

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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**FORM 8-K**

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

**Date of Report:**

**December 31, 2003**

**(Date of earliest event reported)**

**Segmentz, Inc.**

**(Exact name of registrant as specified in its charter)**

**Delaware**

**000-49606**

**03-0450326**

**(State or other jurisdiction of incorporation or organization)**

**(Commission File Number)**

**(I.R.S. Employer Identification Number)**

**18302 Highwoods Preserve Parkway Suite 100 Tampa, FL 33647**

**(Address of principal executive offices)**

**Registrant's telephone number, including area code:**

**(813) 989-2232**

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## **Item 2. Acquisition or Disposition of Assets.**

On December 31, 2003, Segmentz, Inc. acquired all of the issued and outstanding capital stock of Dasher Express, Inc. ("Acquired Companies") from Brad Kelley and Jeff Wiseman for cash consideration of \$1,300,000, 538,462 shares of Segmentz, Inc. restricted common stock and conditional payments based upon incentives over a four year period (the "Consideration"), pursuant to terms and conditions of a Stock Purchase Agreement dated December 1, 2003 (the "Stock Purchase Agreement"). The Consideration was paid for out of existing cash on hand.

Except for the transactions contemplated in the Stock Purchase Agreement, there are no material relationships between Segmentz or any of its affiliates, directors or officers, or any associate of any such directors and officers, and any of the Acquired Companies.

Dasher is in the business of providing expedited trucking, scheduled line haul movements, trade show transportation and integrated third party logistics services. Dasher will continue its business operations post closing.

A copy of the Stock Purchase Agreement and a copy of Segmentz's press release related to this event are respectively filed as Exhibit 2.1 and Exhibit 99.1 to this Form 8-K and are incorporated herein by reference.

## **Item 7. Financial Statements and Exhibits.**

### **(a) Financial Statements of Business Acquired**

The Financial Statements required by Item 7(a) of Form 8-K shall be filed by amendment to this Form 8-K no later than March 15, 2004.

### **(b) Pro Forma Financial Information**

The Financial Statements required by Item 7(b) of Form 8-K shall be filed by amendment to this Form 8-K no later than March 15, 2004.

### **(c) Exhibits**

2.1 Stock Purchase Agreement dated as of December 1, 2003 by and among Segmentz, Inc., Brad Kelley and Jeff Wiseman.

10.1 Employment Agreement dated as of December 1, 2003 by and between Segmentz, Inc. and Brad Kelley

10.2 Employment Agreement dated as of December 1, 2003 by and between Segmentz, inc. and Jeff Wiseman

99.1 Press Release from Segmentz, Inc. issued on January 6, 2004.

**SIGNATURE**

Pursuant to the requirements of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SEGMENTZ, INC.

By: /s/ John S. Flynn

Name: John S. Flynn

Title: President, Chief Financial Officer and Secretary

Date: January 13, 2004

## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (the " Agreement" ) entered into on December 1, 2003, by and among **Segmentz, Inc.**, a Delaware corporation (the "Buyer"), and **Brad Kelley** (" BK" ), and **Jeff Wiseman** (" JW" and together with BK collectively the "Sellers"). The Buyer and the Sellers are referred to collectively herein as the "Parties."

The Sellers in the aggregate own all of the outstanding capital stock of **Dasher Express, Inc.**, a Kentucky corporation (" Dasher" ), referred to herein as the ("Target").

This Agreement contemplates a transaction in which the Buyer will purchase from the Sellers, and the Sellers will sell to the Buyer, all of the outstanding capital stock of the Target owned by the Sellers in return for cash and shares of common stock of Buyer, upon the terms and conditions set forth herein.

In connection with the negotiation and preparation of this Agreement, the Sellers have prepared, and the Buyer has reviewed, a set of documents delivered separately, identified in Exhibit " A" attached hereto, and a Disclosure Schedule dated the date hereof, attached hereto as Exhibit " B" (the " Disclosure Schedule" ), with any references in this Agreement to a Schedule being the Disclosure Schedule or a document referenced in the Disclosure Schedule.

Now, therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows.

### 1. Definitions.

"Accredited Investor" has the meaning set forth in Regulation D promulgated under the Securities Act.

"Adverse Consequences" means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement, Liabilities, obligations, Taxes, liens, losses, expenses, and fees, including court costs and reasonable attorneys' fees and expenses.

"Affiliate" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act.

"Affiliated Group" means any affiliated group within the meaning of Code §1504(a) or any similar group defined under a similar provision of state, local or foreign law.

" Annual Payment Amount" means the payment made to the Sellers based upon meeting or exceeding benchmarks for Revenues as defined in §3(b)(iii) below.

"Basis" means any past or present fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction that forms or could form the basis for any specified consequence.

"Buyer" has the meaning set forth in the preface above.

"Buyer Financial Statements" has the meaning set forth in §3(b) below.

" Buyer SEC Documents" has the meaning set forth in §3(b) below.

"Buyer Shares" means any and all restricted shares of common stock of Buyer transferred or transferable to Sellers pursuant to the terms and provisions in §2(b) below, the restrictions thereon being as set forth under Rule 144 of the Securities and Exchange Act of 1933, as amended, with such shares to bear the following restrictive legend, " This certificate and the shares of stock represented hereby have not been registered under the Securities Act of 1933, as amended. These shares may not be transferred, except in a transaction that is exempt under Rule 144 or pursuant to an effective registration statement."

"Closing" has the meaning set forth in §2(c) below.

"Closing Date" has the meaning set forth in §2(c) below.

"Code" means the Internal Revenue Code of 1986, as amended.

"COBRA" means the requirements of Part 6 of Subtitle B of Title I of ERISA and Code §4980B.

"Confidential Information" means any information concerning the businesses and affairs of the Target and its Subsidiaries that is not already generally available to the public.

"Controlled Group" has the meaning set forth in Code §1563.

"Deferred Intercompany Transaction" has the meaning set forth in Reg. §1.1502-13.

"Disclosure Schedule" has the meaning set forth in the preface above and in §4 below, and is attached hereto as Exhibit " B" .

"Employee Benefit Plan" means any (a) nonqualified deferred compensation or retirement plan or arrangement, (b) qualified defined contribution retirement plan or arrangement which is an Employee Pension Benefit Plan, (c) qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit Plan (including any Multiemployer Plan), or (d) Employee Welfare Benefit Plan or material fringe benefit or other retirement, bonus, or incentive plan or program.

"Employee Pension Benefit Plan" has the meaning set forth in ERISA §3(2).

"Employee Welfare Benefit Plan" has the meaning set forth in ERISA §3(1).

"Employment Agreements" shall mean the form of the Employment Agreements attached hereto as Exhibits " C-1" and " C-2" , to be executed at the Closing by and between the Buyer and each of the Sellers.

"Environmental, Health, and Safety Requirements" shall mean all federal, state, local and foreign statutes, regulations, ordinances and other provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations and all common law concerning public health and safety, worker health and safety, and pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation, each as amended and as now or hereafter in effect.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means each entity, which is treated as a single employer with the Target for purposes of Code §414.

"Excess Loss Account" has the meaning set forth in Reg. §1.1502-19.

"Fiduciary" has the meaning set forth in ERISA §3(21).

"Financial Statement" has the meaning set forth in §4(g) below.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Indebtedness" means the term accounts payable item identified in the Most Recent Financial Statement as a long-term liability, attached to the Disclosure Schedule as Schedule C.

"Indemnified Party" has the meaning set forth in §8(d) below.

"Indemnifying Party" has the meaning set forth in §8(d) below.

"Intellectual Property" means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (b) all trademarks, service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (d) all mask works and all applications, registrations, and renewals in connection therewith, (e) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (f) all computer software (including data and related documentation), (g) all other proprietary rights, and (h) all copies and tangible embodiments thereof (in whatever form or medium).

"Knowledge" means actual knowledge after reasonable investigation.

"Liability" means any actually known liability or any actually known asserted liability by any third party (whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any actually known liability or any actually known asserted liability for Taxes.

"Most Recent Balance Sheet" means the balance sheet contained within the Most Recent Financial Statements.

"Most Recent Financial Statements" has the meaning set forth in §4(g) below.

"Most Recent Fiscal Month End" has the meaning set forth in §4(g) below.

"Most Recent Fiscal Year End" has the meaning set forth in §4(g) below.

"Multiemployer Plan" has the meaning set forth in ERISA §3(37).

"Ordinary Course of Business" means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).

"Party" has the meaning set forth in the preface above.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

"Prohibited Transaction" has the meaning set forth in ERISA §406 and Code §4975.

"Piggyback Registration Rights" are rights granted to holders of stock bearing restrictive legend under the Securities Act of 1933, as amended, that limits sale of such stock to transactions that meet requirements for Rule 144 exemption, that provide for the registration of shares in any registration statement filed by the Company for any shareholders.

"Purchase Price" has the meaning set forth in §2(b) below.

"Reportable Event" has the meaning set forth in ERISA §4043.

"Revenues" means the annual gross sales of the Target for all services provided to customers.

"Securities Act" means the Securities Act of 1933, as amended.

"Securities Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Security Interest" means any mortgage, pledge, lien, encumbrance, charge, or other security interest, other than (a) mechanic's, materialmen's, and similar liens, (b) liens for Taxes not yet due and payable, (c) purchase money liens and liens securing rental payments under capital lease arrangements, (d) the existing mortgage lien on the Target's real estate (as set forth in the Disclosure Schedule)<sup>1</sup>, and (e) other liens arising in the Ordinary Course of Business and not incurred in connection with the borrowing of money.

"Sellers" has the meaning set forth in the preface above.

"Subsidiary" means any corporation with respect to which a specified Person (or a Subsidiary thereof) owns a majority of the common stock or has the power to vote or direct the voting of sufficient securities to elect a majority of the directors.

"Target" has the meaning set forth in the preface above.

"Target Share" means any share of the Common Stock of the Target.

"Tax" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Third Party Claim" has the meaning set forth in §8(d) below.

## 2. Purchase and Sale of Target Shares.

(a) Basic Transaction. On and subject to the terms and conditions of this Agreement, the Buyer agrees to purchase from each of the Sellers, and each of the Sellers agrees to sell to the Buyer, all of his and her Target Shares for the consideration specified below in this §2.

b) Purchase Price. The Buyer agrees to pay to the Sellers the purchase price (the "Purchase Price") as follows:

(i) One Million Three Hundred Thousand Dollars (\$1,300,000) in cash by wire transfer or other immediately available funds at Closing, paid according to the Sellers' instructions the Sellers' instructions attached hereto as Exhibit "D".

(ii) Seven Hundred Thousand Dollars worth (\$700,000.00) of restricted common stock of Buyer at Closing, at a valuation per share of \$1.30, paid according to the Sellers' instructions attached hereto as Exhibit D, such shares which shall have "piggyback registration rights" as defined herein and shall be filed for registration within 120 days from the Closing Date; and

(iii) An Annual Payment Amount for each of calendar years 2004 through 2007 (a "Year"), to be determined as follows:

(A) Each Year shall have an established Revenue threshold (the "Benchmark" for such Year). The Benchmarks are as follows:

### Year Benchmark

2004 \$7,500,000

2005 \$8,200,000

2006 \$9,000,000

2007 \$9,000,000

With respect to a Year where Revenue equals or exceeds the Benchmark for such Year (any such excess being the "Revenue Surplus") the Buyer shall pay to the Sellers for such Year an Annual Payment Amount of Two Hundred Thousand Dollars (\$200,000) plus Fifty-Five One Hundredths Percent (0.55%) of the Revenue Surplus. For example, if Revenues for 2003 were Eight Million Dollars (\$8,000,000), the Revenue Surplus would be Five Hundred Thousand Dollars (\$500,000), and the Annual Payment Amount would be Two Hundred Two Thousand Seven Hundred Fifty Dollars (\$202,750) (i.e.,  $\$200,000 + (0.55\% \times \$500,000)$ ). With respect to a Year where the Revenue is less than the Benchmark for such Year (such deficiency being the "Revenue Shortfall"), the Buyer shall pay the Sellers an Annual Payment Amount equal to Two Hundred Thousand Dollars (\$200,000) less 3.6% of the Revenue Shortfall. For example, if Revenues for 2004 were Six Million Dollars (\$6,000,000), the Revenue Shortfall would be One Million Five Hundred Thousand Dollars (\$1,500,000), and the Annual Payment Amount would be One Hundred Forty-Six Thousand Dollars (\$146,000) (i.e.,  $\$200,000 - (3.6\% \times \$1,500,000)$ ). In the event the Annual Payment Amount is either zero or a negative amount, the Buyer shall have no obligation to make any payment to Sellers under this Section 2(b)(iii) for such Year and to the extent such Annual Payment Amount is negative, Sellers shall have no obligation to make any payment to Buyers under this Section 2(b)(iii) for such Year.

(B) The Buyer shall pay the Sellers the Annual Payment Amount due for any Year within ninety (90) days of the end of such Year. Each Annual Payment Amount shall be paid, at the Seller's option, in either immediately available funds or in Buyer Shares, up to the number of Buyer Shares



that are the equivalent of Four Hundred Thousand Dollars, in the aggregate over the four Years, at a price of the lower of One Dollar and Eighty Cents (\$1.80) per share or the average market price per share determined by a weighted average of the closing price of the stock over the twenty trading days prior to the Closing Date and up to the number of Buyer Shares that are the equivalent of Four Hundred Thousand Dollars, in the aggregate over the four Years, at the market price determined by the average market price per share determined by a weighted average of the closing price of the stock over the twenty trading days prior to their issuance.

(C) For purposes of this Section 2(b)(iii), Revenues shall mean the gross revenues received by the Target or Buyer's Affiliated Group which is derived from existing customers of Target at the time of execution of this Agreement, as set forth in Exhibit "H", and from any future customers of the Target. Sellers shall have the right at any time and from time to time during normal business hours at their sole cost and expense to personally examine or to have agents appointed by them to examine the books and records of the Target and the Company's Affiliated Group to verify the correctness of the computation of Revenues.

