

EX-10.47 19 b316817_ex10-47.txt STOCK PURCHASE AGREEMENT EXHIBIT D NON-COMPETITION AND NON-DISCLOSURE AGREEMENT AGREEMENT (this "Agreement"), made and entered into as of the ____ day of _____, 2002, by and between COMMERCIAL CONSOLIDATORS CORP., a corporation organized under the laws of Alberta, Canada ("Purchaser"); AMERICAN WAY IMPORTING, INC., a California corporation (the "Company"); and those individuals who have executed this Agreement on the signature page under the designation "Stockholders" (individually, a "Stockholder" and collectively, the "Stockholders"); W I T N E S S E T H : WHEREAS, Purchaser has agreed to acquire from the Stockholders 100% of the shares of capital stock of the Company pursuant to the terms of a stock purchase agreement dated January __, 2002 (the "Purchase Agreement") among Purchaser, the Company, and the Stockholders; and WHEREAS, by reason of their prior ownership of the capital stock of the Company and employment in the Company, each of the Stockholders has detailed knowledge and possesses confidential information concerning the Company and the business and operations thereof, and WHEREAS, on the date hereof, the Company, (i) an Affiliate of Steven Javidzad, one of the Stockholders, is entering into separate consulting agreement (the "Consulting Agreement") pursuant to which such Stockholders Affiliate will provide consulting services to the Company, and (ii) certain of the other Stockholders will continue to be employed by the Company, and in connection with which such Stockholders will continue to have access to confidential and proprietary information relating to the business of the Company; and WHEREAS, in order to induce Purchaser to consummate the transactions contemplated by the Purchase Agreement, and to induce Purchaser to cause the Company to enter into the Consulting Agreement and to continue to employ certain of the other Stockholders, each of the Stockholders has agreed, and Purchaser has required the Stockholders, to enter into this Agreement; NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereby agree as follows: 1. Restrictive Covenants. (a) Each of the Stockholders do hereby acknowledge and agree that: (i) the business contacts, customers, suppliers, technology, know-how, trade secrets, marketing techniques and other aspects of the Company have been of substantial value to the Company, and will hereafter provide Purchaser with substantial competitive advantage, (ii) such elements and aspects of the Business are not generally known to the public or available through any source other than the Stockholders, and reasonable efforts have been made to maintain the confidentiality thereof to the date hereof, (iii) they have detailed knowledge of and possesses confidential information concerning the Company, and (iv) by reason of their duties and responsibilities pursuant to the Consulting Agreement and their continued employment with the Company, they will become privy to confidential and proprietary information of the Company. 1 (b) Each of the Stockholders do hereby agree, for the benefit of Purchaser, the Company and their respective subsidiaries, successors and assigns, that neither he nor she shall, directly or indirectly, for himself or herself or through or on behalf of any other person or entity: (i) at any time from and after the date hereof, divulge, transmit or otherwise disclose or cause to be divulged, transmitted or otherwise disclosed, any business contacts, client or customer lists, technology, know-how, trade secrets, marketing techniques, contracts or other confidential or proprietary information of or relating to the Company or its subsidiaries of whatever nature (provided, however, that for purposes hereof, information shall not be considered to be confidential or proprietary if (A) it is a matter of common knowledge or public record, (B) it is generally known throughout the industry, or (C) such Stockholder can demonstrate that such information was already known to the recipient thereof other than by reason of any breach of any obligation under this Agreement or any other confidentiality or nondisclosure agreement); and/or (ii) at any time from the date hereof through and including February 28, 2006, invest, carry on, engage or become involved, either as an owner, principal, agent, advisor, stockholder (excluding passive ownership of not more than 1% of the outstanding shares of a publicly held corporation if such ownership does not involve managerial or operational involvement or activity), manager, partner, joint venturer, participant or consultant, in any business enterprise (other than Purchaser, the Company and their subsidiaries, successors or assigns) which derives 10% or more of their consolidated revenues from the business of purchasing, marketing, distributing and selling cellular telephones, pagers and other telecommunications devices (the "Business"). (iii) Notwithstanding the foregoing provisions of paragraph 1(b)(ii), it shall not be a violation of paragraph 1(b)(ii) for any of the Stockholders to own an equity interest in Wireless Lines Corporation or Platinum Wireless Corporation, both Affiliates of the Stockholders (collectively, "Wireless Lines"), if and for so long as Wireless Lines or any subsidiary or Affiliate of such corporations shall not: (A) sell any products, on a wholesale basis, which are carried and sold by the Company on the Closing Date, other than not more than 5,000 cellular phones per year which may be sold on a bulk basis by Wireless Lines; or (B) otherwise engage in direct competition with the Business now or hereafter conducted by the Company. (c) Unless otherwise separately defined in this Agreement, when used herein, all capitalized terms shall have the same meaning as is defined in the Purchase Agreement. 