and Supplies.** All equipment, furniture, furnishings and accessories and supplies of all kinds including office supplies used in connection with the Business, including those listed and described in Schedule 2.1(a);

(b) **Vehicles.** All trucks, cars and other vehicles used in connection with the Business, including those listed and described in Schedule 2.1(b);

(c) **Inventories.** All inventories of the Business (the **"Inventories"**), including (i) finished goods, work in process, raw materials and new and unused production, packing and shipping supplies, and (ii) all other materials and supplies on hand to be used or consumed or which might be used or consumed in connection with the manufacture, packing or shipping or finished goods of the Business referred to in Schedule 2.1(c);

(d) **Accounts Receivables.** All accounts receivable, notes receivable and other debts due or accruing due to the Partners and the Partnership in connection with the Business (the "**Accounts Receivable**") and the full benefit of all security for the Accounts Receivable;

(e) **Prepaid Expenses.** All prepaid expenses of the Business;

(f) **Contracts.** The full benefit of all Contracts to which the Partners or the Partnership are parties in connection with the Business, excluding the Employment Contracts (collectively, the "**Purchased Contracts**");

(g) **Leased Property.** The leasehold interest of the Partners and the Partnership in and to the Leased Properties and all right, title and interest of the Partners and the Partnership in and benefits of the Partners and the Partnership to and under the Leases;

(h) **Authorizations.** All Authorizations, owned, held or used by the Partners and the Partnership in connection with the Business, to the extent that they are transferable;

(i) **Intellectual Property.** All right, title and interest of the Partners and the Partnership in and to the Intellectual Property owned by, licensed to or used by the Partners and the Partnership in connection with the Business;

(j) **Books and Records.** The Books and Records, excluding all Tax Returns pertaining to corporate income taxes of the Partners;

(k) **Claims.** All claims of the Partners and the Partnership relating to the Business or the Purchased Assets, whether choate or inchoate, known or unknown, contingent or otherwise;

(l) **Working Capital.** All cash and cash equivalents of the Business; and

(m) **Goodwill.** The goodwill of the Business, including the exclusive right of the Purchaser to (i) represent itself as carrying on the Business in lieu of the Partnership, and (ii) use any words indicating that the Business is so carried on, including all of the Partners' and the Partnership's right, title and interest in and to the name "Off the Wall", or any variation of it, together with the rights, if any, to telephone and facsimile numbers and internet domain names used in connection with the Business.

Section 2.2 Excluded Assets.

The Purchased Assets shall not include any of the following assets (collectively, the "**Excluded Assets**"):

(a) the minute books and corporate records of the Partners and the Partnership; and

(b) the employment contracts of the Employees.

Section 2.3 Assignment of Contracts.

Nothing in this Agreement will be construed as an attempt to assign any Purchased Contract or Lease which is not assignable in whole or in part without the consent of the other party or parties to it, unless such consent has been given on terms satisfactory to the Purchaser, acting reasonably (and in this Agreement, the benefits under the non-assigned Purchased Contracts and Leases are referred to as the "**Contractual Rights**"). In accordance with Section 6.6, the Partners and the Principals will use their commercially reasonable efforts to obtain such consents and will take all actions described in Section 11.2 to preserve the full benefit of the Purchased Contracts, the Leases and the Contractual Rights for the Purchaser.

Section 2.4 Purchase Price.

The consideration (the **"Purchase Price"**) payable by the Purchaser to the Partnership for the Purchased Assets will be 5,217,391 common shares of the Purchaser (the "**Issued Shares**") and $6,000,000 and assumption of the Assumed Liabilities, subject to adjustment in accordance with Section 2.8.

Section 2.5 Deposit

(1) The Partners acknowledge that Stikeman Elliott LLP has received from the Purchaser a deposit in the amount of $200,000 (the "**Deposit**").

(2) The Deposit together with all accrued interest or other proceeds will be applied on Closing in satisfaction of an equivalent amount of the Purchase Price. If the Closing does not occur for any reason, the full amount of the deposit together with all accrued interest or other proceeds shall be immediately paid to the Partnership as liquidated damages (and not as a penalty) to compensate them for the expenses incurred and opportunities foregone as a result of the failure of the transaction to close.

Section 2.6 Payment of the Purchase Price.

At the Closing, the Purchase Price shall be paid and satisfied, subject to adjustment in accordance with Section 2.8, as follows:

(a) by the Purchaser issuing and delivering certificates for 5,217,391 Issued Shares to the Partnership;

(b) by the Purchaser paying $1,000,000 to or to the order of Davis and Company, in trust (the **"Escrow Agent"**) by bank draft, certified cheque or wire transfer of immediately available funds, to be held in escrow pursuant to the terms and conditions of an escrow agreement substantially in the form of the escrow agreement attached as Schedule 2.6(b) (the **"Escrow Agreement"**);

(c) by the Purchaser assuming the Assumed Liabilities; and

(d) by application of the deposit and interest accrued thereon under Section 2.5(1) to the Partnership; and

(e) by the Purchaser paying $5,000,000, less the amount of the deposit and accrued interest thereon, to or to the order of the Partnership by bank draft, certified cheque or wire transfer of immediately available funds.

Section 2.7 Preparation of Working Capital Statement.

(1) Within 90 days following the Closing Date (or such other date as is mutually agreed to by the Managing Partner and the Purchaser in writing), the Purchaser will prepare and cause its auditors to review and deliver to the Partners a draft audited working capital statement (the **"Draft Statement of Working Capital"**) of the Partnership prepared as of the close of business on the Closing Date, together with a draft auditor's report on it. The Draft Statement of Working Capital will be prepared in accordance with GAAP applied on a basis consistent with the preparation of the Financial Statements and will not include any portion of the Term Loan.

(2) The Partners will have a period of 15 Business Days to review the Draft Statement of Working Capital following receipt of it. The Partners must notify the Purchaser in writing if they have any objections to the Draft Statement of Working Capital within such 15 Business Day period. The notice of objection must contain a statement of the basis of each of the Partners' objections and each amount in dispute. The Purchaser will provide access, upon every reasonable request, to the Partners and their auditors or accountants, to all work papers of the Purchaser and its auditors, accounting books and records and the appropriate personnel to verify the accuracy, presentation and other matters relating to the preparation of the Draft Statement of Working Capital, subject to execution and delivery by the Partners and their auditors or accountants of any agreement or other document, including any release, waiver or indemnity that the Purchaser's auditors require prior to providing such access.

(3) If the Partners send a notice of objection of the Draft Statement of Working Capital, the Parties will meet to see if they can resolve such objections within 20 Business Days following the date of notification by the Partners to the Purchaser of such objections. Failing resolution of any objection to the Draft Statement of Working Capital raised by the Partners, the dispute will be submitted for determination to an independent firm of chartered accountants mutually agreed to by the Partners and the Purchaser (and, failing such agreement between the Partners and the Purchaser within a further period of 5 Business Days, such independent firm of chartered accountants shall be

BDO Dunwoody LLP, or if such firm is unable to act, Ernst & Young LLP). The determination of such firm of chartered accountants will be final and binding upon the Parties and will not be subject to appeal, absent manifest error. Such firm of chartered accountants are deemed to be acting as experts and not as arbitrators.

(4) If the Partners do not notify the Purchaser of any objection within the 15 Business Day period, the Partners are deemed to have accepted and approved the Draft Statement of Working Capital and such Draft Statement of Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of Working Capital will become the **"Statement of Working Capital"** on the second Business Day following the end of such 15 Business Day period.

(5) If the Partners send a notice of objection, the Parties will revise the Draft Statement of Working Capital to reflect the final resolution or final determination of such objections under Section 2.7(3) within two Business Days following such final resolution or determination. Such revised Draft Statement of Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of Working Capital will become the "**Statement of Working Capital**" on the second Business Day following revision of the Draft Statement of Working Capital under this Section 2.7(5).

(6) The Partners and the Purchaser will each bear their own fees and expenses, including the fees and expenses of their respective auditors, in preparing or reviewing, as the case may be, the Draft Statement of Working Capital. In the case of a dispute and the retention of a firm of chartered accountants to determine such dispute, the costs and expenses of such firm of chartered accountants shall be borne equally by the Partners on the one hand and the Purchaser on the other hand. However, the Partners and the Purchaser will each bear their own costs in presenting their respective cases to such firm of chartered accountants.

Section 2.8 Working Capital Purchase Price Adjustment.

(1) The Purchase Price will be increased or decreased, as the case may be, dollar-for-dollar, to the extent that the Working Capital as determined from the Statement of Working Capital is more or less than $1,400,000. **"Working Capital"** means, at any time, the amount by which the current assets of the Partnership business at such time exceed the current liabilities of the Partnership business at such time and shall include: (i) deferred development costs for the West Edmonton Mall location of the Business of $17,500 in prepaid opening costs; and (ii) any bonuses accrued and owing to employees

of the Business as at the fiscal year ended February 26, 2005 and as at closing (without duplication). In addition to the foregoing adjustment, the Purchase Price will be increased or decreased, as the case may be, dollar for dollar to the extent that the aggregate amount outstanding under or in connection with any loan held by the Partnership with the Toronto-Dominion Bank (the "**Term Loan**") on the Closing Date is less or more than $450,000.

(2) The Purchaser will, within 2 Business Days after the Draft Statement of Working Capital becomes the Statement of Working Capital in accordance with Section 2.7(4) or Section 2.7(5), as the case may be, deliver to the Escrow Agent a certificate (the "**Escrow Certificate**") signed by the Purchaser, certifying the amount by which the Working Capital as determined from the Statement of Working Capital, is more or less than $1,400,000 and/or the amount by which the amount outstanding under or in connection with the Term Loan is more or less than $450,000 on the Closing Date.

(3) To the extent that the aggregate of:

(a) the Working Capital as determined from the Statement of Working Capital, less $1,400,000; and

(b) $450,000 less the amount of the Term Loan on the Closing Date

is a positive amount (the "**Adjustment Amount**"), the Purchase Price shall be increased by the Adjustment Amount, and paid by the Purchaser to the Partnership and if the Partnership has been wound up, 80% of the Adjustment Amount will be paid by the Purchaser to the Managing Partner and 20% of the Adjustment Amount will be paid by the Purchaser to C.I.T. Holdings Limited, and in addition 80% of the escrow funds will be paid by the Escrow Agent to the Managing Partner and 20% of the escrow funds will be paid by the Escrow Agent to C.I.T. Holdings Limited.

(4) To the extent that the aggregate of:

(a) the Working Capital as determined from the Statement of Working Capital, less $1,400,000; and

(b) $450,000 less the amount of the Term Loan on the Closing Date

is a negative amount (the "**Purchase Price Shortfall**"), the Purchase Price Shortfall will be paid to the Purchaser by the Escrow Agent from the escrow funds in accordance with the Escrow Certificate and any amount of the Purchase Price Shortfall in excess of the escrow funds will be paid jointly and severally by the Partners and the Principals to the Purchaser. The amounts to be paid by the Escrow Agent under Section 2.8 will be paid in accordance with the terms of the Escrow Agreement. Any amounts to be paid by the Partnership or the Purchaser under Section 2.8 will be paid by bank draft, certified cheque or wire transfer of immediately available funds within two business days after receipt by the Escrow Agent of the Escrow Certificate. The balance of the escrow funds, if any, will be paid to the Partnership and if the Partnership has been wound up, 80% of the balance of the escrow funds, if any, will be paid to the Managing Partner and 20% of the balance of the escrow funds will be paid to C.I.T. Holdings Limited by the Escrow Agent forthwith after the payments required pursuant to Section 2.8(4).