(c) Allocation of the Purchase Price. The Purchase Price is allocated as follows:

(i) The Purchase Price is allocated, in its entirety, towards the purchase of all outstanding share classes of Dasher Express, Inc.

(d) Penalties. In the event that the Buyer does not exercise " Best Efforts" to file registration statement covering the \$700,000 worth of Restricted Shares detailed in (2)(b)(ii) within the time schedule detailed herein, the Seller shall receive penalties equal to one percent per month via bank transfer in accordance with Sellers' instruction, based upon the value of \$700,000, for each month in which the Buyer fails to file such registration statement. If the Buyer files registration statement within time schedule, it shall not be held liable for any delays caused by " Force Majeure" events, including, but not limited to, delays in review by governmental authorities, market events and other such events beyond its control.

(e) The Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of The Rigsby Law Group, PLC, 228 East High Street Lexington KY 40588, and via mail, facsimile and wire transfer for any additional supporting documentation, commencing at 9:00 a.m. local time on or before the 5th business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective Parties will take at the Closing itself) or such other date as the Buyer and the Sellers may mutually determine (the "Closing Date"); provided, however, that the Closing Date shall be no later than December 12, 2003.

(f) Deliveries at the Closing. At the Closing, (i) the Sellers will deliver to the Buyer the various certificates, instruments, and documents referred to in §7(a) below, (ii) the Buyer will deliver to the Sellers the various certificates, instruments, and documents referred to in §7(b) below, (iii) each of the Sellers will deliver to the Buyer stock certificates representing all of his and her Target Shares, endorsed in blank or accompanied by duly executed assignment documents, and (iv) the Buyer will deliver to each of the Sellers the consideration and the various certificates, instruments, agreements and documents specified in §2(b) above.

### 3. Representations and Warranties Concerning the Transaction.

(a) Representations and Warranties of the Sellers. Each of the Sellers represents and warrants to the Buyer that, to the Sellers' Knowledge, the statements contained in this §3(a) are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this §3(a)) except as set forth in Annex I or as set forth in the Disclosure Schedule attached hereto.

i. Organization of Certain Sellers. Not applicable.

(ii) Authorization of Transaction. The Sellers have full power and authority to execute and deliver this Agreement and to perform his or her obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Sellers, enforceable in accordance with its terms and conditions. The Sellers need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.

(iii) Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Sellers are subject or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Sellers are a party or by which he or she is bound or to which any of his or her assets is subject.

(iv) Brokers' Fees. The Sellers have no Liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which the Buyer could become liable or obligated.

(v) Investment. The Sellers (A) are acquiring the Buyer Shares solely for his or her own account for investment purposes, and not with a view to the immediate distribution thereof, (B) have received certain information concerning the Buyer and has had the opportunity to obtain additional information as desired in order to evaluate the merits and the risks inherent in holding the Buyer Shares, and (C) are Accredited Investors as that term is defined in Regulation D of the Securities and Exchange Act of 1933, as amended.

(vi) Target Shares. The Sellers hold of record and own beneficially the number of Target Shares set forth next to his or her name in §4(b) of the Disclosure Schedule, free and clear of any restrictions on transfer (other than any restrictions under the Securities Act and state securities laws), Taxes, Security Interests, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. The Sellers are not a party to any option, warrant, purchase right, or other contract or commitment that could require the Sellers to sell, transfer, or otherwise dispose of any capital stock of the Target (other than this Agreement). The Sellers are not a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of any capital stock of the Target.

(b) Representations and Warranties of the Buyer. The Buyer represents and warrants to the Sellers that the statements contained in this §3(b) are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this §3(b)), except as set forth in Annex II attached hereto.

(i) Organization of the Buyer. The Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation.

(ii) Authorization of Transaction. The Buyer has full power and authority (including full corporate power and authority) to execute and deliver this Agreement, to consummate the transaction provided herein and to perform its obligations hereunder. The Board of Directors of the Buyer have duly authorized by proper corporate action the execution and delivery of this Agreement by the Buyer. If shareholder approval is required, the shareholders of the Buyer have duly authorized by proper corporate action the execution and delivery of this Agreement by the Buyer. This Agreement constitutes the valid and legally binding obligation of the Buyer, enforceable in accordance with its terms and conditions. The Buyer need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.

(iii) Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Buyer is subject or any provision of its charter or bylaws or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Buyer is a party or by which it is bound or to which any of its assets is subject.

(iv) Brokers' Fees. The Buyer has no Liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which any Sellers could become liable or obligated.

(v) Investment. The Buyer represents that it (A) understands that the Target Shares have not been, and will not be, registered under the Securities Act, or under any state securities laws, and are being offered and sold in reliance upon federal and state exemptions for transactions not involving any public offering, (B) is acquiring the Target Shares solely for its own account for investment purposes, and not with a view to the distribution thereof, (C) is a sophisticated investor with knowledge and experience in business and financial matters, and is knowledgeable regarding the business of the Target, (D) has had an opportunity to ask questions and receive answers from the Sellers regarding the business, properties, prospects and financial condition of the Target, has received certain information concerning the Target, and has had the opportunity to obtain additional information as desired in order to evaluate the merits and the risks inherent in holding the Target Shares, (E) is able to bear the economic risk and lack of liquidity inherent in holding the Target Shares, and (F) is an Accredited Investor for the reasons set forth on Annex II. Buyer believes it has received all the information it considers necessary or appropriate for deciding whether to purchase the Target Shares. By executing this Agreement, Buyer further represents that Buyer does not have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participation to such Person or to any third Person, with respect to any of the Target Shares or the Target, other than the Sellers.

(vi) Buyer Shares; SEC Documents; Financial Statements; Disclosures. The Buyer has filed with the SEC and has made available to the Sellers a true and complete copy of each annual, quarterly and other material report, schedule, form, registration statement (without exhibits) and definitive proxy statement required to be filed by the Buyer with the Securities and Exchange Commission (the "SEC") since January 1, 2001, (the "Buyer SEC Documents"). The Buyer SEC Documents and the statements, representations and warranties contained therein

are specifically incorporated herein by this reference. As of their respective filing dates, the Buyer SEC Documents complied in all material respects with the applicable requirements of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, as the case may be, and the published rules and regulations of the SEC promulgated thereunder applicable to such Buyer SEC Documents, and none of the Buyer SEC Documents contained on their filing dates any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except to the extent corrected by a subsequently filed Buyer SEC Document. The financial statements of the Buyer included in the Buyer SEC Documents (the "Buyer Financial Statements") complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto as of their respective dates, were prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited financial statements, as permitted under the Securities Act or the Securities Exchange Act, as the case may be), and fairly presented in all material respects the consolidated financial position, results of operations and cash flows of the Buyer and its consolidated subsidiaries as of the respective dates thereof and for the periods indicated therein (subject, in the case of unaudited financial statements, to normal and recurring year-end audit adjustments). There has been no material change in the Buyer's accounting policies or estimates, except as described in the notes to the Buyer Financial Statements or as required by GAAP. The Buyer has provided the Sellers with all the information that the Sellers have requested regarding the business of the Buyer and the Buyer Shares.

4. Representations and Warranties Concerning the Target and Its Subsidiaries. The Sellers represent and warrant to the Buyer that, to the Sellers' Knowledge, the statements contained in this §4 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this §4), except as provided elsewhere in this Agreement, the Exhibits and/or the Appendices attached hereto, and/or in the documents provided by the Sellers to the Buyer on or before the Closing, including, without limitation, the Disclosure Schedule with attached Schedules delivered by the Sellers to the Buyer on the date hereof and initialed by the Parties, and attached hereto as Exhibit " B" . The statements contained in the Exhibits, Appendices, and/or in the documents provided by the Sellers to the Buyer on or before the Closing, including, without limitation, the Disclosure Schedule with attached Schedules attached hereto as Exhibit " B" , are incorporated in the representations and warranties contained in this Section 4 by this reference. The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered and numbered paragraphs contained in this §4.

(a) Organization, Qualification, and Corporate Power. Each of the Target and its Subsidiaries is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. Each of the Target and its Subsidiaries is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required. Each of the Target and its Subsidiaries has full corporate power and authority and all licenses, permits, and authorizations necessary to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. §4(a) of the Disclosure Schedule lists the directors and officers of each of the Target and its Subsidiaries. The Sellers have delivered to the Buyer correct and complete copies of the charter and bylaws of each of the Target and its Subsidiaries (as amended to date). The minute books (containing the available records of meetings of the stockholders, the board of directors, and any committees of the board of directors), the stock certificate books, and the stock record books of each of the Target and its Subsidiaries are correct and complete. None of the Target and its Subsidiaries is in default under or in violation of any provision of its charter or bylaws.

(b) Capitalization. All of the issued and outstanding Target Shares have been duly authorized, are validly issued, fully paid, and nonassessable, and are held of record by the respective Sellers as set forth in §4(b) of the Disclosure Schedule. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Target to issue, sell, or otherwise cause to become outstanding any of its capital stock. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or similar rights with respect to the Target. There are no voting trusts, proxies, or other agreements or understandings with respect to the voting of the capital stock of the Target.

(c) Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which any of the Target and its Subsidiaries is subject or any provision of the charter or bylaws of any of the Target and its Subsidiaries or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which any of the Target and its Subsidiaries is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Security Interest upon any of its assets). None of the Target and its Subsidiaries needs to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement.

(d) Brokers' Fees. None of the Target and its Subsidiaries has any Liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

(e) Title to Assets. The Target and its Subsidiaries have good and marketable title to, or a valid leasehold interest in, the properties and assets used by them, located on their premises, or shown on the Most Recent Balance Sheet or acquired after the date thereof, free and clear of all Security Interests, except for properties and assets disposed of in the Ordinary Course of Business since the date of the Most Recent Balance Sheet.

(f) Subsidiaries. §4(f) of the Disclosure Schedule sets forth for each Subsidiary of the Target (i) its name and jurisdiction of incorporation, (ii) the number of shares of authorized capital stock of each class of its capital stock, (iii) the number of issued and outstanding shares of each class of its capital stock, the names of the holders thereof, and the number of shares held by each such holder, and (iv) the number

of shares of its capital stock held in treasury. All of the issued and outstanding shares of capital stock of each Subsidiary of the Target have been duly authorized and are validly issued, fully paid, and nonassessable. One of the Target and its Subsidiaries holds of record and owns beneficially all of the outstanding shares of each Subsidiary of the Target, free and clear of any restrictions on transfer (other than restrictions under the Securities Act and state securities laws), Taxes, Security Interests, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require any of the Target and its Subsidiaries to sell, transfer, or otherwise dispose of any capital stock of any of its Subsidiaries or that could require any Subsidiary of the Target to issue, sell, or otherwise cause to become outstanding any of its own capital stock. There are no outstanding stock appreciation, phantom stock, profit participation, or similar rights with respect to any Subsidiary of the Target. There are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any capital stock of any Subsidiary of the Target. None of the Target and its Subsidiaries controls directly or indirectly or has any direct or indirect equity participation in any corporation, partnership, trust, or other business association which is not a Subsidiary of the Target.

(g) Financial Statements. Attached hereto as Exhibit " F" are the following financial statements (collectively the "Financial Statements"): (i) unaudited consolidated and consolidating balance sheets and statements of income, changes in stockholders' equity, and cash flow as of and for the fiscal years ended 2000, 2001, and 2002 (the "Most Recent Fiscal Year End") for the Target; and (ii) unaudited consolidated and consolidating balance sheets and statements of income, changes in stockholders' equity, and cash flow (the "Most Recent Financial Statements") as of and for the 10 months ended October 31, 2003 (the "Most Recent Fiscal Month End") for the Target . To the Sellers' Knowledge, the Financial Statements (including the notes thereto) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, present fairly the financial condition of the Target as of such dates and the results of operations of the Target for such periods, are correct and complete, and are consistent with the books and records of the Target (which books and records are correct and complete); provided, however, that the Most Recent Financial Statements are subject to normal year-end adjustments (which will not be material individually or in the aggregate) and lack footnotes and other presentation items.