2. Remedies. The parties hereby acknowledge and agree that any breach by any of the Stockholders or any of their respective Affiliates, directly or indirectly, of any of the foregoing restrictive covenants will cause Purchaser and the Company irreparable injury for which there is no adequate remedy at law. Accordingly, the Stockholders do hereby expressly agree that, in the event that any of the Stockholders or any of their respective Affiliates shall commit any such breach or any threatened breach hereunder, directly or indirectly, Purchaser and/or the Company shall be entitled, in addition to any and all other remedies available at law, to seek and obtain, without requirement of posting any bond or other security, injunctive and/or other equitable relief to require specific performance of or prevent, restrain and/or enjoin the breaching party or parties under the provisions of this Agreement. 2 3. Expenses. In the event of any dispute under or arising out of this Agreement, the prevailing party in such dispute shall be entitled to recover from the non-prevailing party, in addition to any damages and/or other relief that may be awarded, its reasonable costs and expenses (including reasonable attorneys' fees) incurred in connection with prosecuting or defending the subject dispute. 4. Benefits and Obligations. This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by Purchaser and/or the Company and their respective affiliates, successors and assigns, and the Stockholders and their respective affiliates, successors and assigns; provided, however, that neither Russell's nor Speciale's obligations contained herein may not be delegated or assigned. 5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America. 6. Resolution of Certain Disputes. Except for any claim or proceeding seeking to assert or obtain equitable remedies hereunder (including, without limitation, injunctive relief and/or specific enforcement), which claim or proceeding may be asserted or brought in any court of competent jurisdiction sitting in California (as to which courts, the parties hereby consent to the jurisdiction thereof), any dispute involving the interpretation or application of this Agreement shall be resolved in accordance with the procedures specified in the Purchase Agreement. 7. Severability. It is acknowledged, understood and agreed that the restrictions contained in this Agreement (a) are made for good, valuable and adequate consideration received and to be received by each of the Stockholders, (b) are reasonable and necessary, in terms of the time, geographic scope and nature of the restrictions, for the protection of Purchaser and/or the Company and their respective Affiliates and their good will, and (c) will not pose any undue hardship on any Stockholder or materially impair his or her ability to support himself. It is intended that said provisions be fully severable, and in the event that any of the foregoing restrictions, or any portion of the foregoing restrictions, shall be deemed contrary to law, invalid or unenforceable in any respect by any court or other tribunal of competent jurisdiction, then such restrictions shall be deemed to be amended, modified and reduced in scope and effect, only to that extent necessary to render same valid and enforceable, and all other restrictions shall be unaffected and shall remain in full force and effect. 8. Waiver, Amendment or Modification. Neither this Agreement nor any of the terms and conditions hereof may be waived, amended or modified except by means of a written instrument duly executed by the party to be charged therewith. No waiver of any provision, performance or default hereunder in any instance shall be construed as a continuing waiver of such provision, performance or default, or a waiver of any other provision, performance or default, or of any future performance or default. 3 9. Notices. Any notice, request, demand or other communication required or permitted under this Agreement shall be in writing and shall be given in the manner provided in the Purchase Agreement. 10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above. COMMERCIAL CONSOLIDATORS CORP. By: _____ AMERICAN WAY IMPORTING, INC. By: _____ STOCKHOLDERS: _____ STEVEN JAVIDZAD _____ SHAWN JAVIDZAD _____ JEFF JAVIDZAD _____ BOBBY MELAMED 4 _____ BAZE