Section 2.9 No Effect on Other Rights.

The determination and adjustment of the Purchase Price in accordance with the provisions of this Article shall not limit or affect any other rights or causes of action either the Purchaser or the Partners or Principals may have with respect to the representations, warranties, covenants and indemnities in its or their favour contained in this Agreement.

Section 2.10 Payment of Sales Tax, and GST and Income Tax Elections.

(1) The Purchaser shall be liable for and shall pay all federal and provincial sales taxes and all other taxes, duties, registration charges or other like charges properly payable by a buyer upon and in connection with the conveyance and transfer of the Purchased Assets by the Partners and the Partnership to the Purchaser.

(2) The Parties will use their commercially reasonable efforts in good faith to minimize (or eliminate) any taxes payable under the *Excise Tax Act* (Canada) in respect of the Closing by, among other things, making such elections and taking such steps as may be provided for under that Act (including, for greater certainty, making a joint election in a timely manner under Section 167 of that Act) as may reasonably be requested by the Purchaser in connection with the Closing.

(3) To the extent that the portion of the Purchase Price payable in Issued Shares allocated to any Purchased Asset other than Goodwill exceeds the tax cost of such Purchased Asset, the Parties covenant and agree to execute and deliver in a timely manner an election pursuant to subsection 85(2) of the Tax Act, as may be amended from time to time, or any similar election specifying the elected amount, and under any applicable provincial statute, for the transfer contemplated by this Agreement at an elected amount equal to the "cost amount" (within the meaning of the Tax Act) to the Partnership of such Purchased Assets (other than goodwill) and to otherwise fully co-operate in such regard with the intention that the election will result in the disposition of all Purchased Assets (other than goodwill) on a fully tax-deferred basis to

the Partners. In the event that any taxing authority having jurisdiction over the Purchaser or the Partnership makes a final determination that the cost amount of any Purchased Asset (other than goodwill) is greater or less than the amount allocated in respect of such Purchased Asset by the Parties, then in such event, the elected amount of such Purchased Asset shall be retroactively increased or decreased to equal the cost amount of such Purchased Asset as re-determined. A determination shall be deemed to be a final determination if it is pursuant to an assessment or reassessment by any competent tax authority having jurisdiction and no appeal is taken therefrom or if agreement is reached between the Partnership, the Purchaser and such tax authority or if determined by a judgment of a court of competent jurisdiction which judgment is not appealed. The Parties covenant and agree that the amount to be elected on the transfer of goodwill pursuant to subsection 85(2) of the Tax Act shall be equal to the portion of the Purchase Price allocated to goodwill which is payable in cash less the aggregate amount elected with respect to all of the Purchased Assets (other than goodwill).

(4) The Purchaser and the Partnership agree to elect jointly in the prescribed form under Section 22 of the Tax Act as to the sale of the Accounts Receivable and to designate in such election an amount equal to the portion of the Purchase Price allocated to Accounts Receivable.

Section 2.11 Allocation.

The Parties agree to allocate the Purchase Price in accordance with the provisions of Schedule 2.11. The Parties agree to execute and file all of their own Tax Returns and prepare all of their own financial statements and other instruments on the basis of this allocation.

ARTICLE 3
ASSUMED LIABILITIES

Section 3.1 Assumed Liabilities.

Subject to Closing, the Purchaser agrees to discharge, perform and fulfil and to indemnify and save harmless the Partners and the Partnership from and against the following obligations and liabilities, if any, of the Partners:

(a) all accounts payable relating to the business of the Partnership reflected in the Books and Records or incurred in the Ordinary Course and not yet reflected in the Books and Records (collectively, the "**Assumed Payables**");

(b) all obligations and liabilities under the Purchased Contracts and the Leases arising in respect of the period after the Effective Time and not related to any matter, circumstance or default existing at, prior to or as a consequence of Closing;

(c) any product liability or warranty liability arising at any time in respect of products or services of the Business produced or sold on or prior to the Effective Time, even though a claim may be made or filed after the Effective Time; and

(d) all other obligations and liabilities expressly assumed under this Agreement.

Section 3.2 Excluded Liabilities

The Purchaser shall not assume and shall have no obligation to discharge, perform or fulfil, and the Partners and the Principals will jointly and severally indemnify the Purchaser from and against, any and all Excluded Liabilities. "**Excluded Liabilities**" means any and all liabilities and obligations, contingent or otherwise of the Partnership or the Partners or the Principals other than the Assumed Liabilities (collectively, the "**Excluded Liabilities**") including:

(a) all liabilities and obligations under all Contracts to which the Partners are a party which are not part of the Purchased Assets and under the Purchased Contracts and Leases in respect of the period prior to the Effective Time; and

(b) any and all liabilities of the Principals, the Partners or the Partnership not expressly assumed in this Agreement.

Section 3.3 Assumption of Contractual Liabilities.

Notwithstanding anything in this Agreement, the Purchaser shall not assume and shall have no obligation to discharge any liability or obligation under or in respect of any Purchased Contract or Lease which is not assignable and/or assumable in whole or in part without the consent of the other party or parties to it, unless such consent has been obtained on terms satisfactory to the Purchaser, acting reasonably, or unless the Partners, the Partnership and the Principals shall have performed their obligations under Section 11.2 and the value of such Purchased Contracts, Leases and Contractual Rights shall have enured to the Purchaser.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE PARTNERS AND THE PRINCIPALS

Section 4.1 Representations and Warranties of the Partners and the Principals.

The Partners and the Principals jointly and severally represent and warrant as follows to the Purchaser and acknowledge and confirm that the Purchaser is relying upon the representations and warranties in connection with the purchase by the Purchaser of the Purchased Assets:

Corporate Matters

(a) **Incorporation and Qualification, Etc**. Each of the Partners is a corporation incorporated and existing under the laws of the Province of British Columbia and has the corporate power to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is or will at Closing be a party. The Partnership is formed and existing as a general partnership under the laws of the Province of British Columbia and has the power to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is or will at Closing be a party. Each of the Partnership and the Partners is qualified, licensed or registered to carry on business in the jurisdictions listed in Schedule 4.1(a). The jurisdictions listed in Schedule 4.1(a) include all jurisdictions in which the nature of the Purchased Assets or the Business makes such qualification necessary or where the Partnership or the Partners own or lease any material assets or property or conduct any material business. Attached as part of Schedule 4.1(a) is a true, correct and complete copy of the Partnership Agreement and all registrations under the *Partnership Act* (British Columbia). The bankrupt estate name "Denise Marie Dawson" is not related in any manner to the Partnership, the Partners, the Business or the Purchased Assets.

(b) **Authorization**. The execution and delivery of and performance by the Partners of this Agreement and each of the Ancillary Agreements to which each is or will be a party and the consummation of the transactions contemplated by them have been duly authorized by all necessary corporate or other action on the part of the Partners. The execution and delivery of and performance by the Partnership of this Agreement and each of the Ancillary Agreements to which it is or will be a party and the consummation of the transactions contemplated by them have been duly authorized by all necessary action on the part of the Partnership.

(c) **No Conflict**. Except as disclosed in Schedule 4.1(d) and except for the consents, approvals and waivers described in Schedule 4.1(e), the execution and delivery of and performance by each of the Partnership and the Partners of this Agreement and each of the Ancillary Agreements to which it is or will be a party:

(i) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with, or allow any other Person to exercise any rights under, any of the terms or provisions of its constating documents, partnership agreement or by-laws, as applicable;

(ii) do not and will not (or would not with the giving of notice, the lapse of time or the happening or any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other Person to exercise any rights under, any of the terms or provisions of any Contracts, Leases or instruments to which it is a party or pursuant to which any of its assets or property may be affected;

(iii) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with, or allow any Person to exercise any rights under, any orders, decrees or judgments to which it is a party or pursuant to which any of its assets or property may be affected;

(iv) do not and will not result in a breach of, or cause the termination or revocation of, any Authorization held by the Partnership or the Partners or necessary to the ownership of the Purchased Assets or the operation of the Business; and

(v) do not and will not result in the violation of any Law.

(d) **Required Authorizations**. There is no requirement to make any filing with, give any notice to, or obtain any Authorization of, any Governmental Entity as a condition to the lawful completion of the transactions contemplated by this Agreement, except for the filings, notifications and Authorizations described in Schedule 4.1(d).

(e) **Required Consents**. There is no requirement to obtain any consent, approval or waiver of a party under any Lease or any Contract to which the Partnership or the Partners is a party to any of the transactions contemplated by this Agreement, except for the consents, approvals and waivers described in Schedule 4.1(e) (the "**Required Consents**").

(f) **Execution and Binding Obligation**. This Agreement and each of the Ancillary Agreements to which each of the Partnership or the Partners is or will be a party have been duly executed and delivered by each of the Partnership and the Partners and constitute legal, valid and binding agreements enforceable against each in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

(g) **Residence of the Partnership and the Partners**. The Partnership and the Partners are not non-residents of Canada within the meaning of the *Tax Act* and the Partnership is a registrant for purposes of any taxes imposed under Part IX of the *Excise Tax Act* and the *Social Services Tax Act* (British Columbia).

General Matters Relating to the Business

(h) **Conduct of Business in Ordinary Course**. Except as disclosed in Schedule 4.1(h) since February 26, 2005, the Business has been carried on in the Ordinary Course. Without limiting the generality of the foregoing, except as disclosed in Schedule 4.1(h) none of the Partners or the Partnership:

(i) has sold, transferred or otherwise disposed of or diminished the value of any of the Purchased Assets except for (A) assets which are obsolete and which individually or in the aggregate do not exceed $25,000, or (B) inventory sold in the Ordinary Course;

(ii) except for expenditures on account of Richmond store premises in an amount not to exceed $400,000, has made any capital expenditure or commitment to do so which individually or in the aggregate exceeded $25,000;

(iii) has discharged any secured or unsecured obligation or liability (whether accrued, absolute, contingent or otherwise) which individually or in the aggregate exceeded $25,000;

(iv) has not increased its indebtedness for borrowed money or made any loan or advance, or assumed, guaranteed or otherwise became liable with respect to the liabilities or obligation of any Person;

(v) has made any bonus or profit sharing distribution, dividend or similar payment or distribution of any kind or acquired, redeemed or purchased any of its partnership units except as may be required by the terms of a Material Contract or a contract listed in Schedule 4.1(cc);

(vi) has removed any auditor or director or terminated any officer or other senior employee;

(vii) has written off as uncollectible any Accounts Receivable which individually or in the aggregate is material to the Partnership or the Business or is in excess of $5,000;

(viii) has granted any general increase in the rate of wages, salaries, bonuses or other renumeration of any employees of the Partnership except as may be required by the terms of a Material Contract or a contract listed in Schedule 4.1(cc);

(ix) has increased the benefits to which employees of the Partnership or the Partners are entitled under any Employee Plan or created any new Employee Plan for any employee;

(x) has suffered any extraordinary loss, whether or not covered by insurance;

(xi) has suffered any material shortage or any cessation or interruption of inventory shipments, supplies or ordinary services;

(xii) has cancelled or waived any material claims or rights;

(xiii) has compromised or settled any litigation, proceeding or other governmental action relating to the Purchased Assets, the Business, the Partnership or the Partners;

(xiv) has cancelled or reduced any of its insurance coverage;

(xv) has made any change in any method of accounting practice, or amended or approved any amendment to its constating documents, partnership agreement, by-laws or capital structure; and

(xvi) has authorized, agreed or otherwise committed, whether or not in writing, to do any of the foregoing.