(h) Events Subsequent to Most Recent Fiscal Year End. Since the Most Recent Fiscal Year End, to the Sellers' Knowledge, there has not been any adverse change in the business, financial condition, operations, results of operations, or future prospects of any of the Target and its Subsidiaries. Without limiting the generality of the foregoing, since that date:

(i) none of the Target has sold, leased, transferred, or assigned any of its assets, tangible or intangible, other than for a fair consideration in the Ordinary Course of Business;

(ii) none of the Target has entered into any agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) either involving more than \$10,000 or outside the Ordinary Course of Business;

(iii) no party (including any of the Target and its Subsidiaries) has accelerated, terminated, modified, or cancelled any agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) involving more than \$10,000 to which any of the Target is a party or by which any of them is bound;

(iv) none of the Target has imposed any Security Interest upon any of its assets, tangible or intangible;

(v) none of the Target has made any capital expenditure (or series of related capital expenditures) either involving more than \$10,000 or outside the Ordinary Course of Business;

(vi) none of the Target has made any capital investment in, any loan to, or any acquisition of the securities or assets of, any other Person (or series of related capital investments, loans, and acquisitions) either involving more than \$10,000 or outside the Ordinary Course of Business;

(vii) none of the Target has issued any note, bond, or other debt security or created, incurred, assumed, or guaranteed any indebtedness for borrowed money or capitalized lease obligation either involving more than \$10,000 singly or \$20,000 in the aggregate;

(viii) none of the Target has delayed or postponed the payment of accounts payable and other Liabilities outside the Ordinary Course of Business;

(ix) none of the Target has cancelled, compromised, waived, or released any right or claim (or series of related rights and claims) either involving more than \$10,000 or outside the Ordinary Course of Business;

Property;

(x) none of the Target has granted any license or sublicense of any rights under or with respect to any Intellectual

(xi) there has been no change made or authorized in the charter or bylaws of any of the Target and its Subsidiaries;

(xii) none of the Target has issued, sold, or otherwise disposed of any of its capital stock, or granted any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange, or exercise) any of its capital stock;

(xiii) none of the Target has declared, set aside, or paid any dividend or made any distribution with respect to its capital stock (whether in cash or in kind) or redeemed, purchased, or otherwise acquired any of its capital stock;

(xiv) none of the Target has experienced any damage, destruction, or loss (whether or not covered by insurance) to its property;

(xv) none of the Target has made any loan to, or entered into any other transaction with, any of its directors, officers, and employees outside the Ordinary Course of Business;

(xvi) none of the Target has entered into any employment contract or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement;

(xvii) none of the Target has granted any increase in the base compensation of any of its directors, officers, and employees outside the Ordinary Course of Business;

(xviii) none of the Target has adopted, amended, modified, or terminated any bonus, profit-sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, and employees (or taken any such action with respect to any other Employee Benefit Plan);

(xix) none of the Target has made any other change in employment terms for any of its directors, officers, and employees outside the Ordinary Course of Business;

(xx) none of the Target has made or pledged to make any charitable or other capital contribution outside the Ordinary Course of Business;

(xxi) there has not been any other material occurrence, event, incident, action, failure to act, or transaction outside the Ordinary Course of Business involving any of the Target ; and

(xxii) the Seller's have incurred professional fees, in connection with this transaction, totaling approximately \$5,000, which amount has been distributed to Sellers from Target;

(xxiii) none of the Target has committed to any of the foregoing.

(i) Undisclosed Liabilities. To the Sellers' Knowledge, none of the Target and its subsidiaries has any Liability (and there is no Basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any of them giving rise to any Liability), except for (i) Liabilities set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) and (ii) Liabilities

which have arisen after the Most Recent Fiscal Month End in the Ordinary Course of Business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law).

(j) Legal Compliance. To the Sellers' Knowledge, each of the Target, its Subsidiaries, and their respective predecessors has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of them alleging any failure so to comply.

(k) Tax Matters. To the Sellers' Knowledge:

(i) each of the Target and its Subsidiaries has filed all Tax Returns that it was required to file. All such Tax Returns were correct and complete in all respects. All Taxes owed by any of the Target and its Subsidiaries (whether or not shown on any Tax Return) have been paid. None of the Target and its Subsidiaries currently is the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where any of the Target and its Subsidiaries does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Security Interests on any of the assets of any of the Target and its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax.

(ii) each of the Target and its Subsidiaries has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(iii) the Sellers do not expect any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax Liability of any of the Target and its Subsidiaries either (A) claimed or raised by any authority in writing or (B) as to which any of the Sellers and the directors and officers (and employees responsible for Tax matters) of the Target has Knowledge based upon personal contact with any agent of such authority. §4(k) of the Disclosure Schedule lists all federal, state, local, and foreign income Tax Returns filed with respect to any of the Target and its Subsidiaries for taxable periods ended on or after January 1, 1999, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Sellers have delivered to the Buyer correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by any of the Target and its Subsidiaries since January 1, 1999.

(iv) none of the Target and its Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(v) none of the Target and its Subsidiaries has filed a consent under Code §341(f) concerning collapsible corporations. None of the Target and its Subsidiaries has made any payments, is obligated to make any payments, or is a party to any agreement that under certain circumstances could obligate it to make any payments that will not be deductible under Code §280G. None of the Target and its Subsidiaries has been a United States real property holding corporation within the meaning of Code §897(c)(2) during the applicable period specified in Code §897(c)(1)(A)(ii). None of the Target and its Subsidiaries is a party to any Tax allocation or sharing agreement. None of the Target and its Subsidiaries (A) has been a member of an Affiliated Group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Target) or (B) has any Liability for the Taxes of any Person (other than any of the Target and its Subsidiaries) under Reg. §1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise.

(l) Real Property.

(i) The Target owns real property as detailed in Exhibit "G".

(ii) §4(l)(ii) of the Disclosure Schedule lists and describes briefly all real property leased or subleased to any of the Target. The Sellers have delivered to the Buyer correct and complete copies of the leases and subleases listed in §4(l)(ii) of the Disclosure Schedule (as amended to date). To the Sellers' Knowledge, with respect to each lease and sublease listed in §4(l)(ii) of the Disclosure Schedule:

(A) the lease or sublease is legal, valid, binding, enforceable, and in full force and effect;

(B) the lease or sublease will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;

(C) no party to the lease or sublease is in breach or default, and no event has occurred which, with notice or lapse of time, would constitute a breach or default or permit termination, modification, or acceleration thereunder;

(D) no party to the lease or sublease has repudiated any provision thereof;

(E) there are no disputes, oral agreements, or forbearance programs in effect as to the lease or sublease;

(F) with respect to each sublease, the representations and warranties set forth in subsections (A) through (E) above are true and correct with respect to the underlying lease;

(G) none of the Target and its Subsidiaries has assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the leasehold or subleasehold;

(H) all facilities leased or subleased thereunder have received all approvals of governmental authorities (including licenses and permits) required in connection with the operation thereof and have been operated and maintained in accordance with applicable laws, rules, and regulations;

(I) all facilities leased or subleased thereunder are supplied with utilities and other services necessary for the operation of said facilities.

(m) Intellectual Property. To the Sellers' Knowledge:

(i) the Target and its Subsidiaries owns or have the right to use pursuant to license, sublicense, agreement, or permission all Intellectual Property necessary for the operation of the businesses of the Target and its Subsidiaries as presently conducted. Each item of Intellectual Property owned or used by any of the Target and its Subsidiaries immediately prior to the Closing hereunder will be owned or available for use by the Target or the Subsidiary on identical terms and conditions immediately subsequent to the Closing hereunder.

(ii) None of the Target and its Subsidiaries have received any charge, complaint, demand, or notice that the Target has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties. To the Knowledge of the Sellers, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of any of the Target and its Subsidiaries.

(iii) No patent or registration has been issued to any of the Target and its Subsidiaries with respect to any of its Intellectual Property and no pending patent application or application for registration has been filed by any of the Target and its Subsidiaries with respect to any of its Intellectual Property. §4(m)(iii) of the Disclosure Schedule identifies each trade name or unregistered trademark used by any of the Target and its Subsidiaries in connection with any of its businesses. To the Sellers' Knowledge, with respect to each item of Intellectual Property required to be identified in §4(m)(iii) of the Disclosure Schedule:

(A) the Target possess all right, title, and interest in and to the item, free and clear of any Security Interest, license, or other restriction;

(B) the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge;

(C) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or is threatened which challenges the legality, validity, enforceability, use, or ownership of the item; and

(D) none of the Target and its Subsidiaries has ever agreed to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

(iv) To the Sellers' Knowledge, there are no written licenses, sublicenses, agreements or permissions applicable to the Target's use of the Target's Intellectual Property.

(v) To the Knowledge of the Sellers, none of the Target and its Subsidiaries will interfere with, infringe upon, misappropriate, or otherwise come into conflict with, any Intellectual Property rights of third parties as a result of the continued operation of its businesses as presently conducted.

(vi) The Sellers have no Knowledge of any new products, inventions, procedures, or methods of manufacturing or processing that any competitors or other third parties have developed which reasonably could be expected to supersede or make obsolete any product or process of any of the Target and its Subsidiaries.

(n) Tangible Assets. The Target and its Subsidiaries own or lease all buildings, machinery, equipment, and other tangible assets necessary for the conduct of their businesses as presently conducted. To the Sellers' Knowledge, each such tangible asset has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used.

(o) Inventory. The Target does not have any inventory.

(p) Contracts. §4(p) of the Disclosure Schedule lists the following contracts and other agreements to which any of the Target and its Subsidiaries is a party:

(i) any agreement (or group of related agreements) for the lease of personal property to or from any Person providing for lease payments in excess of \$10,000 per annum;

(ii) any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one year, result in a material loss to any of the Target and its Subsidiaries, or involve consideration in excess of \$10,000;

(iii) any agreement concerning a partnership or joint venture;

(iv) any agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$10,000 or under which it has imposed a Security Interest on any of its assets, tangible or intangible;

(v) any agreement concerning confidentiality or noncompetition;

(vi) any agreement with any of the Sellers and their Affiliates (other than the Target and its Subsidiaries);

(vii) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance, or other material plan or arrangement for the benefit of its current or former directors, officers, and employees;



(viii) any collective bargaining agreement;

(ix) any agreement for the employment of any individual on a full-time, part-time, consulting, or other basis providing annual compensation in excess of \$20,000 or providing severance benefits;

(x) any agreement under which it has advanced or loaned any amount to any of its directors, officers, and employees outside the Ordinary Course of Business;

(xi) any agreement under which the consequences of a default or termination could have a material adverse effect on the business, financial condition, operations, results of operations, or future prospects of any of the Target and its Subsidiaries; or

(xii) any other agreement (or group of related agreements) the performance of which involves consideration in excess of \$10,000.

A correct and complete copy of each written agreement listed in the Disclosure Schedule (as amended to date) is attached as a Schedule to the Disclosure Schedule. With respect to each such agreement: (A) the agreement is legal, valid, binding, enforceable, and in full force and effect; (B) the agreement will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby; (C) no party is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default, or permit termination, modification, or acceleration, under the agreement; and (D) no party has repudiated any provision of the agreement.

(q) Notes and Accounts Receivable. To the Sellers' Knowledge, all notes and accounts receivable of the Target and its Subsidiaries are reflected properly on their books and records, are valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with their terms at their recorded amounts, subject only to the reserve for bad debts set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Target and its Subsidiaries.

(r) Powers of Attorney. There are no outstanding powers of attorney executed on behalf of any of the Target and its Subsidiaries.

(s) Insurance. §4(s) of the Disclosure Schedule sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which any of the Target and its Subsidiaries has been a party, a named insured, or otherwise the beneficiary of coverage at any time within the past three (3) years:

i. the name, address, and telephone number of the agent;

(ii) the name of the insurer, the name of the policyholder, and the name of each covered insured;

(iii) the policy number and the period of coverage;

(iv) the scope (including an indication of whether the coverage was on a claims made, occurrence, or other basis) and amount (including a description of how deductibles and ceilings are calculated and operate) of coverage; and

(v) a description of any retroactive premium adjustments or other loss-sharing arrangements.

To the Sellers' Knowledge, with respect to each such insurance policy: (A) the policy is legal, valid, binding, enforceable, and in full force and effect; (B) the policy will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation

of the transactions contemplated hereby; (C) neither any of the Target and its Subsidiaries nor any other party to the policy is in breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification, or acceleration, under the policy; and (D) no party to the policy has repudiated any provision thereof. Each of the Target and its Subsidiaries has been covered during the past 5 years by insurance in scope and amount customary and reasonable for the businesses in which it has engaged during the aforementioned period. §4(s) of the Disclosure Schedule describes any self-insurance arrangements affecting any of the Target and its Subsidiaries.

(t) Litigation. §4(t) of the Disclosure Schedule sets forth each instance of which the Sellers have Knowledge that any of the Target and its Subsidiaries (i) is subject to any outstanding injunction, judgment, order, decree, ruling, or charge or (ii) is a party or is threatened to be made a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator. None of the Sellers have Knowledge that any action, suit, proceeding, hearing, or investigation arising from or relating to matters not identified in the Disclosure Schedule may be brought or threatened against any of the Target and its Subsidiaries.

(u) Product Warranty. Not applicable.

(v) Product Liability. Not applicable.

(w) Employees. To the Knowledge of the Sellers, no executive, key employee, or group of employees has any plans to terminate employment with any of the Target and its Subsidiaries. None of the Target and its Subsidiaries is a party to or bound by any collective bargaining agreement, nor has any of them experienced any strikes, grievances, claims of unfair labor practices, or other collective bargaining disputes. To the Sellers' Knowledge, none of the Target and its Subsidiaries has committed any unfair labor practice. The Sellers do not have any Knowledge of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of any of the Target and its Subsidiaries.

(x) Employee Benefits. The Target is not a party to any Employee Benefit Plan.

(y) Guaranties. Excluding any Liabilities or obligations arising from or related to: common law liability, including without limitation, respondeat superior and liability based on ownership of a motor vehicle; obligations for which the Target is a co-obligor; and Liabilities and obligations of any of the other corporations comprising the Target, none of the Target and its Subsidiaries is a guarantor or otherwise is liable for any Liability or obligation (including indebtedness) of any other Person.

(z) Environmental, Health, and Safety Matters. To the Sellers' Knowledge:

(i) Each of the Target, its Subsidiaries, and their respective predecessors has complied and is in compliance with all Environmental, Health, and Safety Requirements.

(ii) Without limiting the generality of the foregoing, each of the Target and its Subsidiaries has obtained and complied with, and is in compliance with, all permits, licenses and other authorizations that are required pursuant to Environmental, Health, and Safety Requirements for the occupation of its facilities and the operation of its business; a list of all such permits, licenses and other authorizations is set forth on the attached "Environmental and Safety Permits Schedule."

(iii) Neither the Target, its Subsidiaries, nor their respective predecessors has received any written or oral notice, report or other information regarding any actual or alleged violation of Environmental, Health, and Safety Requirements, or any liabilities or potential liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to any of them or its facilities arising under Environmental, Health, and Safety Requirements.

(iv) None of the following exists at any property or facility owned or operated by the Target or its Subsidiaries: (1) underground storage tanks, (2) asbestos-containing material in any form or condition, (3) materials or equipment containing polychlorinated biphenyls, or (4) landfills, surface impoundments, or disposal areas.