(i) **No Material Adverse Change**. Since February 26, 2005, there has not been any material adverse change in the affairs, prospects, operations or condition of the Partnership, the Partners, any of the Purchased Assets, or the Business and, to the knowledge of the Partners and the Principals, no event has occurred or circumstance exists which may result in such a material adverse change.

(j) **Compliance with Laws**. The Partnership and the Partners are conducting and have always conducted the Business in compliance with all applicable Laws, other than acts of non-compliance which, individually or in the aggregate, are not material.

(k) **Authorizations**. The Partnership and the Partners own, hold, possess or lawfully use in the operation of the Business, all Authorizations which are necessary for it to conduct the Business as presently or previously conducted or for the ownership and use of the Purchased Assets in compliance with all applicable Laws. All Authorizations material to the Partnership or the Business, and all Tax Authorizations, are listed in Schedule 4.1(k). Each Authorization is valid, subsisting and in good standing, none of the Partnership or the Partners is in material default or breach of any Authorization and, to the knowledge of the Partners and the Principals without any enquiry having been made, no proceeding is pending or threatened to revoke or limit any Authorization. All Authorizations are renewable by their terms or in the ordinary course of business without the need for the Partnership or the Partners to comply with any special rules or procedures, agree to any materially different terms or conditions or pay any amounts other than routine filing fees.

Matters Relating to the Purchased Assets

(l) **Sufficiency of Purchased Assets**. The Business is the only business operation carried on by the Partnership. The Purchased Assets include all rights and property necessary to enable the Purchaser to conduct the Business after the Closing substantially in the same manner as it was conducted prior to the Closing. With the exception of inventory in transit, all of the Purchased Assets are situate at the Leased Properties.

(m) **Title to the Purchased Assets**. The Partnership or the Partners (solely on behalf of the Partnership) own or will on Closing own (with good title) all of the properties and assets (whether tangible or intangible) that the Partnership purports to own including all the properties and assets reflected as being owned by the Partnership in its financial Books and Records. The Partnership or the Partners (solely on behalf of the Partnership) has, or will on Closing have, legal and beneficial ownership of the Purchased Assets, free and clear of all Liens, except for Permitted Liens. No other Person owns any property or assets which is being used in the Business except for the Leased Properties, the personal property leased by the Partnership or the Partners pursuant to the Material Contracts and the Intellectual Property licensed to the Partnership or the Partners and disclosed in Schedule 4.1(v). To the extent that some of the Purchased Assets may be recorded in the name of one or both of the Partners, such Purchased Assets are held in the name of the Partners or either of them solely on behalf of and in their capacity as partners of the Partnership, all of the Purchased Assets are owned by the Partnership and the Partners have no rights to any Purchased Assets separate and apart from their rights as partners of the Partnership.

(n) **No Options, etc. to Purchase Assets.** No Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase or other acquisition from the Partnership or the Partners of any of the Purchased Assets, other than (i) assets which are obsolete and which individually or in the aggregate do not exceed $25,000 or (ii) inventory to be sold in the Ordinary Course.

(o) **Condition of Tangible Assets**. The sole vehicle, equipment and other tangible personal property of the Partnership and the Partners comprising part of the Purchased Assets are structurally sound, in good operating condition and repair having regard to their use and age and are adequate and suitable for the uses to which they are being put. None of the vehicle, equipment or other property is in need of maintenance or repairs except for routine maintenance and repairs in the Ordinary Course that are not material in nature or cost.

(p) **Owned Property**. None of the Partnership or the Partners is the owner or lessee of, or subject to any agreement or option to own or lease, any real property or any interest in any real property, other than leases of the Leased Properties.

(q) **Leases**. None of the Partnership or the Partners is a party to, or under any agreement to become a party to, any lease with respect to real property other than the Leases, copies of which have been provided to the Purchaser. Each Lease is in good standing, creates a good and valid leasehold estate in the Leased Properties thereby demised and is in full force and effect without amendment, except as disclosed in Schedule 4.1(q). With respect to each Lease (i) all rents and additional rents have been paid, (ii) no waiver, indulgence or postponement of the lessee's obligations has been granted by the lessor, (iii) except for the Required Consents, there exists no event of default or event, occurrence, condition or act (including the purchase of the Purchased Assets) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default under the Lease, and (iv) to the knowledge of the Partners and the Principals, all of the covenants to be performed by any other party under the Lease have been fully performed. Each of the Leased Properties is adequate and suitable for the purposes for which it is presently being used and the Partnership and the Partners have adequate rights of ingress and egress into each of the Leased Properties for the operation of the Business in the Ordinary Course. Schedule 4.1(q) contains a list of all of the Leases setting out, in respect of each Lease, the parties to the Lease, a description of the leased premises (by municipal address and proper legal description), the term of the Lease, the rental payments under the Lease (specifying any breakdown of base rent and additional rents), any rights of renewal and the term thereof, and any restrictions on assignment or change of control of the Partnership or the Partners or sale of any of the Purchased Assets.

(r) **Material Contracts**. Except for the Material Contracts listed in Schedule 4.1(r) the Leases, the Employee Plans listed in Schedule 4.1(dd) the insurance policies listed in Schedule 4.1(ee), the loan agreement and security with the Toronto-Dominion Bank in relation to the Term Loan and the Purchased Contracts listed in Schedule 4.1(v), none of the Partnership or the Partners is a party to or bound by:

(i) any distributor, sales, advertising, agency or manufacturer's representative Contract;

(ii) any continuing Contract for the purchase of materials, supplies, inventory, equipment or services involving in the case of any such Contract more than $25,000 over the life of the Contract;

(iii) any Contract that expires or may be renewed at the option of any Person other than the Partners or the Partnership so as to expire more than one year after the date of this Agreement;

(iv) any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, any currency exchange, interest rate, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with GAAP;

(v) any Contract for capital expenditures in excess of $25,000 in the aggregate other than expenditures on account of the Richmond store in an amount not to exceed $400,000;

(vi) any confidentiality, secrecy or non-disclosure Contract or any Contract limiting the freedom of the Partners or the Partnership to engage in any line of business, compete with any other Person, solicit any Persons for any purpose, or otherwise conduct its business;

(vii) any Contract pursuant to which the Partners or the Partnership is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property;

(viii) any Contract with any Person with whom the Partnership or the Partners does not deal at arm's length within the meaning of the Tax Act in relation to the Business;

(ix) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other Person;

(x) any Contract in respect of the Intellectual Property owned by, licensed to or used by the Partnership or the Partners;

(xi) any Contract made out of the Ordinary Course; or

(xii) any other Contract that is material to the Business.

Schedule 4.1(r) lists all transportation and customs brokerage arrangements in the Purchased Contracts.

(s) **No Breach of Material Contracts**. The Partnership and the Partners has performed all of the obligations required to be performed by it or them and are entitled to all benefits under the Material Contracts. None of the Partnership or the Partners is alleged to be in default of any Material Contract. Each of the Material Contracts is in full force and effect, unamended, and there exists no default or event of default or event, occurrence, condition or act (including the purchase of the Purchased Assets) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default or event of default under any Material Contract. True, correct and complete copies of all Material Contracts have been delivered to the Purchaser.

(t) **No Breach of Other Contracts**. With respect to Purchased Contracts that are not Material Contracts, none of the Partnership or the Partners has violated or breached, in any material respect, any of the terms or conditions of any such Purchased Contract, and to the knowledge of the Partners and the Principals, all the covenants to be performed by any other party to such Purchased Contracts have been fully performed, in all material respects.

(u) **Accounts Receivable**. All Accounts Receivable are bona fide, and, subject to an allowance for doubtful accounts that has been reflected in the Books and Records in accordance with GAAP and consistent with past practice, collectible without set off or counterclaim.

(v) **Intellectual Property**.

(i) Attached as Schedule 4.1(v) is a list of all Intellectual Property owned or which immediately prior to Closing will be owned by or licensed to the Partners and included in the Purchased Assets used by the Partnership or by the Partners in carrying on the Business.

(ii) Schedule 4.1(v) includes complete and accurate particulars of all registrations and applications for registration of the Intellectual Property included in the Purchased Assets. All of such owned Intellectual Property which has been registered or applied for has been properly maintained and renewed by the owner thereof in accordance with all applicable Laws.

(iii) Except as set forth in Schedule 4.1(v), the Partnership or the Partners own(s) all right, title and interest in and to the Intellectual Property listed as owned by them in Schedule 4.1(v), free and clear of all Liens and the Partnership and the Partners have the right to use all such Intellectual Property in carrying on the Business. The Partnership and the Partners have taken all reasonable steps to protect their rights in and to the owned Intellectual Property, in each case in accordance with industry practice.

(iv) Except as set forth in Schedule 4.1(v), none of the Partnership or the Partners is a party to or bound by any Contract or other obligation that limits or impairs the ability to use, sell, transfer, assign or convey, or that otherwise affects, any of the Intellectual Property owned by the Partnership and used in the Business. Except as set forth in Schedule 4.1(v) none of the Partnership or the Partners has granted to any Person any right, license or permission to use all or any portion of, or otherwise encumbered any of its rights in, or to, any of the Intellectual Property owned by or licensed to the Partnership or used in the Business. Except as set forth in Schedule 4.1(v), none of the Partnership or the Partners is obligated to pay any royalties, fees or other compensation to any Person in respect of its ownership, use or license of any Intellectual Property.

(v) To the knowledge of the Partners, without having made enquiry, the operation of the Business does not infringe upon the Intellectual Property rights of any Person. Except as set forth in Schedule4.1(v), no claims have been asserted or are threatened by any Person alleging that the conduct of the Business, including the use of the Intellectual Property included in the Purchased Assets infringes upon any of their Intellectual Property rights. To the knowledge of the Partners and the Principals without having made enquiry, there are no valid grounds for any such bona fide claims by any such Persons alleging a conflict with or infringement of their Intellectual Property rights. To the knowledge of the Partners and the Principals without having made enquiry, there is no state of facts that casts doubt on the validity or enforceability of any of the Intellectual Property included in the Purchased Assets.

(vi) The transaction contemplated by this Agreement and the continued operation of the Business will not violate or breach the terms of any Intellectual Property license, or entitle any other party to any such Intellectual Property license to terminate or modify it, or otherwise adversely affect the Partnership’s or applicable Vendor’s rights under it.

(vii) The Intellectual Property included in the Purchased Assets constitutes all Intellectual Property necessary for the conduct of the Business as presently conducted. Except as set forth in Schedule 4.1(v), following Closing, the Purchaser will be entitled to continue to use, practice and exercise rights in, all of the Intellectual Property included in the Purchased Assets, to the same extent and in the same manner as used, practiced and exercised by the Partnership or the Partners prior to Closing, without financial obligation to any Person.

(viii) Except as set forth in Schedule 4.1(v), to the knowledge of the Partners and the Principals without having made any enquiry, no Person is currently infringing any of the Intellectual Property included in the Purchased Assets.

(ix) Except as set forth in Schedule 4.1(v), following the Closing, none of the Partners or any affiliate of the Partners will retain or use any of the Intellectual Property included in the Purchased Assets or used in the Business.

(x) None of the Intellectual Property included in the Purchased Assets has been developed by the Partners or the Partnership with the assistance of or funding of any third party or by any employee or consultant of the Business.

(xi) Schedule 4.1(v) sets out the physical location of the computer servers that are currently hosting the Partnership's Internet websites. Such servers are validly owned, or a portion is validly leased, by the Partnership or the Partners. Schedule 4.1(v) also sets out any applicable Internet hosting Contract including the term of the Contract, associated costs, corporate information of the host and amount of bandwidth to which the server is connected to the Internet. In addition, Schedule 4.1(v) sets out the name and IP address of the Internet Web homepage of the Business and lists all similar names and addresses owned by the Partners.