(v) None of the Target, its Subsidiaries, or their respective predecessors has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, or released any substance, including without limitation any hazardous substance, or owned or operated any property or facility (and no such property or facility is contaminated by any such substance) in a manner that has given or would give rise to liabilities, including any liability for response costs, corrective action costs, personal injury, property damage, natural resources damages or attorney fees, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Solid Waste Disposal Act, as amended ("SWDA") or any other Environmental, Health, and Safety Requirements.

(vi) Neither this Agreement nor the consummation of the transaction that is the subject of this Agreement will result in any obligations for site investigation or cleanup, or notification to or consent of government agencies or third parties, pursuant to any of the so-called "transaction-triggered" or "responsible property transfer" Environmental, Health, and Safety Requirements.

(vii) Neither the Target, its Subsidiaries, nor any of their respective predecessors has, either expressly or by operation of law, assumed or undertaken any liability, including without limitation any obligation for corrective or remedial action, of any other Person relating to Environmental, Health, and Safety Requirements.

(viii) No facts, events or conditions relating to the past or present facilities, properties or operations of the Target, its Subsidiaries, or any of their respective predecessors will prevent, hinder or limit continued compliance with Environmental, Health, and Safety Requirements, give rise to any investigatory, remedial or corrective obligations pursuant to Environmental, Health, and Safety Requirements, or give rise to any other liabilities (whether accrued, absolute, contingent, unliquidated or otherwise) pursuant to Environmental, Health, and Safety Requirements, including without limitation any relating to onsite or offsite releases or threatened releases of hazardous materials, substances or wastes, personal injury, property damage or natural resources damage.

(aa) Disclosure. The representations and warranties contained in this §4 do not contain any untrue statement of a fact or omit to state any fact necessary in order to make the statements and information contained in this §4 not misleading.

**(ab) DISCLAIMER. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLERS DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

5. Pre-Closing Covenants. The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing.

(a) General. Each of the Parties will use his or its reasonable best efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the closing conditions set forth in §7 below).

(b) Notices and Consents. The Sellers will cause each of the Target to give any notices to third parties, and will cause each of the Target to use its reasonable best efforts to obtain any third party consents, that the Buyer reasonably may request in connection with the matters referred to in §4(c) above. Each of the Parties will (and the Sellers will cause each of the Target to) give any notices to, make any filings with, and use its reasonable best efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies in connection with the matters referred to in §3(a)(ii), §3(b)(ii), and §4(c) above.

(c) Operation of Business. The Sellers will not cause or permit any of the Target to engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business. Without limiting the generality of the foregoing, the Sellers will not cause or permit any of the Target to (i) declare, set aside, or pay any dividend or make any distribution with respect to its capital stock or redeem, purchase, or otherwise acquire any of its capital stock, or (ii) otherwise engage in any practice, take any action, or enter into any transaction of the sort described in §4(h) above.

(d) Preservation of Business. The Sellers will cause each of the Target to keep its business and properties substantially intact, including its present operations, physical facilities, working conditions, and relationships with lessors, licensors, suppliers, customers, and employees.

(e) Full Access. Each of the Sellers will permit, and the Sellers will cause each of the Target to permit, representatives of the Buyer to have full access to all premises, properties, personnel, books, records (including Tax records), contracts, and documents of or pertaining to each of the Target.

(f) Notice of Developments. The Sellers will give prompt written notice to the Buyer of any material adverse development causing a breach of any of the representations and warranties in §4 above. Each Party will give prompt written notice to the others of any material adverse development causing a breach of any of his or its own representations and warranties in §3 above. No disclosure by any Party pursuant to this §5(f), however, shall be deemed to amend or supplement Annex I, Annex II, or the Disclosure Schedule or to prevent or cure any misrepresentation, breach of warranty, or breach of covenant.

(g) Exclusivity. None of the Sellers will (and the Sellers will not cause or permit any of the Target and its Subsidiaries to (i) solicit, initiate, or encourage the submission of any proposal or offer from any Person relating to the acquisition of any capital stock or other voting securities, or any substantial portion of the assets, of any of the Target and its Subsidiaries (including any acquisition structured as a merger, consolidation, or share exchange) or (ii) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any Person to do or seek any of the foregoing. None of the Sellers will vote their Target Shares in favor of any such acquisition structured as a merger, consolidation, or share exchange. The Sellers will notify the Buyer immediately if any Person makes any proposal, offer, inquiry, or contact with respect to any of the foregoing.

#### 6. Post-Closing Covenants. The Parties agree as follows with respect to the period following the Closing.

(a) General. In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under §8 below). The Sellers acknowledge and agree that from and after the Closing the Buyer will be entitled to possession of all documents, books, records (including Tax records), agreements, and financial data of any sort relating to the Target.

(b) Litigation Support. In the event and for so long as any Party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand asserted by a third party in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving any of the Target, each of the other Parties will cooperate with the contesting or defending Party and that Party's counsel in the contest or defense, make available their personnel, and provide such testimony and access to their books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is entitled to indemnification therefor under §8 below).

(c) Transition. None of the Sellers will take any action that is designed or intended to have the effect of discouraging any lessor, licensor, customer, supplier, or other business associate of any of the Target from maintaining the same business relationships with the Target after the Closing as it maintained with the Target prior to the Closing. Each of the Sellers will refer all customer inquiries relating to the businesses of the Target to the Buyer and/or the Target from and after the Closing.

(d) Confidentiality. Each of the Sellers will treat and hold as such all of the Confidential Information, refrain from using any of the Confidential Information except in connection with this Agreement, and deliver promptly to the Buyer or destroy, at the request and option of the Buyer, all tangible embodiments (and all copies) of the Confidential Information which are in his or her possession. In the event that any of the Sellers is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, that Sellers will notify the Buyer promptly of the request or requirement so that the Buyer may seek an appropriate protective order or waive compliance with the provisions of this §6(d). If, in the absence of a protective order or the receipt of a waiver hereunder, any of the Sellers is, on the advice of counsel, compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, that Sellers may disclose the Confidential Information to the tribunal; provided, however, that the disclosing Sellers shall use his or her reasonable best efforts to obtain, at the request of the Buyer, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as the Buyer shall designate. The foregoing provisions shall not apply to any Confidential Information, which is generally available to the public immediately prior to the time of disclosure or has been disclosed by any Person other than the Sellers prior to the time of disclosure.

(e) Target Indebtedness and Contractual Obligations and Liabilities for Which the Sellers are Obligated. At the Closing the Buyer shall pay in full the Indebtedness of the Target, for which any or both of the Sellers have given a personal guaranty of performance and/or payment. At the Closing, the Buyer shall either (a) secure the consent of any Person who is a party to any contract to whom any or both of the Sellers have given such a personal guaranty to the continuation of the payoff of such Indebtedness or the continuation of performance of such contract after Closing by the Buyer with the elimination of the personal guaranty of each Seller, or (b) pay off the Indebtedness on or before the closing of this Agreement, approximate amounts to be paid are:

(f) Buyer Shares.

(i) The Buyer covenants that all of the Buyer Shares transferable to Sellers pursuant to this Agreement: (a) have been, or shall be when issued, duly authorized and are, or shall be when issued, validly issued, fully paid, and nonassessable, (b) were issued and registered, or shall be registered within ninety (90) days of Sellers' request given no earlier than one (1) year from the date of issue, in full and complete compliance with all applicable state and federal securities laws and regulations, (c) were not, and shall not be, issued in breach of any commitments, (d) as of the date hereof are held of record and owned beneficially by the Buyer and as of the Closing Date and thereafter shall be held of record and owned beneficially by Sellers, and (e) have no contracts or restrictions applicable to the Buyer Shares with respect to the voting, sale, resale or other transfer of the Buyer Shares that the Buyer has not specifically disclosed to the Sellers.

(ii) In the event of the payment or declaration of any dividends payable in, or the making of any distribution of shares of the Buyer (or the passing of the record date for the determination of stockholders of Buyer entitled to receive such dividend or distribution), or in the event of any stock split, combination of shares, merger, consolidation, reorganization, recapitalization, reclassification or other similar change affecting Buyer Shares occurring after the date of this Agreement and before the Buyer Shares are delivered to the Sellers pursuant to the provisions of Section 2 hereof or the Employment Agreements, then the Buyer shall make appropriate adjustments in the number and kind of Buyer Shares to be delivered, and the value, on the date of delivery of the Buyer Shares shall be appropriately adjusted, to reflect such dividend, distribution, split, combination, merger, consolidation, reorganization, recapitalization, reclassification or other change.

#### 7. Conditions to Obligation to Close.

(a) Conditions to Obligation of the Buyer. The obligation of the Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

(i) the representations and warranties set forth in §3(a) and §4 above shall be true and correct in all material respects at and as of the Closing Date;

(ii) the Sellers shall have performed and complied with all of their covenants hereunder in all material respects through the Closing;

(iii) the Target and its Subsidiaries shall have procured all of the third party consents specified in §5(b) above;

(iv) no action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, (C) affect adversely the right of the Buyer to own the Target Shares and to control the Target and its Subsidiaries, or (D) affect adversely the right of any of the Target and its Subsidiaries to own its assets and to operate its businesses (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

(v) the Sellers shall have delivered to the Buyer a certificate to the effect that each of the conditions specified above in §7(a)(i)-(iv) is satisfied in all respects;

(vi) each of the Sellers and the Buyer shall have entered into the Employment Agreements attached hereto as Exhibits "C-1" and "C-2" and the same shall be in full force and effect; and

(vii) all actions to be taken by the Sellers in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Buyer.

The Buyer may waive any condition specified in this §7(a) if it executes a writing so stating at or prior to the Closing.

(b) Conditions to Obligation of the Sellers. The obligation of the Sellers to consummate the transactions to be performed by them in connection with the Closing is subject to satisfaction of the following conditions:

(i) the representations and warranties set forth in §3(b) above shall be true and correct in all material respects at and as of the Closing Date;

(ii) the Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;

(iii) no action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (C) affect adversely the right of the Sellers to own the Buyer Shares (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

(iv) the Buyer shall have delivered to the Sellers a certificate to the effect that each of the conditions specified above in §7(b)(i)-(iii) is satisfied in all respects;

(v) each of the Sellers and the Buyer shall have entered into the Employment Agreements attached hereto as Exhibits "G-1" and "G-2" and the same shall be in full force and effect; and

(vi) all actions to be taken by the Buyer in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Sellers.

(vii) pursuant to a certain employment agreement, dated July 9, 1993, between Dasher Express and Airfreight and Tom Drury, it is agreed that all obligations of that agreement will be assumed by the Buyer, and that Drury will consent to such assumption and release the Sellers from all obligations thereunder.

The Sellers may waive any condition specified in this §7(b) if they execute a writing so stating at or prior to the Closing.

## 8. Remedies for Breaches of This Agreement.

(a) Survival of Representations, Warranties and Covenants. All of the representations and warranties of the Parties contained in this Agreement shall survive the Closing hereunder and continue in full force and effect for one (1) year thereafter (subject to any applicable statutes of limitations). The provisions of Section 2 of this Agreement and the covenants of the Parties contained in this Agreement shall survive the Closing hereunder and continue in full force and effect for as long as they remain applicable.

(b) Indemnification Provisions for Benefit of the Buyer. Each Seller shall defend, indemnify and hold the Buyer harmless from and against any and all claims, demands, costs, expenses, including attorneys' fees and court costs, damages, lawsuits, actions, causes of action, assessments, judgments, liabilities and losses, arising before the Closing and based on the Sellers' breach of any warranty or representation in this Agreement; **provided that** the Sellers had Knowledge that the representation or warranty was untrue and further provided that the Buyer did not have any Knowledge or any reason to have Knowledge that the representation or warranty was untrue on or before the Closing. Each Seller's liability under this provision shall not exceed the amounts that such Seller received in payment of the Purchase Price, and the Sellers' liability under this provision shall be reduced by the amount of insurance coverage available to pay the costs or expenses that the Buyer actually incurs.

(c) Indemnification Provisions for Benefit of the Sellers. The Buyer shall defend, indemnify and hold the Sellers harmless from and against any and all claims, demands, costs, expenses, including attorneys' fees and court costs, damages, lawsuits, actions, causes of action, assessments, judgments, liabilities and losses, whether arising before or after the Closing, whether known or unknown, arising from or relating to the Target, and/or arising from or relating to: (i) the Buyer's breach of any warranty, representation or covenant in this Agreement; (ii) Sellers' ownership of the Target Shares; (iii) Sellers' operation of the Target; (iv) Sellers' positions as officers and directors of the Target; (v) the Target's

Indebtedness, contractual obligations and liabilities, whether incurred before or after the Closing, including any liability for Taxes; and (vi) the Buyer's breach of any covenant of this Agreement to be performed by the Buyer, including without limitation, Buyer's default in payment of the Indebtedness or default of the performance of any contract for which any Seller has given a personal guaranty.

(d) Matters Involving Third Parties.

(i) If any third party shall notify any Party (the "Indemnified Party") with respect to any matter (a "Third Party Claim") which may give rise to a claim for indemnification against any other Party (the "Indemnifying Party") under this §8, then the Indemnified Party shall promptly notify each Indemnifying Party thereof in writing; provided, however, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is prejudiced.

(ii) Any Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as (A) the Indemnifying Party notifies the Indemnified Party in writing within 15 days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against the entirety of any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim, (B) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill its indemnification obligations hereunder, (C) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief, (D) settlement of, or an adverse judgment with respect to, the Third Party Claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice adverse to the continuing business interests of the Indemnified Party, and (E) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently.

(iii) So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with §8(d)(ii) above, (A) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, (B) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably), and (C) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably).

(iv) In the event any of the conditions in §8(d)(ii) above is or becomes unsatisfied, however, (A) the Indemnified Party may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, the Third Party Claim in any manner it reasonably may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, any Indemnifying Party in connection therewith), (B) the Indemnifying Parties will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses), and (C) the Indemnifying Parties will remain responsible for any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim to the fullest extent provided in this §8.