(w) **Inventories**. The inventory of the Business is good and usable and is capable of being processed and sold in the Ordinary Course at normal profit margins, subject to a reasonable allowance for obsolete inventory consistent with the allowances reflected in the Financial Statements. The inventory levels of the Business have been maintained at levels sufficient for the continuation of the Business in the Ordinary Course. All inventories of the Business have been determined and valued in accordance with the policies, practices and procedures set forth on Schedule 4.1(w).

(x) **Other Interests**. None of the Partnership or the Partners hold shares or other ownership, equity or proprietary interests in any Person.

Financial Matters

(y) **Books and Records**. All Books and Records have been fully, properly and accurately kept and are complete in all material respects. The Books and Records and other data and information are not recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which will not be available to the Purchaser in the Ordinary Course.

(z) **Financial Statements**. The Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with those of previous fiscal years subject to the exceptions to GAAP set forth in Schedule 2.7(1) and present fairly:

(i) the assets, liabilities, (whether accrued, absolute, contingent or otherwise) and financial position of the Partnership as at the respective dates of the relevant statements; and

(ii) the sales and earnings of the Partnership during the periods covered by the Financial Statements.

True, correct and complete copies of the Financial Statements are attached as Schedule 4.1(z).

(aa) **No Liabilities**. None of the Partnership or the Partners in respect of the Partnership has any liabilities or obligations of any nature whatsoever, whether known, unknown, due, to become due, direct, indirect, absolute, contingent or otherwise and whether or not required to be accrued on the financial statements of the Partnership, except for (i) liabilities and obligations reflected or reserved against in the Financial Statements, (ii) current liabilities incurred after February 26, 2005 in the Ordinary Course (none of which is material), or (iii) liabilities and obligation disclosed in the Schedules to this Agreement (including Schedule 4.1(aa)). The loan of the Partnership from the Toronto-Dominion Bank has not been and will not before Closing be assigned or replaced by the Partnership or the Partners or the Toronto-Dominion Bank.

Particular Matters Relating to the Business

(bb) **Environmental Matters**. Except as set forth in Schedule 4.1(bb):

(i) none of the Leased Properties (i) has ever been used by the Partnership or the Partners or, to the knowledge of the Partners and the Principals without having made any inquiry, by any other Person as a waste disposal site or as a licensed landfill, or (ii) to the knowledge of the Partners and the Principals without having made any inquiry, has ever had asbestos, asbestos-containing materials, PCBs, urea formaldehyde foam insulation, radioactive substances or aboveground or underground storage systems, active or abandoned, located on, at or under them;

(ii) to the knowledge of the Partners and the Principals without having made any inquiry, no properties adjacent to any of the Leased Properties are contaminated;

(iii) the Business has not transported, removed or disposed of any waste to a location outside of Canada;

(iv) to the knowledge of the Partners and the Principals without having made any inquiry, there are no contaminants located in the ground or in groundwater under any of the Leased Properties;

(v) none of the Partnership or the Partners has been required by any Governmental Entity to (i) alter any of the Leased Properties in a material way in order to be in compliance with Environmental Laws, or (ii) perform any environmental closure, decommissioning, rehabilitation, restoration or post-remedial investigations, on, about, or in connection with any real property; and

(vi) Schedule 4.1(bb) lists all reports and documents relating to the environmental matters affecting the Partners, the Partnership or any of the Leased Properties which are in the possession or under the control of the Partners or the Partnership. Copies of all such reports and documents have been provided to the Purchaser. To the knowledge of the Partners and the Principals, there are no other reports or documents relating to environmental matters affecting the Partnership, the Partners or without having made any inquiry any of the Leased Properties which have not been made available to the Purchaser whether by reason of confidentiality restrictions or otherwise.

(cc) **Employees**.

(i) The Partnership is the employer of all the employees employed in the Business except for the Principals. The Partnership is in compliance with all terms and conditions of employment and all Laws respecting employment, including pay equity, wages and hours of work and occupational health and safety, and there are no outstanding claims, complaints, investigations or orders under any such Laws.

(ii) The Partnership has not and is not engaged in any unfair labour practice and no unfair labour practice complaint, grievance or arbitration proceeding is pending or, to the knowledge of the Partners and the Principals without having made any inquiry, threatened against the Partnership or the Partners.

(iii) No collective agreement is currently being negotiated by the Partnership or any other Person in respect of employees of the Business.

(iv) No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the employees of the Business by way of certification, interim certification, voluntary recognition, or succession rights, or has applied or, to the knowledge of the Partners and the Principals without any enquiry having been made, threatened to apply to be certified as the bargaining agent of any employees of the Business. To the knowledge of the Partners and the Principals without any enquiry having been made, there are no threatened or pending union organizing activities involving any employees of the Business. There is no labour strike, dispute, work slowdown or stoppage pending or involving or, to the knowledge of the Partners and the Principals, threatened against the Business and no such event has occurred within the last five (5) years.

(v) No trade union has applied to have the Business or the Partnership or any Partner declared a related employer pursuant to the *Labour Relations Code* (British Columbia) or any similar legislation in any jurisdiction in which the Business is carried on.

(vi) All amounts due or accrued due for all salary, wages, bonuses, commissions, vacation with pay, and benefits under the Employee Plans have either been paid or are accurately reflected in the Books and Records.

(vii) Schedule 4.1(cc) contains a correct and complete list of each employee, director, independent contractor, consultant and agent of the Business, whether actively at work or not, their salaries, wage rates, commissions and consulting fees, bonus arrangements, benefits, positions, ages, status as full-time or part-time employees, location of employment and length of service. In addition, with respect to the employees, Schedule 4.1(cc) contains for each employee his or her annual vacation entitlement in days, vacation days taken and vacation days remaining; his or her annual sick day entitlement, sick days taken and sick days remaining; and Schedule 4.1(cc) lists any employee currently on leave and in receipt of disability benefits, applicable workplace safety and insurance legislation benefits and those employees currently on pregnancy or parental leave or other leave approved by the Partnership, together with the type of leave and their expected date of return to work if known.

(viii) No employee of the Business has any agreement as to length of notice or severance payment required to terminate his or her employment, other than such as results by Law from the employment of an employee without an agreement as to notice or severance.

(ix) There are no outstanding assessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing pursuant to any workplace safety and insurance legislation and the Business has not been reassessed in any material respect under such legislation during the past three (3) years and, to the knowledge of the Partners and the Principals without enquiry having been made, no audit of the Business is currently being performed pursuant to any applicable workplace safety and insurance legislation. There are no claims or potential claims which may materially adversely affect the accident cost experience in respect of the Business.

(x) The Partnership has never received and is not subject to any orders issued under applicable Occupational Health and Safety legislation.

(dd) **Employee Plans**.

(i) The only Employee Plans are the extended medical and dental plans listed in Schedule 4.1(dd), which do not provide for retiree benefits or benefits to retired employees or to the beneficiaries or dependants of retired employees. The Partners have furnished to the Purchaser true, correct and complete copies of all the Employee Plans as amended together with all related documentation including summary plan descriptions.

(ii) The Business has paid all premiums in respect of each Employee Plan in a timely fashion in accordance with the terms of each Employee Plan and applicable Laws. The Business has paid in full all premiums for the period up to the Closing Date even though not otherwise required to be paid until a later date or has made full and adequate disclosure of and provision for such premiums in the Books and Records.

(iii) No insurance policy or any other agreement affecting any Employee Plan requires or permits a retroactive increase in premiums or other payments due under such insurance policy or agreement. The level of insurance reserves under each insured Employee Plan is reasonably sufficient to provide for all incurred but unreported claims.

(ee) **Insurance**. The Purchased Assets are insured against loss or damage by all insurable hazards or risks on a replacement cost basis. Schedule 4.1(ee) contains a correct and complete list of insurance policies which are maintained by the Partnership or the Partners setting out, in respect of each policy, the type of policy, the name of insurer, the coverage allowance, the expiration date, the annual premium and any pending claims. None of the Partnership or the Partners is in default with respect to any of the provisions contained in the insurance policies or has failed to give any notice or to present any claim under any insurance policy in a due and timely fashion. To the knowledge of the Partners and the Principals, no enquiry having been made, there are no circumstances in respect of which any Person could make a claim under any insurance policy. There has not been any material adverse change in the relationship of the Partnership or the Partners with their insurers, the availability of coverage, or in the premiums payable pursuant to the policies. Part of Schedule 4.1(ee) is a list setting forth any and all claims, with reasonable particulars, made under any policies of insurance maintained by or for the benefit of the Partnership or the Partners over the past 5 calendar years prior to this date and a summary of the policies. Copies of all insurance policies of the Partnership or the Partners and the most recent inspection reports received from insurance underwriters have been delivered to the Purchaser.

(ff) **Litigation**. Except as described in Schedule 4.1(ff), there are no (i) actions, suits or proceedings, at law or in equity, by any Person (including the Partnership or the Partners), (ii) any grievance, arbitration or alternative dispute resolution process, or (iii) administrative or other proceeding by or before (or to the knowledge of the Partners and the Principals no enquiry having been made any investigation by) any Governmental Entity, pending, or, to the knowledge of the Partners and the Principals, no enquiry having been made, threatened against or affecting the Partnership, the Partners, the Business or any of the Purchased Assets, and, to the knowledge of the Partners and the Principals no enquiry having been made, there is no valid basis for any such action, complaint, grievance, suit, proceeding, arbitration or investigation by or against the Partnership or the Partners. None of the Partnership or the Partners is subject to any judgment, order or decree entered in any lawsuit or proceeding nor has the Partnership or the Partners settled any claim prior to being prosecuted in respect of it. Except as disclosed in Schedule 4.1 (gg) none of the Partnership or the Partners is the plaintiff or complainant in any action, suit or proceeding, grievance, arbitration or alternative dispute resolution process;

(gg) **Suppliers**. Schedule 4.1(gg) is a true and correct list setting forth the ten largest suppliers of the Business by dollar amount for the 12 months ended February 26, 2005. None of the Partners or the Principals have any reason to believe that the benefits of any relationship with any of the major suppliers of the Partnership will not continue after the Closing Date in substantially the same manner as prior to the date of this Agreement;

(hh) **Taxes**.

(i) None of the Partnership or the Partners has failed to pay any Taxes due and payable and as reflected on its Tax Returns within the time required by applicable Law and each has paid all assessments and reassessments it has received in respect of Taxes. None of the Partnership or the Partners has failed to report any Taxes in a manner which would affect the Financial Statements.

(ii) There are no claims, actions, suits, audits, proceedings, investigations or other actions pending or threatened, to the knowledge of the Partners and the Principals, against the Partnership or the Partners in respect of Taxes and, to the knowledge of the Partners and the Principals, there is no reason to expect that any such claim, action, suit, audit, proceeding, investigation or other action may be asserted against the Partnership or the Partners by a Governmental Entity for any period ending on or prior to the Closing Date.

(iii) The Partnership and the Partners have withheld and collected all amounts required by applicable Law to be withheld or collected by them on account of Taxes and have remitted all such amounts to the appropriate Governmental Entity within the time period prescribed under any applicable Law.

(ii) **Full Disclosure**. Neither this Agreement nor any Ancillary Agreement to which the Partnership, the Partners or the Principals are or will be a party (i) contains any untrue statement of a material fact in respect of the Partnership, the Partners, the Principals, the affairs, prospects, operations or condition of the Partnership, the Purchased Assets or the Business, or (ii) omits any statement of a material fact necessary in order to make the statements in respect of the Partnership, the Partners, the Principals, the affairs, prospects, operations or condition of the Partnership, the Purchased Assets or the Business contained herein or therein not misleading. There is no fact known to the Partners or the Principals which materially and adversely affects the affairs, prospects, operations or condition of the Partners, the Partnership, the Purchased Assets or the Business which has not been set forth in this Agreement.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Section 5.1 Representations and Warranties of the Purchaser.

The Purchaser represents and warrants as follows to the Partners and acknowledges and confirms that the Partners are relying on such representations and warranties in connection with the sale by the Partners of the Purchased Assets:

(a) **Incorporation and Corporate Power**. The Purchaser is a corporation incorporated and existing under the laws of its jurisdiction of incorporation. The Purchaser has the corporate power and authority to enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is or will at Closing be a party.

(b) **Corporate Authorization**. The execution and delivery of and performance by the Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated by them have been duly authorized by all necessary corporate action on the part of the Purchaser.

(c) **No Conflict**. The execution and delivery of and performance by the Purchaser of this Agreement and each of the Ancillary Agreements to which it is or will at Closing be a party:

(i) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with, or allow any other Person to exercise any rights under, any of the terms or provisions of its constating documents or by-laws;

(ii) subject to obtaining the consent of the Toronto Stock Exchange to the issuance of the Issued Shares, do not and will not (or would not with the giving of notice, the lapse of time or the happening or any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other Person to exercise any rights under, any of the terms or provisions of any material Contracts or instruments to which it is a party; and

(iii) do not and will not result in the violation of any Law.

(d) **Execution and Binding Obligation**. This Agreement and each of the Ancillary Agreements to which the Purchaser is or will be a party have been duly executed and delivered by the Purchaser and constitute legal, valid and binding agreements of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

(e) **Issued Shares.** Upon issuance to the Partnership in accordance with this Agreement at closing, the Issued Shares will be duly issued as fully paid and non-assessable shares. The Issued Shares will be subject to (i) resale restrictions under applicable securities laws for four (4) months from the Closing Date, and (ii) in the case of 1,391,304 of the Issued Shares to be distributed by the Partnership to C.I.T. Holding Limited, an additional contractual hold period for a total of six (6) months from the Closing Date, with the statutory hold period of 4 months specified in (i) running concurrently.

ARTICLE 6
PRE-CLOSING COVENANTS OF THE PARTIES

Section 6.1 Conduct of Business Prior to Closing.

(1) During the Interim Period, the Partnership will conduct, and the Partners will cause the Partnership to conduct, the Business in the Ordinary Course.

(2) Without limiting the generality of Section 6.1(1), the Partners will not permit the Partnership to:

(a) sell, transfer or otherwise dispose of any of the Purchased Assets except for (i) assets which are obsolete and which individually or in the aggregate do not exceed $25,000, or (ii) inventory sold in the Ordinary Course;

(b) make any capital expenditure or commitment to do so which individually or in the aggregate exceeds $25,000 except for expenditures relating to the Richmond store in an amount not to exceed $400,000, individually or in the aggregate;

(c) discharge any secured or unsecured obligation or liability (whether accrued, absolute, contingent or otherwise) which individually or in the aggregate exceeds $25,000;

(d) increase its indebtedness for borrowed money or make any loan or advance or assume, guarantee or otherwise become liable with respect to the liabilities or obligations of any Person;

(e) except as set forth in Schedule 4.1(h), make any bonus or profit sharing distribution or similar payment of any kind except as may be required by the terms of a Material Contract or a contract listed in Schedule 4.1(cc);

(f) remove any director or terminate any officer or other senior employee;

(g) write off as uncollectible any Accounts Receivable which individually or in the aggregate is material to the Partnership or is in excess of $25,000;

(h) grant any general increase in the rate of wages, salaries, bonuses or other remuneration of any employees except as may be required by the terms of a Material Contract or a contract listed in Schedule 4.1(cc);

(i) increase the benefits to which employees are entitled under any Employee Plan or create any new Employee Plan;

(j) cancel or waive any material claims or rights;

(k) compromise or settle any litigation, proceeding or governmental investigation relating to the Purchased Assets, the Business, the Partnership or the Partners;

(l) cancel or reduce any of its insurance coverage;

(m) make any profit sharing distribution or other payment or distribution to the Partners or acquire, redeem or purchase any of the units of the Partnership; or

(n) authorize, agree, or otherwise commit, whether or not in writing, to do any of the foregoing.

(3) Without limiting the generality of Section 6.1(1) and without derogating from the obligation of the Partners in Section 6.1(2), the Partners and the Partnership shall and the Partners shall cause the Partnership to:

(a) maintain adequate levels of inventories to carry on the Business in the Ordinary Course;

(b) maintain the Purchased Assets in good state of repair and condition;

(c) comply with all Authorizations and contractual obligations under the Purchased Contracts;

(d) maintain all Books and Records in the usual, regular and ordinary manner;

(e) use commercially reasonable efforts to preserve intact the current business organization of the Business, keep available the services of the present employees and agents of the Business and maintain good relations with, and the goodwill of, the suppliers, customers, landlords, creditors, distributors and all other Persons having business relationships with the Business;

(f) confer with the Purchaser concerning operational matters of a material nature;

(g) use commercially reasonable efforts to retain possession and control of the Purchased Assets and preserve the confidentiality of any confidential or proprietary information of the Business;

(h) use commercially reasonable efforts to not cause or permit to exist a breach of any representations and warranties of the Partners or the Principals contained in this Agreement and to conduct the Business in such a manner that on the Closing Date such representations and warranties shall be true, correct and complete as if they were made on and as of such date; and

(i) otherwise periodically report to the Purchaser concerning the state of the Business and the Partnership.

Section 6.2 Access for Due Diligence.

(1) Subject to applicable Law, during the Interim Period, the Partners and the Principals will (i) upon reasonable notice, permit the Purchaser and its employees, agents, counsel, accountants or other representatives to have reasonable access during normal business hours to (A) the premises of the Partnership, (B) the Assets, including all Books and Records whether retained by the Partners, the Partnership or otherwise, (C) all Purchased Contracts and Leases, and (D) the senior personnel of the Partners and the Partnership, and (ii) furnish to the Purchaser or its employees, agents, counsel, accountants or other representatives such financial and operating data and other information with respect to the Assets, the Partners, the Partnership and the Business as the Purchaser from time to time reasonably requests.

(2) No investigations made by or on behalf of the Purchaser, whether under this Section 6.2 or any other provision of this Agreement or any Ancillary Agreement, shall have the effect of waiving, diminishing the scope of, or otherwise affecting any representation or warranty made in this Agreement or any Ancillary Agreement.

Section 6.3 Purchaser Confidentiality.

The Partnership, the Partners and the Purchaser acknowledge having signed a confidentiality agreement in the form of Schedule 6.3 and the Purchaser agrees to comply with such agreement in accordance with its terms. Upon closing, such confidentiality agreement shall be deemed to have been terminated and the Purchaser and its affiliates shall be released from all of its terms.

Section 6.4 Actions to Satisfy Closing Conditions.

(1) The Partners shall take all such actions as are within their power to control and to use their commercially reasonable efforts to cause other actions to be

taken which are not within their power to control, so as to ensure compliance with all of the conditions set forth in Section 7.1 including ensuring that during the Interim Period and at Closing, there is no breach of any of their representations and warranties.

(2) The Purchaser shall take all such actions as are within its power to control and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 7.2 including ensuring that during the Interim Period and at Closing, there is no breach of any of its representations and warranties.

Section 6.5 Transfer of the Purchased Assets.

The Partners shall take all necessary steps and proceedings to permit good title to the Purchased Assets to be duly and validly transferred and assigned to the Purchaser at the Closing, free of all Liens other than Permitted Liens.

Section 6.6 Request for Consents.

The Partnership and the Partners will use their commercially reasonable efforts to obtain or cause to be obtained, prior to Closing, all consents, approvals and waivers that are required by the terms of the Leases and the Purchased Contracts in order to complete the transactions contemplated by this Agreement, including the consents, approvals and waivers described in Schedule 4.1(e). Such consents, approvals and waivers will be upon such terms as are acceptable to the Purchaser, acting reasonably.

Section 6.7 Filings and Authorizations.

Each of the Parties, as promptly as practicable after the execution of this Agreement, will (i) make, or cause to be made, all filings and submissions under all Laws applicable to it, that are required for it to consummate the purchase and sale of the Purchased Assets in accordance with the terms of this Agreement, (ii) use its reasonable best efforts to obtain, or cause to be obtained, all Authorizations necessary to be obtained by it in order to consummate such transfer, and (iii) use its reasonable best efforts to take, or cause to be taken, all other actions which are necessary in order for it to fulfil its obligations under this Agreement.

Section 6.8 Notice of Untrue Representation or Warranty.

Each of the Partners and the Principals shall promptly notify the Purchaser, and the Purchaser shall promptly notify the Partners, upon any representation or warranty made by it contained in this Agreement or any Ancillary Agreement becoming untrue or incorrect during the Interim Period and for the purposes of this Section 6.8 each representation and warranty shall be deemed to be given at and as of all times during the Interim Period. Any such notification shall set out particulars of the untrue or incorrect representation or warranty.

Section 6.9 Exclusive Dealing.

During the Interim Period, none of the Partnership, the Partners or the Principals shall, directly or indirectly, solicit, initiate, or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any inquiries or proposals from, or enter into any agreement with, any Person (other than the Purchaser) relating to any transaction involving the sale of any units of the Partnership, any shares of the Partners or the sale of the Business or any of the Assets (other than as permitted in this Agreement) or any other business combination.

Section 6.10 Use of Name.

The Partners and the Partnership, on behalf of themselves and their Affiliates, hereby consent to the use of the name "Off the Wall" by the Purchaser or any of its subsidiaries in connection with incorporating one or more companies to complete the transactions contemplated in this Agreement and will provide any consent reasonably required in that regard. If the transaction of purchase and sale contemplated by this Agreement is not completed, the Purchaser shall change the name of the Purchaser and its Affiliates to a name not including "Off the Wall" and will discontinue any use of the name "Off the Wall".

ARTICLE 7
CONDITIONS OF CLOSING

Section 7.1 Conditions for the Benefit of the Purchaser.

The purchase and sale of the Purchased Assets is subject to the following conditions being satisfied at or prior to Closing, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

(a) **Truth of Representations and Warranties**. The representations and warranties of the Partners and the Principals contained in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date, it being understood that, for purposes of determining the accuracy of such representations and warranties, all materiality qualifications contained in such representations and warranties shall be disregarded, and the Partners and the Principals shall have executed and delivered a certificate (in the case of the Partners of a senior officer) to that effect. The receipt of such certificate and the Closing shall not constitute a waiver by the Purchaser of any of the representations and warranties of the Partners or the Principals which are contained in this Agreement**.** Upon the delivery of such certificate, the representations and warranties of the Partners in Article 4 shall be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.

(b) **Performance of Covenants**. The Partners and the Principals shall have fulfilled or complied with all covenants contained in this Agreement to be fulfilled or complied with by them at or prior to the Closing, and the Partners and the Principals shall have executed and delivered a certificate (in the case of the Partners of a senior officer) to that effect. The receipt of such certificate and the Closing shall not constitute a waiver by the Purchaser of any of the covenants of the Partners or the Principals which are contained in this Agreement.

(c) **Consents and Authorizations**. All consents, approvals and waivers listed in Schedule 4.1(e) and all filings, notices and Authorizations listed in Schedule 4.1(d), shall have been made, given or obtained on terms acceptable to the Purchaser, acting reasonably. The Purchaser shall have all Authorizations necessary or desirable to carry on the Business on terms satisfactory to the Purchaser, acting reasonably (by transfer in the case of transferable Authorizations) and, where the Authorizations of the Partnership or the Partners are non-transferable, replacement Authorizations shall have been granted to the Partnership or the Purchaser on terms acceptable to the Purchaser, acting reasonably.