(e) Other Indemnification Provisions. The foregoing indemnification provisions are in addition to, and not in derogation of, any statutory, equitable, or common law remedy (including without limitation any such remedy arising under Environmental, Health, and Safety Requirements) any Party may have with respect to the Target, its Subsidiaries, or the transactions contemplated by this Agreement. Each of the Sellers hereby agrees that he or she will not make any claim for indemnification against any of the Target and its Subsidiaries by reason of the fact that he or she was a director, officer, employee, or agent of any such entity or was serving at the request of any such entity as a partner, trustee, director, officer, employee, or agent of another entity (whether such claim is for judgments, damages, penalties, fines, costs, amounts paid in settlement, losses, expenses, or otherwise and whether such claim is pursuant to any statute, charter document, bylaw, agreement, or otherwise) with respect to any action, suit, proceeding, complaint, claim, or demand brought by the Buyer against such Seller arising from the Sellers' alleged breach of this Agreement.

9. Tax Matters. The following provisions shall govern the allocation of responsibility as between Buyer and Sellers for certain tax matters following the Closing Date:

(a) Cooperation on Tax Matters.

(i) Buyer, the Target and its Subsidiaries and Sellers shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Section and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Buyer and Sellers agree (A) to retain all books and records with respect to Tax matters pertinent to the Target and its Subsidiaries relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Buyer or Sellers, any extensions thereof) of the respective taxable periods, and

to abide by all record retention agreements entered into with any taxing authority, and (B) to give the other party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, the Buyer or Sellers, as the case may be, shall allow the other party to take possession of such books and records.

(ii) Buyer and Sellers further agree, upon request, to use their best efforts to obtain any certificate or other document from any governmental authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

(iii) Buyer and Sellers further agree, upon request, to provide the other party with all information that either party may be required to report pursuant to Section 6043 of the Code and all Treasury Department Regulations promulgated thereunder.

(b) Certain Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement, shall be paid by Buyer when due, and Buyer will, at their own expense, file all necessary Tax Returns and other documentation with respect to all such transfer, documentary, sales, use, stamp, registration and other Taxes and fees, and, if required by applicable law, Sellers will join in the execution of any such Tax Returns and other documentation.

## 10. Termination.

(a) Termination of Agreement. Certain of the Parties may terminate this Agreement as provided below:

(i) the Buyer and the Sellers may terminate this Agreement by mutual written consent at any time prior to the Closing;

(ii) the Buyer may terminate this Agreement by giving written notice to the Sellers on or before the 15th day following the date of this Agreement time prior to the Closing if the Buyer is not satisfied with the results of its continuing business, legal, environmental, and accounting due diligence regarding the Target ;

(iii) the Buyer may terminate this Agreement by giving written notice to the Sellers at any time prior to the Closing (A) in the event any of the Sellers has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, the Buyer has notified the Requisite Sellers of the breach, and the breach has continued without cure for a period of 5 days after the notice of breach or (B) if the Closing shall not have occurred on or before December 10, 2003, by reason of the failure of any condition precedent under §7(a) hereof (unless the failure results primarily from the Buyer itself breaching any representation, warranty, or covenant contained in this Agreement); and

(iv) the Sellers may terminate this Agreement by giving written notice to the Buyer at any time prior to the Closing (A) in the event the Buyer has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, any of the Sellers has notified the Buyer of the breach, and the breach has continued without cure for a period of 5 days after the notice of breach or (B) if the Closing shall not have occurred on or before December 10, 2003, by reason of the failure of any condition precedent under §7(b) hereof (unless the failure results primarily from any of the Sellers themselves breaching any representation, warranty, or covenant contained in this Agreement).

(b) Effect of Termination. If any Party terminates this Agreement pursuant to §10(a) above, all rights and obligations of the Parties hereunder shall terminate without any Liability of any Party to any other Party (except for any Liability of any Party then in breach).

## 11. Miscellaneous.

(a) Nature of Certain Obligations. The representations, warranties, and covenants in this Agreement are joint obligations. This means that the Sellers will be jointly responsible to the extent provided in §8 above for the entirety of any Adverse Consequences the Buyer may suffer as a result of any breach thereof.

(b) Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the Buyer.



(c) No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

(d) Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

(e) Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of his or its rights, interests, or obligations hereunder without the prior written approval of the Buyer and the Sellers; provided, however, that the Buyer may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates and (ii) designate one or more of its Affiliates to perform its obligations hereunder (in any or all of which cases the Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder).

(f) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

(g) Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

(h) Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to the Sellers:

Brad Kelley Jeff Wiseman

**745 Mill Ridge Road 223 Glendover Road**

**Lexington, KY 40514 Lexington, KY 40503**

With a copy to:

William F. Rigsby

Rigsby Law Group, PLC

228 E. High Street

Lexington, Kentucky 40507

If to the Buyer: Copy to:

John S. Flynn, President Charles Pearlman, Esq. Adorno & Yoss, P.A.

Segmentz, Inc. 351 East Las Olas Boulevard

18302 Highwoods Preserve Parkway Suite 100 17th Floor

Tampa, FL 33647 Fort Lauderdale, FL

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

(i) **Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Florida.

(j) **Amendments and Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Buyer and the Requisite Sellers. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

(k) **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

(l) **Expenses.** Each of the Parties, the Target, and its Subsidiaries will bear his, her or its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby. The Sellers agree that none of the Target and its Subsidiaries has borne or will bear any of the Sellers' costs and expenses (including any of their legal fees and expenses) in connection with this Agreement or any of the transactions contemplated hereby.

(m) **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation. The Parties intend that each representation, warranty, and covenant contained herein shall have independent significance. If any Party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

(n) **Incorporation of Exhibits, Annexes, and Schedules.** The Exhibits, Annexes, and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

(o) **Specific Performance.** Each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement and the documents executed in connection with the Closing of the transaction contemplated herein are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the Parties agrees that the other Parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter, in addition to any other remedy to which they may be entitled, at law or in equity.

(p) **Submission to Jurisdiction.** Each of the Parties submits to the jurisdiction of any state or federal court sitting in Hillsborough County, Florida, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto.

(q) **Limitation of Liability.** Under no circumstances shall a Seller be liable for any damages, losses, amounts, sums or fees in excess of the Purchase Price paid and received by such Seller in connection with this Agreement.

(r) **Enforcement.** Should it become necessary for any party to institute legal action to enforce the terms and conditions of this Agreement, the successful party will be awarded reasonable attorneys' fees at all trial and appellate levels, expenses and costs.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

**Segmentz, Inc.**

By: \_\_\_\_\_

Name: John Flynn

Title: President

By: \_\_\_\_\_

**Brad Kelley**

By: \_\_\_\_\_

Jeff Wiseman

## EXECUTIVE EMPLOYMENT AGREEMENT

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (the "Agreement") is made and entered into as of December 1, 2003 (the "Effective Date"), between **Segmentz, Inc.**, a Delaware corporation, whose principal place of business is 18302 Highwoods Preserve Parkway, Suite 100, Tampa, Florida 33467 (the "Company") and **Brad Kelley**, an individual whose address is 745 Mill Ridge Road Lexington, KY 40514 (the "Executive").

### RECITALS

A. The Company is a Delaware corporation and is principally engaged in the business of Third Party Logistics (the "Business").

B. The Executive has extensive experience in logistics operations and transportation management.

C. The Company desires to employ the Executive and the Executive desires to be employed by the Company.

D. The parties agree that a covenant not to compete is essential to the growth and stability of the Business of the Company.

**NOW, THEREFORE**, in consideration of the mutual agreements herein made, the Company and the Executive do hereby agree as follows:

1. Recitals. The above recitals are true, correct, and are herein incorporated by reference.

2. Employment. The Company hereby employs the Executive, and the Executive hereby accepts employment, upon the terms and conditions hereinafter set forth.

3. Authority and Power During Employment Period.

a. Duties and Responsibilities. During the Term (as hereinafter defined) of this Agreement, the Executive shall serve as Vice President of Operations, for Dasher Express, Inc. (the "Division"), and shall perform such duties as are consistent with Executive's position and as the Chief Executive Officer and/or the Board of Directors (the "Board") of the Company may reasonably direct. The Executive agrees to observe and comply with the policies, rules and regulations of the Company and the Division, as adopted by their respective Boards with reference to the performance of Executive's duties and agrees to carry out and perform orders, directions and policies of the Company and the Division as they may be, from time to time, stated either orally or in writing. For the Term hereof, Executive shall report directly to the Chief Executive Officer of the Company or, if there is none, the Chairman of the Board of Directors of the Company.

b. Time Devoted. Throughout the term of the Agreement, the Executive shall devote all of the Executive's business time and attention to the business and affairs of the Division consistent with the Executive's position with the Company.

c. Employment Base. The Executive's employment shall be permanently based within a fifty (50) mile radius of Fayette County, Kentucky. In this regard, Executive shall not be required be away from such base on temporary assignment more than five (5) nights each calendar month, without consent of the Executive.

4. Term. The Term of employment hereunder shall commence on the Effective Date shall end on December 31, 2007 (the "Term"), unless earlier terminated as provided herein. The Company shall have the option to extend the Term for an additional one (1) year period thereafter, upon the same terms and conditions as provided herein, provided that the Company shall give the Executive thirty (30) days written notice prior to the expiration of the initial Term of Company's decision to extend the Term. For purposes of this Agreement, the Term shall include the initial term and all extensions thereof, when extended.

#### 5. Compensation and Benefits.

a. Salary. The Executive shall be paid a base salary (the "Base Salary") at an annual rate of Sixty-Five Thousand Dollars (\$65,000.00) beginning on the Effective Date of this Agreement for the first calendar year of the Term. For each calendar year of the Term, the amount of the Base Salary shall increase on December 31 by an amount equal to Two Percent (2%) of the amount of the immediately preceding year's Base Salary, subject to the following conditions:

- For the 2004 calendar year the Division must attain \$8.0 million in Revenues.
- For the 2005 calendar year the Division must attain \$9.0 million in Revenues.
- For the 2006 calendar year the Division must attain \$10.0 million in Revenues.

Revenues shall be as defined in that Stock Purchase Agreement dated December 1, 2003 with the Company and Executive as parties thereto (the "Stock Purchase Agreement").

In the event that these conditions are not met, the Company may increase the Base Salary in the Company's discretion.

b. Additional Compensation. Depending on operations department performance, Employee may receive additional compensation, in cash, stock and/or stock options ("Additional Compensation"). All Additional Compensation is subject to board approval.

c. Revenues. "Revenues" as used herein shall have the same meaning as defined in the Stock Purchase Agreement of even date. Executive shall have the right at any time and from time to time during normal business hours at his sole cost and expense to personally examine or to have agents appointed by him to examine the books and records of the Division and the Company's Affiliated Group (as defined in the Stock Purchase Agreement) to verify the correctness of the computation of Revenues.

d. Stock Options. On the Effective Date, the Company shall grant the Executive options to purchase One Hundred Thousand (100,000) shares of stock in the Company at Two Dollars and Fifty Cents (\$2.50) per share (the "Stock Options"), which shall vest over a three (3) year period as follows: Twenty Percent (20%) of the Stock Options shall vest on December 31, 2004; an additional Thirty Percent (30%) of the Stock Options shall vest on December 31, 2005; and the remaining Fifty Percent (50%) of the Stock Options shall vest on December 31, 2006. Each of the Stock Options shall expire three (3) years from the date each of the Stock Options vested. The Executive may exercise part or all of the Stock Options when vested by written notice delivered at the Company's principal place of business. Delivery of the certificates representing the shares called for under the Stock Options shall be made promptly after receipt of such notice, against the payment of the purchase price in cash or check. In the event that, prior to the delivery by the Company of all the shares in respect of which the Stock Options is hereby granted, the Company shall have effected one or more stock splits or readjustments, stock dividends, or other increases or reductions of the number of its shares outstanding without receiving compensation therefor in money, services, or property, the remaining number of shares still subject to the Stock Options hereby granted shall be increased or decreased to reflect proportionately the increase or decrease in the number of shares outstanding, and the purchase price per share shall be decreased or increased, as the case may be, in the same proportion. If the Executive's employment is terminated before the expiration of the Term, for whatever cause, such termination shall not affect the right to exercise any portion of the Stock Options theretofore vested in the Executive.

e. Executive Benefits. The Executive shall be entitled to participate in all benefit programs of the Company currently existing or hereafter made available to comparable executives. The Company will provide an automobile reimbursement allowance

of up to Eight Hundred Dollars (\$800), payable monthly, to reimburse Executive for expenses incurred for automobile, insurance and related costs. The Company will provide health or major medical insurance to the Executive and members of his immediate family in accordance with the Company's policies. The Executive will be entitled to participate in any disability, life or accident insurance plans which the Company may have in effect from time to time for the benefit of its employees. During the Term, the Company will make any required contributions on behalf of Executive to the Company's profit-sharing plan, which is treated as a qualified retirement plan by the Internal Revenue Service. Executive's rights to benefits thereunder will be governed by the terms and conditions of the Company's profit-sharing plan. All benefits referred to in this paragraph shall be referred to herein as "Executive Benefits."

f. Vacation. During each calendar year of the Term of this Agreement, the Executive shall be entitled to three (3) weeks of paid time off (PTO), Subject to proration or reduction for any partial calendar years of the Term.

g. Business Expense Reimbursement. During the Term, the Executive shall be entitled to receive full reimbursement for all reasonable, out-of-pocket expenses incurred by the Executive (in accordance with the policies and procedures established by the Company for its senior executive officers) in performing services hereunder, including, without limitation, the mileage expenses for the Executive's usage of a personal automobile for business purposes, and his mobile telephone expenses, provided the Executive accounts therefor in accordance with the Company's written reimbursement policies and procedures established for its senior executive officers.