(d) **Due Diligence.** The Purchaser shall have completed its investigation into the Partnership, the Partners, the Business, the Books and Records, the Purchased Assets and all other matters it deems relevant and such investigation shall not have disclosed any matter which the Purchaser, acting reasonably, considers to be materially adverse to the Partnership, the Partners, the Business, the Purchased Assets or materially adverse to its decision to acquire the Purchased Assets**.**

(e) **Deliveries**. The Partners shall deliver or cause to be delivered to the Purchaser the following in form and substance satisfactory to the Purchaser acting reasonably:

(i) certified copies of (i) the constating documents, partnership agreement and by laws, as applicable and as amended, of each of the Partnership and the Partners, (ii) all resolutions of the Partners and of the shareholders and the board of directors of each of the Partners approving the entering into and completion of the transaction contemplated by this Agreement and the Ancillary Agreements, and (iii) a list of the directors and officers of the Partners authorized to sign agreements together with their specimen signatures;

(ii) a certificate of status, compliance, good standing or like certificate with respect to the Partnership (if applicable) and the Partners issued by appropriate government officials of their respective jurisdictions of incorporation or formation and, in the case of the Partnership, of each jurisdiction in which the Partnership carries on its business as listed in Schedule 4.1(a);

(iii) the certificates referred to in Section 7.1(a) and Section 7.1(b); and

(iv) an opinion of counsel to the Partnership and the Partners and certificates of independent legal advice, each in form and substance satisfactory to the Purchaser, acting reasonably;

(v) a non competition, non-solicitation and confidentiality agreement duly executed by each of the Partners and the Principals, substantially in the form of the agreement in Schedule 7.1(e)(v);

(vi) an employment agreement duly executed by Christian Toth substantially in the form of the agreement in Schedule 7.1(e)(vi);

(vii) a consulting/advisory agreement duly executed by James Wilson substantially in the form of the agreement in Schedule 7.1(e)(vii);

(viii) stock option agreements in favour of Cheryl Antell, Catherine Brunino, Tara Cannon, Tara Zeidler, Raymond Chau, Kristina Cowan, Josephine Lam, Jennifer Pugh, Chris Richards, Sandy Arychuk, Michelle Fiddick, Harold Veerman, Brenda Kalin, Mei-Fah Leonard, Rachel Turner, Brandy Levington, Scott Barwick, Sylvia McNamee, Jodi Bordelay and Christian Toth in the Purchaser's standard form, duly executed by the optionees;

(ix) an estoppel certificate or landlord's acknowledgement and consent from each lessor under each of the Leases (as required by the Purchaser and by its lender), consenting to the assignment of the Lease to the Partners or the Partnership (as applicable) and consenting to assignment of the Lease to the

Purchaser and the lender's security and such other matters, each in form and substance satisfactory to the Purchaser, acting reasonably;

(x) evidence that all necessary steps and proceedings as approved by counsel for the Purchaser to permit all of the Purchased Assets to be transferred to the Purchaser or its nominee(s) have been taken;

(xi) a release in the form agreed between the Purchase and the Partners, acting reasonably, from each of the Partners and the Principals;

(xii) a quitclaim and release in favour of the Purchaser from the Partners in respect of all of the Purchased Assets in form and substance satisfactory to the Purchaser, acting reasonably;

(xiii) elections under section 22 and section 85 of the Tax Act;

(xiv) the Clearance Certificate;

(xv) a release and quitclaim from Off the Wall Holdings Ltd. releasing and quitclaiming to the Purchaser any interest it may have in the Purchased Assets or Business, in form and substance satisfactory to the Purchaser, acting reasonably;

(xvi) a resale restriction agreement by the Partnership and C.I.T. Holdings Limited restricting the disposal or transfer, directly or indirectly, of any of 1,391,304 Issued Shares for six (6) months from the Closing Date, in form and substance satisfactory to the Purchaser, acting reasonably; and

(xvii) the Escrow Agreement.

(f) **Proceedings**. All proceedings to be taken in connection with the transactions contemplated by this Agreement and any Ancillary Agreement shall be reasonably satisfactory in form and substance to the Purchaser, acting reasonably, and the Purchaser shall have received copies of all instruments and other evidence as it may reasonably request in order to establish the consummation of such transactions and the taking of all necessary proceedings in connection therewith, including a registrable form of assignment of trademarks.

(g) **Change in Law.** During the Interim Period, no Law, proposed Law, any change in any Law, or the interpretation or enforcement of any

Law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any Law respecting taxes, employment or environmental matters), the effect of which will be to prevent or to increase materially the cost to the Purchaser of (i) completing of the transaction contemplated in this Agreement or (ii) operating the Business after Closing on substantially the same basis as currently operated.

(h) **No Legal Action**. No action or proceeding shall be pending or threatened by any Person (other than the Purchaser) in any jurisdiction, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement or the right of the Purchaser or the Partnership to conduct the Business after Closing on substantially the same basis as heretofore operated.

(i) **Financing**. The Purchaser shall have received financing sufficient to complete the transaction of purchase and sale contemplated in this Agreement substantially on the terms and conditions set forth in the term sheet between Canadian Imperial Bank of Commerce and the Purchaser dated April, 2005 attached as Schedule 7.1(i), or on other terms satisfactory to the Purchaser, including repayment of the Term Loan and release of security held by the Toronto-Dominion Bank or any successor or replacement lender on terms satisfactory to the Purchaser and its lenders, acting reasonably.

(j) **No Material Adverse Change**. Since the date hereof, there shall have been no material adverse change in the affairs, prospects, operations or condition of the Partnership, any of the Purchased Assets or the Business.

(k) **Social Services Tax Act Clearance Certificate.** The Partnership shall apply for a certificate (the "**Clearance Certificate**") pursuant to Section 99 of the *Social Services Tax Act* (British Columbia) or similar legislation in those jurisdictions in which the Purchased Assets are located or each Partner or the Partnership is registered for provincial sales tax purposes, each of which Clearance Certificates shall indicate that all taxes collectable or payable by the Partnership have been paid up to the date of such certificate or that each Partner and the Partnership has entered into satisfactory arrangements for the payment of such taxes. The Partnership shall provide the duplicate of the Clearance Certificate to the Purchaser on the Closing Date.

(l) **Insurance.** The Purchaser shall have obtained insurance necessary to operate the Business, including as required under the Leases, on terms reasonably satisfactory to the Purchaser.

Section 7.2 Conditions for the Benefit of the Partners and the Partnership.

The purchase and sale of the Purchased Assets is subject to the following conditions being satisfied at or prior to Closing, which conditions are for the exclusive benefit of the Partners and the Partnership and may be waived, in whole or in part, by the Partners and the Partnership in their sole discretion:

(a) **Truth of Representations and Warranties**. The representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date, it being understood that, for purposes of determining the accuracy of such representations and warranties, all materiality qualifications contained in such representations and warranties shall be disregarded, and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing shall not constitute a waiver of the representations and warranties of the Purchaser which are contained in this Agreement. Upon delivery of such certificate, the representations and warranties of the Purchaser in Article 5 shall be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.

(b) **Performance of Covenants**. The Purchaser shall have fulfilled or complied with all covenants contained in this Agreement to be fulfilled or complied with by it at or prior to Closing and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing shall not constitute a waiver by the Partners of the covenants of the Purchaser which are contained in this Agreement.

(c) **Deliveries**. The Purchaser shall deliver or cause to be delivered to the Partners the following in form and substance satisfactory to the Partners acting reasonably:

(i) certified copies of (i) the charter documents and extracts from the by-laws of the Purchaser relating to the execution of documents, (ii) all resolutions of the board of directors of the Purchaser approving the entering into and completion of the transactions contemplated by this Agreement and the Ancillary Agreements, and (iii) a list of its officers and directors authorized to sign agreements together with their specimen signatures;

(ii) a certificate of status, compliance, good standing or like certificate with respect to the Purchaser issued by appropriate government officials of the jurisdiction of its incorporation;

(iii) the certificates referred to in Section 7.2(a) and Section 7.2(b);

(iv) an opinion of counsel to Purchaser, in form and substance satisfactory to the Partners, acting reasonably;

(v) the employment agreement for Christian Toth referenced in Section 7.1(e)(vii), duly executed by the Purchaser;

(vi) the consulting/advisory agreement for James Wilson referenced in Section 7.1(e)(viii), duly executed by the Purchaser;

(vii) elections under section 22 and section 85 of the Tax Act;

(viii) the stock option agreements referenced in Section 7.1(e)(ix), duly executed by the Purchaser;

(ix) evidence of approval of the Toronto Stock Exchange to the issuance of the Issued Shares;

(x) the Escrow Agreement.

(d) **Proceedings**. All corporate proceedings to be taken in connection with the transactions contemplated in this Agreement and any Ancillary Agreement shall be reasonably satisfactory in form and substance to the Partners, acting reasonably, and the Partners shall have received copies of all the instruments and other evidence as they may reasonably request in order to establish the consummation of such transactions and the taking of all corporate proceedings in connection therewith.

(e) **No Legal Action.** No action or proceeding shall be pending or threatened by any Person (other than the Partners, the Principals or the Partnership) in any jurisdiction, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement**.**

ARTICLE 8
CLOSING

Section 8.1 Date, Time and Place of Closing.

The completion of the transaction of purchase and sale contemplated by this Agreement shall take place at the offices of Stikeman Elliott LLP, Suite 1700, Park Place, 666 Burrard Street, Vancouver, B.C., at 10:00 a.m. (Vancouver time) on the Closing Date or at such other place, on such other date and at such other time as may be agreed upon in writing between the Partners and the Purchaser.

Section 8.2 Closing Procedures.

Subject to satisfaction or waiver by the relevant Party of the conditions of closing, at the Closing, the Partners shall deliver actual possession of the Purchased Assets to the Purchaser and upon such delivery the Purchaser shall pay or satisfy the Purchase Price in accordance with Section 2.4.

Section 8.3 Risk of Loss.

If, prior to Closing, all or any material part of the Purchased Assets are destroyed or damaged by fire or any other casualty or are appropriated, expropriated or seized by any Governmental Entity, the Purchaser shall have the option, exercisable by notice in writing given within 4 Business Days of the Purchaser receiving notice in writing from the Partners of such destruction, damage, expropriation or seizure:

(a) to reduce the Purchase Price by an amount equal to the cost of repair, or, if destroyed or damaged beyond repair, by an amount equal to the replacement cost of the Purchased Assets so damaged or destroyed and to complete the purchase provided all proceeds of insurance for such damage or destruction are paid to the Partners immediately upon receipt; or

(b) to complete the transaction contemplated in this Agreement without reduction of the Purchase Price, in which event (i) all proceeds of any insurance (other than business interruption insurance as provided in (ii) below) or compensation for expropriation or seizure shall be paid to the Purchaser, and (ii) all proceeds of any business interruption insurance which compensates for business lost during the Interim Period less the sum of all deductibles on all other insurance shall be paid to the Purchaser immediately upon receipt; or

(c) to terminate this Agreement and not complete the transaction contemplated in this Agreement, in which case all obligations of the Purchaser and the Partners (save and except for their respective obligations under Section 2.5 regarding the Deposit, Section 6.3, Section 13.3, Section 13.4 and Section 13.6 which shall survive) shall terminate immediately upon the Purchaser giving notice as required herein.