## 6. Termination.

a. Death. In the event of the death of the Executive during the Term, this Agreement shall terminate at the end of the month in which the Executive's death occurs. The Company shall pay the Executive's Base Salary, Bonus, vacation pay, and Business Expense Reimbursement accrued to the date of termination within ten (10) days of the date of termination to the Executive's designated beneficiary, or, in the absence of such designation, to the estate or other legal representative of the Executive. Other death benefits will be provided in accordance with the terms of the Company's benefit programs and plans. The Executive's dependents shall be entitled to obtain benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), for a period of eighteen (18) months from the date of termination or until the expiration of the Term, whichever occurs first.

b. Disability. In the event of Executive's Disability (as defined herein), the Company may terminate this Agreement upon thirty (30) days prior written notice to the Executive.

(1) In the event of termination due to the Executive's Disability, the Company shall pay the Executive's Base Salary, Bonus, vacation pay, and Business Expense Reimbursement accrued to the date of termination and the Executive shall be entitled to compensation in accordance with the Company's disability compensation practice for senior executives, including any separate arrangement or policy covering the Executive. Notwithstanding any provision herein to the contrary, but in all events of termination due to Disability the Executive shall continue to receive the Executive's Base Salary at the annual rate in effect immediately prior to commencement of Disability, and Executive Benefits, for a period of thirty (30) days from the date of termination due to Disability. Any amounts payable to Executive under this Section 6(b) shall be offset by other long-term disability benefits received by the Executive from the Company.

(2) "Disability," for the purposes of this Agreement, shall be deemed to have occurred when (A) the Executive is unable by reason of physical or mental illness, incapacity or injury to perform the Executive's usual duties under this Agreement for more than forty-five (45) consecutive days and the period of the Disability is reasonably anticipated to exceed six (6) consecutive months in duration, or (B) a court of competent jurisdiction has adjudged the Executive mentally incapacitated and has appointed a guardian of the person or estate of the Executive.

(3) Anything herein to the contrary notwithstanding, if, following a termination of this Agreement due to Disability, the Executive becomes reemployed, whether as an Executive or a consultant to the Company, any salary, annual incentive payments or other benefits earned by the Executive from such reemployment shall offset any salary continuation due to the Executive hereunder commencing with the date of re-employment.

c. Termination by the Company for Cause.

(1) The Company may terminate this Agreement for "Cause," as hereinafter defined.

(2) "Cause" shall mean and include those actions or events specified below in subsections (A) through (E) occurring, or taking place subsequent to the Effective Date of this Agreement: (A) Executive's fraud, willful misconduct or embezzlement against the Company; (B) Executive's conviction of a crime of moral turpitude; (C) Executive's conviction of a felony under the laws of the United States or any state thereof; (D) any assignment of this Agreement by the Executive in violation of Section 14 of this Agreement; or (E) Executive's grossly negligent or willful failure to discharge his duties under this Agreement. No actions, events or circumstances occurring or taking place at any time prior to the Effective Date shall in any event constitute or provide any basis for any termination of this Agreement for Cause.

(3) Notwithstanding any provision to the contrary contained herein, the Company shall not terminate this Agreement for Cause unless and until the Company notifies the Executive in writing that the Executive has committed the conduct constituting Cause as set forth in Section 6(c)(2)(A) through (E) hereof, describing the particulars thereof, and gives the Executive a ten (10) day period to cure such conduct, if possible. If it is not possible for Executive to cure prior conduct constituting Cause pursuant to Section 6(c)(2)(E) hereof, the Company may terminate this Agreement for Cause in its discretion.

(4) Upon termination of this Agreement for Cause, the Company shall pay the Executive the Base Salary, Bonus, and Business Expense Reimbursement and vacation pay accrued to the effective date of the Executive's termination.

d. Termination by the Company Other than for Cause. The foregoing notwithstanding, the Company may terminate the Executive's employment for whatever reason it deems appropriate; provided, however, that the reason is not illegal or discriminatory. In the event such termination is not for Cause, as provided in Section 6(c) above, the Company may terminate this Agreement upon giving three (3) months' prior written notice. Upon the effective date of termination, the Company shall pay the Executive the Base Salary, Bonus, vacation pay, and Business Expense Reimbursement accrued to the date of termination. Notwithstanding any provision herein to the contrary, after the date of termination, the Company shall pay severance benefits to the Executive by continuing to compensate the Executive, following the effective date of termination, in accordance with the provisions of this Agreement for one year following the effective date of termination, with the Base Salary and Executive Benefits, and the Stock Options shall vest, all in the same manner and to the same extent as if this Agreement was not terminated.

e. Voluntary Termination by Executive. Notwithstanding any provision herein to the contrary, the Executive may terminate this Agreement without cause. In the event the Executive terminates this Agreement (except as provided in Section 6(f) and/or Section 6(g) hereof) prior to the expiration of the Term, the Company shall pay the Executive the Base Salary, Bonus, Automobile Allowance, Business Expense Reimbursement and vacation pay accrued to the effective date of the Executive's voluntary termination.

f. Termination by the Executive for Good Reason.

(1) The Executive may terminate this Agreement for "Good Reason," as hereinafter defined.

(2) "Good Reason," shall mean and include those actions or events specified below in subsections (A) through (C) occurring, or taking place subsequent to the Effective Date of this Agreement: (A) the Company's permanent or long term assignment of Executive to any duties that are materially and adversely inconsistent with the Executive's offices, duties or responsibilities in Executive's position; (B) the Company's breach of its obligation to pay any compensation due under Section 5 of this Agreement; or (C) the Company's relocation of Executive's position from more than One Hundred (50) miles Fayette County, Kentucky



(3) Notwithstanding anything to the contrary contained herein, the Executive shall not terminate this Agreement for Good Reason unless and until the Executive notifies the Company in writing that the Company has committed the conduct constituting Good Reason as set forth in Section 6(f)(2)(A) through (D) hereof and describes the particulars thereof and gives the Company a ten (10) day period to cure such conduct, if possible.

(4) Upon the effective date of termination for Good Reason, the Company shall pay the Executive the Base Salary, Bonus, vacation pay, and Business

Expense Reimbursement accrued to the date of termination. Notwithstanding any provision herein to the contrary, after the date of termination, the Company shall pay severance benefits to the Executive by continuing to compensate the Executive in accordance with the provisions of this Agreement for one (1) year following the effective date of termination, with the Base Salary and Executive Benefits, and the Stock Options shall vest, all in the same manner and to the same extent as if this Agreement was not terminated.

## 7. Covenant Not to Compete and Non-Disclosure of Information.

a. **Covenant Not to Compete.** The Executive acknowledges and recognizes the highly competitive nature of the Company's business and the goodwill, continued patronage, and specifically the names and addresses of the Company's Clients (as hereinafter defined) constitute a substantial asset of the Company having been acquired through considerable time, money and effort. Accordingly, in consideration of the execution of this Agreement, in the event the Executive's employment is terminated by reason of Disability pursuant to Section 6(b) or for Cause pursuant to Section 6(c), then the Executive agrees to the following:

(1) That during the Restricted Period (as hereinafter defined) and within the Restricted Area (as hereinafter defined), the Executive will not, individually or in conjunction with others, directly or indirectly, engage in any Competitive Business Activities (as hereinafter defined), whether as an officer, director, proprietor, employer, partner, independent contractor, investor (other than as a holder solely as an investment of less than 1 % of the outstanding capital stock of a publicly traded corporation other than the Company), consultant, advisor or agent.

(2) That during the Restricted Period and within the Restricted Area, the Executive will not, directly or indirectly, compete with the Company by soliciting, inducing or influencing any of the Company's Clients which have an active business relationship with the Company at the time during the Restricted Period to discontinue or reduce the extent of such relationship with the Company.

b. **Non-Disclosure of Information.** In the event this Agreement has been terminated pursuant to either Section 6(b) or Section 6(c) hereof, Executive agrees that, during the Restricted Period, Executive will not use or disclose any Proprietary Information of the Company for the Executive's own purposes or for the benefit of any entity engaged in Competitive Business Activities. As used herein, the term "Proprietary Information" shall mean trade secrets or confidential proprietary information of the Company, which are material to the conduct of the business of the Company. No information can be considered Proprietary Information unless the same is a unique process or method material to the conduct of Company's Business, or is a customer list or similar list of persons engaged in business activities with Company. No information can be considered Proprietary Information if the same is in the public domain or is required to be disclosed by order of any court or by reason of any statute, law, rule, regulation, ordinance or other governmental requirement. Executive further agrees that in the event his employment is terminated pursuant to Sections 6(b) or 6(c) above, all Documents in his possession at the time of his termination shall be returned to the Company at the Company's business location where the Executive was employed.

c. **Documents.** "Documents" shall mean all original written, recorded, or graphic matters that contain the Company's Proprietary Information, and any and all copies thereof, including, but not limited to: papers; books; records; tangible things; correspondence; communications; telex messages; memoranda; work-papers; reports; affidavits; statements; summaries; analyses; evaluations; client records and information; agreements; agendas; advertisements; instructions; charges; manuals; brochures; publications; directories; industry lists; schedules; price lists; client lists; statistical records; training manuals; computer printouts; books of account, records and invoices reflecting business operations; all things similar to any of the foregoing however denominated. In all cases where originals are not available, the term "Documents" shall also mean identical copies of original documents or non-identical copies thereof.

d. Company's Clients. The "Company's Clients" shall be deemed to be any partnerships, corporations, professional associations or other business organizations for whom the Company then performs Competitive Business Activities.

e. Restrictive Period. The "Restrictive Period" shall be deemed to be twelve (12) months following the effective date of termination of this Agreement pursuant to Sections 6(b) or 6(c) of this Agreement.

f. Restrictive Area. The "Restrictive Area" shall be deemed to include the states of Kentucky, Ohio, North Carolina and Illinois.

g. Competitive Business Activities. The term "Competitive Business Activities" as used herein shall be deemed to mean the Business and Third Party Logistics.

h. Covenants as Essential Elements of this Agreement. It is understood by and between the parties hereto that the foregoing covenants contained in Sections 7(a) and (b) are essential elements of this Agreement, and that but for the agreement by the Executive to comply with such covenants, the Company would not have agreed to enter into this Agreement.

i. Survival After Termination of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the covenants in Sections 7(a) and (b) shall survive the termination of this Agreement and the Executive's employment with the Company.

j. Remedies.

(1) The Executive acknowledges and agrees that the Company's remedy at law for a breach or threatened breach of any of the provisions of Section 7(a) or (b) herein would be inadequate and a breach thereof may cause irreparable harm to the Company. In recognition of this fact, in the event of a breach by the Executive of any of the provisions of Section 7(a) or (b), the Executive agrees that, in addition to any remedy at law available to the Company, including, but not limited to monetary damages, the Company may request equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available to the Company.

(2) Nothing herein contained shall be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or threatened breach.

## 8. Indemnification.

a. The Company shall defend, indemnify and hold Executive harmless from and against any and all expenses, including attorneys' fees and court costs, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any claim, demand, lawsuit or proceeding arising by reason of Executive's employment by the Company hereunder, with respect to matters occurring at any time on or prior to the date of termination of the Executive's employment with the Company, to the maximum extent permitted by the provisions of Florida and Federal law and the Articles of Incorporation and Bylaws of the Company then in effect. The Company shall advance to Executive any expenses incurred in defending any proceeding to the fullest extent permitted by the Company's Articles of Incorporation and Florida law. The Company will use its reasonable best efforts to cause Executive to be covered under any Director and Officer liability policy maintained by the Company for which he is eligible under standard provisions and exclusions.

b. The Company specifically acknowledges and agrees that the Executive has personally guaranteed certain obligations on behalf of the Dasher Expedited Freight

Division of the Company (the "Obligations") and further that the Executive is personally liable for certain obligations of the Dasher Expedited Freight Division of the Company. The Company shall defend, indemnify and hold the Executive harmless from and against any and all expenses, including attorneys' fees and court costs, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any claim, demand, lawsuit or proceeding arising in connection with such personal guaranties, personal liabilities, or the Obligations. Any out-of-pocket costs or expenses that may be incurred by the Executive in connection with such personal guaranties, personal liabilities, or the obligations shall be reimbursed to the Executive, upon receipt by the Company of documented evidence of such costs or expenses, within three (3) business days of the receipt of such documented evidence. Notwithstanding the foregoing, the Company shall satisfy any judgment entered against the Executive in connection with such personal guaranties, personal liabilities, or the obligations within three (3) days of receipt of notice of any such judgment entered against the Executive. The Company shall use its reasonable best efforts to cause the transfer or assignment of the Executive's personal guaranties, personal liabilities, or the Obligations from the Executive and to the Company and the Company shall pay the Obligations on or before June 30, 2004, except where such payment shall result in penalties, in which case the Company shall attempt to take-over any obligations pursuant to such Obligations, absent either ability to take-over or repay, the Company shall make all payments in accordance with terms and provisions to term of Obligations.

9. Withholding. Anything to the contrary notwithstanding, all payments required to be made by the Company hereunder to the Executive or the Executive's estate or beneficiaries shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Company may reasonably determine it should withhold pursuant to any applicable law or regulation. In lieu of withholding such amounts, the Company may accept other arrangements pursuant to which it is satisfied that such tax and other payroll obligations will be satisfied in a manner complying with applicable law or regulation.

10. Notices. Any notice required or permitted to be given under the terms of this Agreement shall be sufficient if in writing and if sent postage prepaid by registered or certified mail, return receipt requested; by overnight delivery; by courier; or by confirmed telecopy, in the case of the Executive to the Executive's last place of business or residence as shown on the records of the Company, or in the case of the Company to its principal office as set forth in the first paragraph of this Agreement, or at such other place as it may designate.