ARTICLE 9
TERMINATION

Section 9.1 Termination Rights.

This Agreement may, by notice in writing given prior to or on the Closing Date, be terminated:

(a) by mutual consent of the Partners and the Purchaser;

(b) by the Purchaser if any of the conditions in Section 7.1 have not been satisfied at or prior to Closing and the Purchaser has not waived such condition at or prior to Closing;

(c) by the Partners if any of the conditions in Section 7.2 have not been satisfied at or prior to Closing and the Partners have not waived such condition at or prior to Closing;

(d) in the circumstances and upon the terms set out in Section 8.3; or

(e) by either Party if the Closing has not occurred on or before June 30, 2005 or such later date as the Purchaser and the Managing Partner agree to in writing, unless the Closing has not occurred by such date because the Party seeking to terminate this Agreement has failed to perform any one or more of its obligations or covenants under this Agreement to be performed at or prior to Closing.

Section 9.2 Effect of Termination.

(1) Each Party's right of termination under this Article is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Nothing in this Article limits or affects any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement. If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

(2) If this Agreement is terminated pursuant to Section 9.1, all obligations of the Parties under this Agreement will terminate, except that:

(a) all of the obligations under Section 2.5 regarding the Deposit, Section 6.3, Section 13.3, Section 13.4 and Section 13.6 will survive; and

(b) if this Agreement is terminated by a Party because of a breach of this Agreement by another Party or because a condition for the benefit of the terminating Party has not been satisfied because another Party has failed to perform any of its obligations or covenants under this Agreement which are reasonably capable of being performed or caused to be performed by such Party, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired.

ARTICLE 10
INDEMNIFICATION

Section 10.1 Survival.

(1) The representations and warranties contained in this Agreement and the certificates to be delivered pursuant to Section 7.1(a) and Section 7.2(a) will survive the Closing and continue in full force and effect for a period of two years after the Closing Date, except that:

(a) the representations and warranties set out in Section 4.1(a), Section 4.1(b), Section 4.1(c), Section 4.1(d), Section 4.1(e), Section 4.1(f), Section 5.1(a), Section 5.1(b), Section 5.1(c), Section 5.1(d) and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 7.1(a) and Section 7.2(a) will survive and continue in full force and effect without limitation of time; and

(b) the representations and warranties set out in Section 4.1(g) and Section 4.1(hh) (and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 7.1(a)), will survive and continue in full force and effect until 6 months after the expiration of the period (the **"tax assessment period"**) during which any tax assessment may be issued by a Governmental Entity in respect of any taxation year to which such representations and warranties extend. The tax assessment period will be determined without regard to any consent, waiver, agreement or other document, made or filed after the Closing Date that extends the period during which a Governmental Entity may issue a tax assessment. A tax assessment includes any assessment, reassessment or other form of recognized document assessing liability for Taxes under applicable Law; and

(c) any representation and warranty involving fraud or fraudulent misrepresentation by the Party giving that representation and warranty will survive and continue in full force and effect without limitation of time.

(2) No Party has any obligation or liability with respect to any representation or warranty made by such Party in this Agreement or the certificates to be delivered pursuant to Section 7.1(a) and Section 7.2(a) after the end of the applicable time period specified in Section 10.1(1) except for claims relating to the representations and warranties that the Party has been notified of prior to the end of the applicable time period.

Section 10.2 No Effect of Knowledge.

The right to indemnification or other remedy of any Party based on the representations, warranties, covenants and obligations contained in this Agreement and the certificates to be delivered pursuant to Section 7.1(a) and Section 7.2(a), exists notwithstanding the Closing and notwithstanding any investigation or knowledge acquired prior to the Closing.

Section 10.3 Indemnification in Favour of the Purchaser.

(1) The Partners and the Principals will jointly and severally indemnify and save the Purchaser and its shareholders, directors, officers, employees, agents and representatives, where applicable, harmless, of and from, and will pay for, any Damages suffered by, imposed upon or asserted against it or any of them as a result of, in respect of, connected with, or arising out of, under, or pursuant to:

(a) any material breach or material inaccuracy of any representation or warranty given by any of the Partners or the Principals contained in this Agreement or the certificate to be delivered pursuant to Section 7.1(a) (it being understood that, for purposes of determining the accuracy of such representations and warranties, all materiality qualifications and similar qualifications contained in such representations and warranties shall be disregarded), for which a notice of claim under Section 10.6 has been provided to the Partners or the Principals within the applicable period specified in Section 10.1;

(b) any failure of the Partners or the Principals to perform or fulfil any of their covenants or obligations under this Agreement;

(c) the failure of the Partners or the Partnership to comply with all applicable Laws governing privacy and the protection of personal information, including the *Personal Information Protection Act* (British Columbia); and

(d) any Excluded Liabilities.

Section 10.4 Indemnification in Favour of the Partners.

The Purchaser will indemnify and save the Partners, the Principals and their shareholders, directors, officers, employees, agents and representatives harmless of and from and will pay for any Damages suffered by, imposed upon or asserted against it or any of them as a result of, in respect of, connected with, or arising out of, under or pursuant to:

(a) any material breach or material inaccuracy of any representation or warranty given by the Purchaser contained in this Agreement or the certificate to be delivered pursuant to Section 7.2(a) (it being understood that, for purposes of determining the accuracy of such representations and warranties, all materiality qualifications and similar qualifications contained in such representations and warranties shall be disregarded), for which a notice of claim under Section 10.6 has been provided to the Purchaser within the applicable period specified in Section 10.1;

(b) any failure of the Purchaser to perform or fulfil any of its covenants or obligations under this Agreement; and

(c) the Assumed Liabilities.

Section 10.5 Limitation on Amount.

The Partners and the Principals will have no obligation to make any payment for Damages (for indemnification or otherwise) until the total of all Damages with respect to such matters suffered by the Purchaser or its indemnified persons under Section 10.3 exceeds $50,000. The Purchaser will have no obligation to make any payment for Damages (for indemnification or otherwise) until the total of all Damages with respect to such matters suffered by the Partners, the Principals and their indemnified persons under Section 10.4 exceeds $50,000. Once the total of all Damages with respect to such matters exceeds $50,000, the Partners and the Principals, jointly and severally, or the Purchaser, as the case may be, will be fully liable for all such Damages, both below and above the threshold amount. The threshold set forth herein does not apply in respect of the liabilities of the Purchaser assumed pursuant to Article 12.

Section 10.6 Notification.

(1) If a Third Party Claim is instituted or asserted against an Indemnified Person, the Indemnified Person will notify the Indemnifying Party in writing of the Third Party Claim.

(2) If an Indemnified Person becomes aware of a Direct Claim, the Indemnified Person will notify the Indemnifying Party in writing of the Direct Claim.

(3) Notice to an Indemnifying Party under this Section of a Direct Claim or a Third Party Claim is assertion of a claim for indemnification against the Indemnifying Party under this Agreement.

(4) The omission to notify the Indemnifying Party will not relieve the Indemnifying Party from any obligation to indemnify the Indemnified Person, unless the notification occurs after the expiration of the specified period set out in Section 10.1 or (and only to that extent that) the omission to notify materially prejudices the ability of the Indemnifying Party to exercise its right to defend provided in Section 10.7.

Section 10.7 Procedure for Third Party Claims.

(1) Upon receiving notice of a Third Party Claim, the Indemnifying Party may participate in the investigation and defence of the Third Party Claim, subject to the terms of this Section. The Indemnifying Party may also elect to assume the investigation and defence of the Third Party Claim, subject to the terms of this Section. An Indemnifying Party may not participate in or assume the investigation or defence of a Third Party Claim if it relates to Taxes of the Indemnified Person.

(2) In order to assume the investigation and defence of a Third Party Claim, the Indemnifying Party must give the Indemnified Person written notice of its election within 15 days of Indemnifying Party's receipt of notice of the Third Party Claim.

(3) The Indemnifying Party may not assume the investigation and defence of a Third Party Claim if:

(a) the Indemnifying Party is also a party to the Third Party Claim and the Indemnified Person determines in good faith that joint representation would be inappropriate;

(b) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend the Third Party Claim and provide indemnification with respect to the Third Party Claim;

(c) the Indemnifying Party does not unconditionally acknowledge in writing its obligation to indemnify and hold the Indemnified Person harmless with respect to the Third Party Claim; or

(d) the Third Party Claim seeks relief against the Indemnified Person other than monetary damages or the Indemnified Person determines in good faith that there is a reasonable probability that the Third Party Claim may adversely affect it or its affiliates or the Business, other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, and the Indemnified Person has notified the Indemnifying Party that it will assume the exclusive right to defend, compromise or settle the Third Party Claim.

(4) If the Indemnifying Party assumes the investigation and defence of a Third Party Claim:

(a) the Indemnifying Party will pay for all costs and expenses of the investigation and defence of the Third Party Claim except that the Indemnifying Party will not, so long as it diligently conducts such defence, be liable to the Indemnified Person for any fees of other counsel or, except as provided in (b) or (8) below, any other expenses with respect to the defence of the Third Party Claim, incurred by the Indemnified Person after the date the Indemnifying Party validly exercised its right to assume the investigation and defence of the Third Party Claim;

(b) the Indemnifying Party will reimburse the Indemnified Person for all costs and expenses incurred by the Indemnified Person in connection with the investigation and defence of the Third Party Claim prior to the date the Indemnifying Party validly exercised its right to assume the investigation and defence of the Third Party Claim; and

(c) legal counsel chosen by the Indemnifying Party to defend the Third Party Claim must be satisfactory to the Indemnified Person, acting reasonably.

(5) If the Indemnifying Party (i) is not entitled to assume the investigation and defence of a Third Party Claim under Section 10.7(1) or Section 10.7(3), other than Section 10.7(3)(d), (ii) does not elect to assume the investigation and defence of a Third Party Claim, (iii) assumes the investigation and defence of a Third Party Claim but fails to diligently pursue such defence, or the Indemnified Person concludes that the Third Party Claim is not being defended to its satisfaction, acting reasonably, the Indemnified Person has the right (but not the obligation) to undertake the defence of the Third Party

Claim and, thereafter, compromise and settle the Third Party Claim on behalf, for the account, and at the risk and at the cost and expense of the Indemnifying Party. In the case where the Indemnifying Party fails to diligently pursue the defence of the Third Party Claim or the Indemnified Person concludes that the Third Party Claim is not being defended to its satisfaction, acting reasonably, the Indemnified Person may not assume the defence of the Third Party Claim unless the Indemnified Person gives the Indemnifying Party written demand to diligently pursue the defence and the Indemnifying Party fails to do so within 14 days after receipt of the demand, or such shorter period as may be reasonably required to respond to any deadline imposed by a court, arbitrator or other tribunal.

(6) If, under Section 10.7(3)(d), the Indemnifying Party is not entitled to assume the investigation and defence of a Third Party Claim, the Indemnifying Party will not be bound by any determination of the Third Party Claim or any compromise or settlement of the Third Party Claim effected without the consent of the Indemnifying Party (which consent may not be unreasonably withheld or delayed).

(7) The Indemnifying Party will not be permitted to compromise and settle or to cause a compromise and settlement of a Third Party Claim without the prior written consent of the Indemnified Person, which consent may not be unreasonably withheld or delayed.

(8) The Indemnified Person and the Indemnifying Party agree to keep the other fully informed of the status of any Third Party Claim and any related proceedings. If the Indemnifying Party assumes the investigation and defence of a Third Party Claim, the Indemnified Person will, at the request and expense of the Indemnifying Party, use its reasonable efforts to make available to the Indemnifying Party, on a timely basis, those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in investigating and defending the Third Party Claim. The Indemnified Person shall, at the request and expense of the Indemnifying Party, make available to the Indemnifying Party, or its representatives, on a timely basis all documents, records and other materials in the possession, control or power of the Indemnified Person, reasonably required by the Indemnifying Party for its use solely in defending any Third Party Claim which it has elected to assume the investigation and defence of. The Indemnified Person shall reasonably cooperate on a timely basis with the Indemnifying Party in the defence of any Third Party Claim.

ARTICLE 11
POST-CLOSING COVENANTS

Section 11.1 Partners' and Principals' Confidentiality.

After the Closing, each of the Partners and the Principals will, except solely for the purposes of the Business if they are employed by it or provide consulting/advisory services to it, keep confidential all information in its or his possession or under its or his control relating to the Partnership, the Purchased Assets and the Business, unless required by law or unless such information is or becomes generally available to the public other than as a result of a disclosure by the Partners or the Principals in violation of this Agreement.

Section 11.2 Assistance By Partners and the Partnership.

In order that the Purchaser may realize the full benefit of the Purchased Contracts, Leases and the Contractual Rights that cannot by their terms be assigned or that require the consent of a third party which consent cannot be obtained on terms satisfactory to the Purchaser, each of the Partners and the Partnership shall, at the request and expense and under the direction of the Purchaser, in the name of the Partners or the Partnership or otherwise as the Purchaser shall specify:

(a) hold such Purchased Contracts, Leases and Contractual Rights in trust for the benefit of the Purchaser;

(b) take all such action and do or cause to be done all such things as shall, in the opinion of the Purchaser, be necessary or proper in order that the obligations of the Partners and the Partnership may be performed in such manner that the value of such Purchased Contracts, Leases and Contractual Rights are preserved and enure to the benefit of the Purchaser, and that the collection of moneys due and payable to the Purchaser in and under such Purchased Contracts, Leases and Contractual Rights are received by the Purchaser; and

(c) promptly pay over to the Purchaser all moneys collected by or paid to the Partners or the Partnership in respect of every such Purchased Contract, Lease and Contractual Right.

For greater certainty, if the Partnership is wound up, all obligations of the Partnership shall become obligations of the Partners.

Section 11.3 Further Assurances.

From time to time after the Closing Date, each Party shall, at the request of any other Party, execute and deliver such additional conveyances, transfers and other assurances as may be reasonably required to effectively transfer the Purchased

Assets to the Purchaser and carry out the intent of this Agreement and any Ancillary Agreement.

Section 11.4 Name Change.

Immediately following the Closing, the Managing Partner, the Partnership and Off the Wall Holdings Ltd. will change their names to one that does not use, alone or in combination with any other words, the words "Off the Wall" and shall not in future use such name.

Section 11.5 Consent to Use of Historical Financial Information.

The Partners and the Partnership hereby consent to (and agree to sign a separate consent form for this purpose at the Closing) the use by the Purchaser of the financial information of the Business for the period up to and including the Closing Date for all purposes required to comply with the obligations of the Purchaser under applicable securities Laws.

Section 11.6 Access to Books and Records.

For a period of 7 years from the Closing Date, the Purchaser shall retain all original accounting Books and Records relating to the Business for the period prior to the Closing Date, but the Purchaser shall not be responsible or liable to the Partners, the Principals or the Partnership for any accidental loss or destruction of or damage to any such Books and Records. For so long as such Books and Records are retained by the Purchaser pursuant to this Agreement, the Partners, the Principals and the Partnership shall have the reasonable right to inspect and make copies (at its own expense) of them upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser. The Purchaser shall have the right to have its representatives present during any such inspection.

ARTICLE 12
EMPLOYEES

Section 12.1 Employees.

(1) Subject to the Closing, the Purchaser agrees to offer employment effective as of the Closing Date on terms substantially similar in the aggregate for each employee to those existing as of the Closing Date to all of the Employees in the form of the letter attached as Schedule 12.1(1). In such offer, and subject to Section 12.2, the Purchaser shall recognize, to the extent previously recognized by the Partnership the service of the Employees for all purposes.

(2) None of the Parties shall attempt in any way to discourage Employees from accepting the offer of employment made by the Purchaser.

Section 12.2 Employee Liability.

The Purchaser shall not assume any of the Employee Plans or liability for accrued benefits or any other liability under or in respect of any of the Employee Plans. The Transferred Employees shall, as of the Closing Date in respect of their employment by the Partnership cease to accrue further benefits under the Employee Plans. The Purchaser agrees that it shall permit the Transferred Employees to participate in benefit plans sponsored by the Purchaser in its discretion (such plans to be called the "**Replacement Plans**"). The Purchaser shall cause each Replacement Plan to recognize the prior service of the Transferred Employee rendered to the Partnership for purposes of eligibility to participate, vesting and entitlement to benefits under such Replacement Plans but not for the purpose of benefit accrual.

Section 12.3 Employee Liability.

Without limiting the Purchaser's obligations in respect of the Transferred Employees the Purchaser shall be responsible for:

(a) All liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to employment of all Transferred Employees in respect of the period on or after the Closing Date and all liabilities under or in respect of the Replacement Plans;

(b) All severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Purchaser (or by the Partnership for terminations after the Closing Date) of the employment of any Transferred Employee;

(c) All liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees in the Business in respect of the period on or after the Closing Date;

(d) All employment-related claims, penalties and assessments in respect of the Business made by the Transferred Employees.

ARTICLE 13
MISCELLANEOUS

Section 13.1 Notices.

Any notice, direction or other communication (each a **"Notice"**) given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed:

(a) to the Purchaser at:

4335 Mainway Drive
Burlington, Ontario
L7L 5N9
Attention: Peter Pigott
Telephone: (905) 315-8400
Facsimile: (905) 315-8134

with a copy (which shall not constitute notice) to:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Simon Romano and Samantha Horn
Telephone: (416) 869-5596 and (416) 869-5636
Facsimile: (416) 947-0866

(b) to the Partnership, the Partners and the Principals at:

to Christian Toth or C.I.T. Holdings Limited:

#32 120 Powell Street
Vancouver
V6A 1G1

Attention: Christian Toth
Facsimile:

to the Managing Partner or James Wilson:

17008 - 20th Avenue, RR7
Surrey, BC
V4B 5A8

Attention: James Wilson
Facsimile: (604) 536-7287

with a copy (which shall not constitute notice) to:

Davis & Company
2800 Park Place
666 Burrard Street

Vancouver, BC V6C 2Z7

Attention: Robert Swift
Telephone: (604) 643-2974
Facsimile: (604) 605-3539

A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent by same-day service courier, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (iii) if sent by overnight courier, on the next Business Day, or (iv) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. The failure to send a copy of a Notice to legal counsel in accordance with the foregoing shall not invalidate any Notice given to a Party in accordance with this Section.

Section 13.2 Time of the Essence.

Time is of the essence in this Agreement.

Section 13.3 Brokers.

The Partners and the Principals shall jointly and severally indemnify and save harmless the Purchaser and the Partnership from and against any and all claims, losses and costs whatsoever for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Partners or the Partnership. The Purchaser shall indemnify and save harmless the Partners and the Principals from and against any and all claims, losses and costs whatsoever for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Purchaser. These indemnities are not subject to any of the limitations set out in Article 10.

Section 13.4 Announcements.

No press release, public statement or announcement or other public disclosure (a **"Public Statement"**) with respect to this Agreement or the transactions contemplated in this Agreement may be made prior to Closing except with the prior written consent and joint approval of the Partners and the Purchaser, or if required by Law or a Governmental Entity. Where the Public Statement is required by Law or a Governmental Entity, the Party required to make the Public Statement will use its commercially reasonable efforts to obtain the approval of the other Party as to the form, nature and extent of the disclosure. After the Closing, any Public Statement by the Partners and the Principals may be made only with the prior written consent and approval of the Purchaser unless the Public Statement is required by Law or a Governmental Entity, in which case the Partners and the Principals shall use their commercially reasonable efforts to obtain the approval of the Purchaser as to the form, nature and extent of the disclosure.

Section 13.5 Third Party Beneficiaries.

Except as otherwise provided in Section 10.3 and Section 10.4, the Parties intend that this Agreement will not benefit or create any right or cause of action in favour of any Person, other than the Parties. Except for the Indemnified Persons, no Person, other than the Parties, shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. Despite the foregoing, the Partners and the Principals acknowledge to each of the Purchaser's Indemnified Persons their direct rights against it under Section 10.3 of this Agreement and the Purchaser acknowledges to each of the Vendor's Indemnified Persons their direct rights against them under Section 10.4 of this Agreement. To the extent required by law to give full effect to these direct rights, the Partners and the Purchaser agree and acknowledge that they are acting as agent of their respective Indemnified Persons. The Parties reserve their right to vary or rescind the rights at any time and in any way whatsoever, if any, granted by or under this Agreement to any Person who is not a Party, without notice to or consent of that Person, including any Indemnified Person.

Section 13.6 Expenses.

Except as otherwise expressly provided in this Agreement, each Party will pay for its own costs and expenses incurred in connection with this Agreement and any Ancillary Agreement and the transactions contemplated by them.

Section 13.7 Amendments.

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Parties.

Section 13.8 Waiver.

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party’s failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

Section 13.9 Non-Merger.

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties shall not merge on and shall survive the Closing. Notwithstanding the Closing or any investigation made by or on behalf of any Party, the covenants, representations and warranties shall continue in full force and effect. Closing shall not prejudice any right of one Party against any other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

Section 13.10 Entire Agreement.

This Agreement, together with the Ancillary Agreements, constitutes the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, including in respect of the Deposit. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement or the confidentiality agreement between the Parties dated February 8, 2005. The Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 13.11 Successors and Assigns.

(1) This Agreement becomes effective only when executed by the Parties. After that time, it will be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

(2) Upon giving notice to the Partners and the Principals at any time on or after the Closing Date, the Purchaser is entitled to assign this Agreement or any of its rights (but without affecting its obligations) under this Agreement to any of its affiliates (as such term is defined under the *Business Corporations Act* (Ontario)).

(3) The Purchaser may assign the benefits of this Agreement, in whole or in part to a lender or lenders as continuing collateral security for obligations owed to it or them without consent of the other Parties. Upon receipt of an appropriate notice, the Partners and the Principals will make payment of any amounts due to the Purchaser to any assignee or as any assignee may direct.

(4) The Purchaser may assign its rights and obligations under this Agreement, in whole or in part, to any subsequent purchaser of the Purchaser or any

material portion of its assets, whether such sale is structured as a sale of shares, a sale of assets, a merger or otherwise.

Section 13.12 Severability.

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions shall remain in full force and effect.

Section 13.13 Governing Law.

This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

Section 13.14 Counterparts.

This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have executed this Asset Purchase Agreement.

OFF THE WALL HOLDINGS (2004) LTD.

Per: *James Wilson ('Signed")*

Name: James Wilson

Title: President

C.I.T. HOLDINGS LIMITED

Per: *Christian Toth ("Signed")*

Name: Christian Toth

Title: President

OFF THE WALL, by its managing partner, OFF THE WALL HOLDINGS (2004) LTD.

Per: *James Wilson (‘Signed”)*

Name: James Wilson

Title: President

Catherine Brunino (“Signed”)

Witness

Christian Toth (“Signed”)

Christian Toth

Catherine Brunino (“Signed”)

Witness

James Wilson (‘Signed”)

James Wilson

WEST 49 INC.

Per: *Peter Pigott (“Signed”)*

Name: Peter Pigott

Title: Chief Operating Officer