11. Waiver. Unless agreed in writing, the failure of either party, at any time, to require performance by the other of any provisions hereunder shall not affect its right thereafter to enforce the same, nor shall a waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any other preceding or succeeding breach of any term or provision of this Agreement. No extension of time for the performance of any obligation or act shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

12. Completeness and Modification. This Agreement constitutes the entire understanding between the parties hereto superseding all prior and contemporaneous agreements or understandings among the parties hereto concerning the Employment Agreement. This Agreement may be amended, modified, superseded or canceled, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties or, in the case of a waiver, by the party to be charged.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute but one agreement.

14. Binding Effect/Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns. This Agreement shall not be assignable by the Executive but shall be assignable by the Company in connection with the sale, transfer or other disposition of its business or to any of the Company's affiliates controlled by or under common control with the Company, subject to the provisions of Section 6(g) hereof. Upon any merger, asset sale or change in control of the Company, the surviving entity or successor to the business of the Company shall expressly assume its obligations hereunder.

15. Governing Law. This Agreement shall become valid when executed and accepted by Company and the Executive. The parties agree that it shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida. Anything in this Agreement to the contrary notwithstanding, the parties shall conduct their respective business in a lawful manner and faithfully comply with applicable laws or regulations of the state, city or other political subdivision in which the respective parties are located.

16. Further Assurances. All parties hereto shall execute and deliver such other instruments and do such other acts as may be necessary to carry out the intent and purposes of this Agreement.

17. Headings. The headings of the sections are for convenience only and shall not control or affect the meaning or construction or limit the scope or intent of any of the provisions of this Agreement.

18. Survival. Any termination of this Agreement shall not, however, affect the ongoing provisions of this Agreement which shall survive such termination in accordance with their terms, including without limitation Sections 6 and 8 hereof and all express post-termination benefit provisions hereof.

19. Severability. The invalidity or unenforceability, in whole or in part, of any covenant, promise or undertaking, or any section, subsection, paragraph, sentence, clause, phrase or word or of any provision of this Agreement shall not affect the validity or enforceability of the remaining portions thereof.

20. Enforcement. Should it become necessary for any party to institute legal action to enforce the terms and conditions of this Agreement, the successful party will be awarded reasonable attorneys' fees at all trial and appellate levels, expenses and costs.

21. Venue. Company and Executive acknowledge and agree that the U.S. District Court for the Southern District of Florida, or if such court lacks jurisdiction, the 11th Judicial Circuit (or its successor) in and for Miami-Dade County, Florida, shall be the exclusive venue and exclusive proper forum in which to adjudicate any case or controversy arising either, directly or indirectly, under or in connection with this Agreement and the parties further agree that, in the event of litigation arising out of or in connection with this Agreement in these courts, they will not contest or challenge the jurisdiction or venue of these courts.

22. Construction. This Agreement shall be construed within the fair meaning of each of its terms and not against the party drafting the document.

THE EXECUTIVE ACKNOWLEDGES THAT HE HAS READ THIS ENTIRE AGREEMENT, HAS HAD THE OPPORTUNITY TO DISCUSS THIS WITH HIS COUNSEL AND FURTHER ACKNOWLEDGES THAT HE UNDERSTANDS THE RESTRICTIONS, TERMS AND CONDITIONS IMPOSED UPON THE EXECUTIVE BY THIS AGREEMENT AND UNDERSTANDS THAT THESE RESTRICTIONS, TERMS AND CONDITIONS MAY BE BINDING UPON THE EXECUTIVE DURING AND AFTER TERMINATION OF THE EMPLOYMENT OF THE EXECUTIVE.

IN WITNESS WHEREOF, the parties have executed this Agreement as of date set forth in the first paragraph of this Agreement.

The Company:

SEGMENTZ, INC.

By: \_\_\_\_\_ Witness: \_\_\_\_\_

John S. Flynn

President & Chief Financial Officer

Brad Kelley:

\_\_\_\_\_ Witness: \_\_\_\_\_

Brad Kelley

## EXECUTIVE EMPLOYMENT AGREEMENT

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (the "Agreement") is made and entered into as of December 1, 2003 (the "Effective Date"), between **Segmentz, Inc.**, a Delaware corporation, whose principal place of business is 18302 Highwoods Preserve Parkway, Suite 100, Tampa, Florida 33467 (the "Company") and **Jeff Wiseman**, an individual whose address is 223 Glendover Road, Lexington, KY 40503 (the "Executive").

### RECITALS

A. The Company is a Delaware corporation and is principally engaged in the business of Third Party Logistics (the "Business").

B. The Executive has extensive experience in logistics operations and transportation management.

C. The Company desires to employ the Executive and the Executive desires to be employed by the Company.

D. The parties agree that a covenant not to compete is essential to the growth and stability of the Business of the Company.

**NOW, THEREFORE**, in consideration of the mutual agreements herein made, the Company and the Executive do hereby agree as follows:

1. Recitals. The above recitals are true, correct, and are herein incorporated by reference.

2. Employment. The Company hereby employs the Executive, and the Executive hereby accepts employment, upon the terms and conditions hereinafter set forth.

3. Authority and Power During Employment Period.

a. Duties and Responsibilities. During the Term (as hereinafter defined) of this Agreement, the Executive shall serve as Vice President of Operations, for Dasher Express, Inc. (the "Division"), and shall perform such duties as are consistent with Executive's position and as the Chief Executive Officer and/or the Board of Directors (the "Board") of the Company may reasonably direct. The Executive agrees to observe and comply with the policies, rules and regulations of the Company and the Division, as adopted by their respective Boards with reference to the performance of Executive's duties and agrees to carry out and perform orders, directions and policies of the Company and the Division as they may be, from time to time, stated either orally or in writing. For the Term hereof, Executive shall report directly to the Chief Executive Officer of the Company or, if there is none, the Chairman of the Board of Directors of the Company.

b. Time Devoted. Throughout the term of the Agreement, the Executive shall devote all of the Executive's business time and attention to the business and affairs of the Division consistent with the Executive's position with the Company.

c. Employment Base. The Executive's employment shall be permanently based within a fifty (50) mile radius of Fayette County, Kentucky. In this regard, Executive shall not be required be away from such base on temporary assignment more than five (5) nights each calendar month, without consent of the Executive.

4. Term. The Term of employment hereunder shall commence on the Effective Date shall end on December 31, 2007 (the "Term"), unless earlier terminated as provided herein. The Company shall have the option to extend the Term for an additional one (1) year period thereafter, upon the same terms and conditions as provided herein, provided that the Company shall give the Executive thirty (30) days written notice prior to the expiration of the initial Term of Company's decision to extend the Term. For purposes of this Agreement, the Term shall include the initial term and all extensions thereof, when extended.

#### 5. Compensation and Benefits.

a. Salary. The Executive shall be paid a base salary (the "Base Salary") at an annual rate of Sixty-Five Thousand Dollars (\$65,000.00) beginning on the Effective Date of this Agreement for the first calendar year of the Term. For each calendar year of the Term, the amount of the Base Salary shall increase on December 31 by an amount equal to Two Percent (2%) of the amount of the immediately preceding year's Base Salary, subject to the following conditions:

- For the 2004 calendar year the Division must attain \$8.0 million in Revenues.
- For the 2005 calendar year the Division must attain \$9.0 million in Revenues.
- For the 2006 calendar year the Division must attain \$10.0 million in Revenues.

Revenues shall be as defined in that Stock Purchase Agreement dated December 1, 2003 with the Company and Executive as parties thereto (the "Stock Purchase Agreement").

In the event that these conditions are not met, the Company may increase the Base Salary in the Company's discretion.

b. Additional Compensation. Depending on operations department performance, Employee may receive additional compensation, in cash, stock and/or stock options ("Additional Compensation"). All Additional Compensation is subject to board approval.

c. Revenues. "Revenues" as used herein shall have the same meaning as defined in the Stock Purchase Agreement of even date. Executive shall have the right at any time and from time to time during normal business hours at his sole cost and expense to personally examine or to have agents appointed by him to examine the books and records of the Division and the Company's Affiliated Group (as defined in the Stock Purchase Agreement) to verify the correctness of the computation of Revenues.

d. Stock Options. On the Effective Date, the Company shall grant the Executive options to purchase One Hundred Thousand (100,000) shares of stock in the Company at Two Dollars and Fifty Cents (\$2.50) per share (the "Stock Options"), which shall vest over a three (3) year period as follows: Twenty Percent (20%) of the Stock Options shall vest on December 31, 2004; an additional Thirty Percent (30%) of the Stock Options shall vest on December 31, 2005; and the remaining Fifty Percent (50%) of the Stock Options shall vest on December 31, 2006. Each of the Stock Options shall expire three (3) years from the date each of the Stock Options vested. The Executive may exercise part or all of the Stock Options when vested by written notice delivered at the Company's principal place of business. Delivery of the certificates representing the shares called for under the Stock Options shall be made promptly after receipt of such notice, against the payment of the purchase price in cash or check. In the event that, prior to the delivery by the Company of all the shares in respect of which the Stock Options is hereby granted, the Company shall have effected one or more stock splits or readjustments, stock dividends, or other increases or reductions of the number of its shares outstanding without receiving compensation therefor in money, services, or property, the remaining number of shares still subject to the Stock Options hereby granted shall be increased or decreased to reflect proportionately the increase or decrease in the number of shares outstanding, and the purchase price per share shall be decreased or increased, as the case may be, in the same proportion. If the Executive's employment is terminated before the expiration of the Term, for whatever cause, such termination shall not affect the right to exercise any portion of the Stock Options theretofore vested in the Executive.

e. Executive Benefits. The Executive shall be entitled to participate in all benefit programs of the Company currently existing or hereafter made available to comparable executives. The Company will provide an automobile reimbursement allowance

of up to Eight Hundred Dollars (\$800), payable monthly, to reimburse Executive for expenses incurred for automobile, insurance and related costs. The Company will provide health or major medical insurance to the Executive and members of his immediate family in accordance with the Company's policies. The Executive will be entitled to participate in any disability, life or accident insurance plans which the Company may have in effect from time to time for the benefit of its employees. During the Term, the Company will make any required contributions on behalf of Executive to the Company's profit-sharing plan, which is treated as a qualified retirement plan by the Internal Revenue Service. Executive's rights to benefits thereunder will be governed by the terms and conditions of the Company's profit-sharing plan. All benefits referred to in this paragraph shall be referred to herein as "Executive Benefits."

f. Vacation. During each calendar year of the Term of this Agreement, the Executive shall be entitled to three (3) weeks of paid time off (PTO), Subject to proration or reduction for any partial calendar years of the Term.

g. Business Expense Reimbursement. During the Term, the Executive shall be entitled to receive full reimbursement for all reasonable, out-of-pocket expenses incurred by the Executive (in accordance with the policies and procedures established by the Company for its senior executive officers) in performing services hereunder, including, without limitation, the mileage expenses for the Executive's usage of a personal automobile for business purposes, and his mobile telephone expenses, provided the Executive accounts therefor in accordance with the Company's written reimbursement policies and procedures established for its senior executive officers.

## 6. Termination.

a. Death. In the event of the death of the Executive during the Term, this Agreement shall terminate at the end of the month in which the Executive's death occurs. The Company shall pay the Executive's Base Salary, Bonus, vacation pay, and Business Expense Reimbursement accrued to the date of termination within ten (10) days of the date of termination to the Executive's designated beneficiary, or, in the absence of such designation, to the estate or other legal representative of the Executive. Other death benefits will be provided in accordance with the terms of the Company's benefit programs and plans. The Executive's dependents shall be entitled to obtain benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), for a period of eighteen (18) months from the date of termination or until the expiration of the Term, whichever occurs first.

b. Disability. In the event of Executive's Disability (as defined herein), the Company may terminate this Agreement upon thirty (30) days prior written notice to the Executive.

(1) In the event of termination due to the Executive's Disability, the Company shall pay the Executive's Base Salary, Bonus, vacation pay, and Business Expense Reimbursement accrued to the date of termination and the Executive shall be entitled to compensation in accordance with the Company's disability compensation practice for senior executives, including any separate arrangement or policy covering the Executive. Notwithstanding any provision herein to the contrary, but in all events of termination due to Disability the Executive shall continue to receive the Executive's Base Salary at the annual rate in effect immediately prior to commencement of Disability, and Executive Benefits, for a period of thirty (30) days from the date of termination due to Disability. Any amounts payable to Executive under this Section 6(b) shall be offset by other long-term disability benefits received by the Executive from the Company.

(2) "Disability," for the purposes of this Agreement, shall be deemed to have occurred when (A) the Executive is unable by reason of physical or mental illness, incapacity or injury to perform the Executive's usual duties under this Agreement for more than forty-five (45) consecutive days and the period of the Disability is reasonably anticipated to exceed six (6) consecutive months in duration, or (B) a court of competent jurisdiction has adjudged the Executive mentally incapacitated and has appointed a guardian of the person or estate of the Executive.

(3) Anything herein to the contrary notwithstanding, if, following a termination of this Agreement due to Disability, the Executive becomes reemployed, whether as an Executive or a consultant to the Company, any salary, annual incentive payments or other benefits earned by the Executive from such reemployment shall offset any salary continuation due to the Executive hereunder commencing with the date of re-employment.



c. Termination by the Company for Cause.

(1) The Company may terminate this Agreement for "Cause," as hereinafter defined.

(2) "Cause" shall mean and include those actions or events specified below in subsections (A) through (E) occurring, or taking place subsequent to the Effective Date of this Agreement: (A) Executive's fraud, willful misconduct or embezzlement against the Company; (B) Executive's conviction of a crime of moral turpitude; (C) Executive's conviction of a felony under the laws of the United States or any state thereof; (D) any assignment of this Agreement by the Executive in violation of Section 14 of this Agreement; or (E) Executive's grossly negligent or willful failure to discharge his duties under this Agreement. No actions, events or circumstances occurring or taking place at any time prior to the Effective Date shall in any event constitute or provide any basis for any termination of this Agreement for Cause.

(3) Notwithstanding any provision to the contrary contained herein, the Company shall not terminate this Agreement for Cause unless and until the Company notifies the Executive in writing that the Executive has committed the conduct constituting Cause as set forth in Section 6(c)(2)(A) through (E) hereof, describing the particulars thereof, and gives the Executive a ten (10) day period to cure such conduct, if possible. If it is not possible for Executive to cure prior conduct constituting Cause pursuant to Section 6(c)(2)(E) hereof, the Company may terminate this Agreement for Cause in its discretion.

(4) Upon termination of this Agreement for Cause, the Company shall pay the Executive the Base Salary, Bonus, and Business Expense Reimbursement and vacation pay accrued to the effective date of the Executive's termination.

d. Termination by the Company Other than for Cause. The foregoing notwithstanding, the Company may terminate the Executive's employment for whatever reason it deems appropriate; provided, however, that the reason is not illegal or discriminatory. In the event such termination is not for Cause, as provided in Section 6(c) above, the Company may terminate this Agreement upon giving three (3) months' prior written notice. Upon the effective date of termination, the Company shall pay the Executive the Base Salary, Bonus, vacation pay, and Business Expense Reimbursement accrued to the date of termination. Notwithstanding any provision herein to the contrary, after the date of termination, the Company shall pay severance benefits to the Executive by continuing to compensate the Executive, following the effective date of termination, in accordance with the provisions of this Agreement for one year following the effective date of termination, with the Base Salary and Executive Benefits, and the Stock Options shall vest, all in the same manner and to the same extent as if this Agreement was not terminated.

e. Voluntary Termination by Executive. Notwithstanding any provision herein to the contrary, the Executive may terminate this Agreement without cause. In the event the Executive terminates this Agreement (except as provided in Section 6(f) and/or Section 6(g) hereof) prior to the expiration of the Term, the Company shall pay the Executive the Base Salary, Bonus, Automobile Allowance, Business Expense Reimbursement and vacation pay accrued to the effective date of the Executive's voluntary termination.

f. Termination by the Executive for Good Reason.

(1) The Executive may terminate this Agreement for "Good Reason," as hereinafter defined.

(2) "Good Reason," shall mean and include those actions or events specified below in subsections (A) through (C) occurring, or taking place subsequent to the Effective Date of this Agreement: (A) the Company's permanent or long term assignment of Executive to any duties that are materially and adversely inconsistent with the Executive's offices, duties or responsibilities in Executive's position; (B) the Company's breach of its obligation to pay any compensation due under Section 5 of this Agreement; or (C) the Company's relocation of Executive's position from more than One Hundred (50) miles Fayette County, Kentucky

(3) Notwithstanding anything to the contrary contained herein, the Executive shall not terminate this Agreement for Good Reason unless and until the Executive notifies the Company in writing that the Company has committed the conduct constituting Good Reason as set forth in Section 6(f)(2)(A) through (D) hereof and describes the particulars thereof and gives the Company a ten (10) day period to cure such conduct, if possible.

(4) Upon the effective date of termination for Good Reason, the Company shall pay the Executive the Base Salary, Bonus, vacation pay, and Business

Expense Reimbursement accrued to the date of termination. Notwithstanding any provision herein to the contrary, after the date of termination, the Company shall pay severance benefits to the Executive by continuing to compensate the Executive in accordance with the provisions of this Agreement for one (1) year following the effective date of termination, with the Base Salary and Executive Benefits, and the Stock Options shall vest, all in the same manner and to the same extent as if this Agreement was not terminated.

## 7. Covenant Not to Compete and Non-Disclosure of Information.

a. **Covenant Not to Compete.** The Executive acknowledges and recognizes the highly competitive nature of the Company's business and the goodwill, continued patronage, and specifically the names and addresses of the Company's Clients (as hereinafter defined) constitute a substantial asset of the Company having been acquired through considerable time, money and effort. Accordingly, in consideration of the execution of this Agreement, in the event the Executive's employment is terminated by reason of Disability pursuant to Section 6(b) or for Cause pursuant to Section 6(c), then the Executive agrees to the following:

(1) That during the Restricted Period (as hereinafter defined) and within the Restricted Area (as hereinafter defined), the Executive will not, individually or in conjunction with others, directly or indirectly, engage in any Competitive Business Activities (as hereinafter defined), whether as an officer, director, proprietor, employer, partner, independent contractor, investor (other than as a holder solely as an investment of less than 1 % of the outstanding capital stock of a publicly traded corporation other than the Company), consultant, advisor or agent.

(2) That during the Restricted Period and within the Restricted Area, the Executive will not, directly or indirectly, compete with the Company by soliciting, inducing or influencing any of the Company's Clients which have an active business relationship with the Company at the time during the Restricted Period to discontinue or reduce the extent of such relationship with the Company.

b. **Non-Disclosure of Information.** In the event this Agreement has been terminated pursuant to either Section 6(b) or Section 6(c) hereof, Executive agrees that, during the Restricted Period, Executive will not use or disclose any Proprietary Information of the Company for the Executive's own purposes or for the benefit of any entity engaged in Competitive Business Activities. As used herein, the term "Proprietary Information" shall mean trade secrets or confidential proprietary information of the Company, which are material to the conduct of the business of the Company. No information can be considered Proprietary Information unless the same is a unique process or method material to the conduct of Company's Business, or is a customer list or similar list of persons engaged in business activities with Company. No information can be considered Proprietary Information if the same is in the public domain or is required to be disclosed by order of any court or by reason of any statute, law, rule, regulation, ordinance or other governmental requirement. Executive further agrees that in the event his employment is terminated pursuant to Sections 6(b) or 6(c) above, all Documents in his possession at the time of his termination shall be returned to the Company at the Company's business location where the Executive was employed.

c. **Documents.** "Documents" shall mean all original written, recorded, or graphic matters that contain the Company's Proprietary Information, and any and all copies thereof, including, but not limited to: papers; books; records; tangible things; correspondence; communications; telex messages; memoranda; work-papers; reports; affidavits; statements; summaries; analyses; evaluations; client records and information; agreements; agendas; advertisements; instructions; charges; manuals; brochures; publications; directories; industry lists; schedules; price lists; client lists; statistical records; training manuals; computer printouts; books of account, records and invoices reflecting business operations; all things similar to any of the foregoing however denominated. In all cases where originals are not available, the term "Documents" shall also mean identical copies of original documents or non-identical copies thereof.

d. Company's Clients. The "Company's Clients" shall be deemed to be any partnerships, corporations, professional associations or other business organizations for whom the Company then performs Competitive Business Activities.

e. Restrictive Period. The "Restrictive Period" shall be deemed to be twelve (12) months following the effective date of termination of this Agreement pursuant to Sections 6(b) or 6(c) of this Agreement.

f. Restrictive Area. The "Restrictive Area" shall be deemed to include the states of Kentucky, Ohio, North Carolina and Illinois.

g. Competitive Business Activities. The term "Competitive Business Activities" as used herein shall be deemed to mean the Business and Third Party Logistics.

h. Covenants as Essential Elements of this Agreement. It is understood by and between the parties hereto that the foregoing covenants contained in Sections 7(a) and (b) are essential elements of this Agreement, and that but for the agreement by the Executive to comply with such covenants, the Company would not have agreed to enter into this Agreement.

i. Survival After Termination of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the covenants in Sections 7(a) and (b) shall survive the termination of this Agreement and the Executive's employment with the Company.

j. Remedies.

(1) The Executive acknowledges and agrees that the Company's remedy at law for a breach or threatened breach of any of the provisions of Section 7(a) or (b) herein would be inadequate and a breach thereof may cause irreparable harm to the Company. In recognition of this fact, in the event of a breach by the Executive of any of the provisions of Section 7(a) or (b), the Executive agrees that, in addition to any remedy at law available to the Company, including, but not limited to monetary damages, the Company may request equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available to the Company.

(2) Nothing herein contained shall be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or threatened breach.

## 8. Indemnification.

a. The Company shall defend, indemnify and hold Executive harmless from and against any and all expenses, including attorneys' fees and court costs, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any claim, demand, lawsuit or proceeding arising by reason of Executive's employment by the Company hereunder, with respect to matters occurring at any time on or prior to the date of termination of the Executive's employment with the Company, to the maximum extent permitted by the provisions of Florida and Federal law and the Articles of Incorporation and Bylaws of the Company then in effect. The Company shall advance to Executive any expenses incurred in defending any proceeding to the fullest extent permitted by the Company's Articles of Incorporation and Florida law. The Company will use its reasonable best efforts to cause Executive to be covered under any Director and Officer liability policy maintained by the Company for which he is eligible under standard provisions and exclusions.

b. The Company specifically acknowledges and agrees that the Executive has personally guaranteed certain obligations on behalf of the Dasher Expedited Freight

Division of the Company (the "Obligations") and further that the Executive is personally liable for certain obligations of the Dasher Expedited Freight Division of the Company. The Company shall defend, indemnify and hold the Executive harmless from and against any and all expenses, including attorneys' fees and court costs, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any claim, demand, lawsuit or proceeding arising in connection with such personal guaranties, personal liabilities, or the Obligations. Any out-of-pocket costs or expenses that may be incurred by the Executive in connection with such personal guaranties, personal liabilities, or the obligations shall be reimbursed to the Executive, upon receipt by the Company of documented evidence of such costs or expenses, within three (3) business days of the receipt of such documented evidence. Notwithstanding the foregoing, the Company shall satisfy any judgment entered against the Executive in connection with such personal guaranties, personal liabilities, or the obligations within three (3) days of receipt of notice of any such judgment entered against the Executive. The Company shall use its reasonable best efforts to cause the transfer or assignment of the Executive's personal guaranties, personal liabilities, or the Obligations from the Executive and to the Company and the Company shall pay the Obligations on or before June 30, 2004, except where such payment shall result in penalties, in which case the Company shall attempt to take-over any obligations pursuant to such Obligations, absent either ability to take-over or repay, the Company shall make all payments in accordance with terms and provisions to term of Obligations.

9. Withholding. Anything to the contrary notwithstanding, all payments required to be made by the Company hereunder to the Executive or the Executive's estate or beneficiaries shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Company may reasonably determine it should withhold pursuant to any applicable law or regulation. In lieu of withholding such amounts, the Company may accept other arrangements pursuant to which it is satisfied that such tax and other payroll obligations will be satisfied in a manner complying with applicable law or regulation.

10. Notices. Any notice required or permitted to be given under the terms of this Agreement shall be sufficient if in writing and if sent postage prepaid by registered or certified mail, return receipt requested; by overnight delivery; by courier; or by confirmed telecopy, in the case of the Executive to the Executive's last place of business or residence as shown on the records of the Company, or in the case of the Company to its principal office as set forth in the first paragraph of this Agreement, or at such other place as it may designate.

11. Waiver. Unless agreed in writing, the failure of either party, at any time, to require performance by the other of any provisions hereunder shall not affect its right thereafter to enforce the same, nor shall a waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any other preceding or succeeding breach of any term or provision of this Agreement. No extension of time for the performance of any obligation or act shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

12. Completeness and Modification. This Agreement constitutes the entire understanding between the parties hereto superseding all prior and contemporaneous agreements or understandings among the parties hereto concerning the Employment Agreement. This Agreement may be amended, modified, superseded or canceled, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties or, in the case of a waiver, by the party to be charged.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute but one agreement.

14. Binding Effect/Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns. This Agreement shall not be assignable by the Executive but shall be assignable by the Company in connection with the sale, transfer or other disposition of its business or to any of the Company's affiliates controlled by or under common control with the Company, subject to the provisions of Section 6(g) hereof. Upon any merger, asset sale or change in control of the Company, the surviving entity or successor to the business of the Company shall expressly assume its obligations hereunder.

15. Governing Law. This Agreement shall become valid when executed and accepted by Company and the Executive. The parties agree that it shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida. Anything in this Agreement to the contrary notwithstanding, the parties shall conduct their respective business in a lawful manner and faithfully comply with applicable laws or regulations of the state, city or other political subdivision in which the respective parties are located.

16. Further Assurances. All parties hereto shall execute and deliver such other instruments and do such other acts as may be necessary to carry out the intent and purposes of this Agreement.

17. Headings. The headings of the sections are for convenience only and shall not control or affect the meaning or construction or limit the scope or intent of any of the provisions of this Agreement.

18. Survival. Any termination of this Agreement shall not, however, affect the ongoing provisions of this Agreement which shall survive such termination in accordance with their terms, including without limitation Sections 6 and 8 hereof and all express post-termination benefit provisions hereof.

19. Severability. The invalidity or unenforceability, in whole or in part, of any covenant, promise or undertaking, or any section, subsection, paragraph, sentence, clause, phrase or word or of any provision of this Agreement shall not affect the validity or enforceability of the remaining portions thereof.

20. Enforcement. Should it become necessary for any party to institute legal action to enforce the terms and conditions of this Agreement, the successful party will be awarded reasonable attorneys' fees at all trial and appellate levels, expenses and costs.

21. Venue. Company and Executive acknowledge and agree that the U.S. District Court for the Southern District of Florida, or if such court lacks jurisdiction, the 11th Judicial Circuit (or its successor) in and for Miami-Dade County, Florida, shall be the exclusive venue and exclusive proper forum in which to adjudicate any case or controversy arising either, directly or indirectly, under or in connection with this Agreement and the parties further agree that, in the event of litigation arising out of or in connection with this Agreement in these courts, they will not contest or challenge the jurisdiction or venue of these courts.

22. Construction. This Agreement shall be construed within the fair meaning of each of its terms and not against the party drafting the document.

THE EXECUTIVE ACKNOWLEDGES THAT HE HAS READ THIS ENTIRE AGREEMENT, HAS HAD THE OPPORTUNITY TO DISCUSS THIS WITH HIS COUNSEL AND FURTHER ACKNOWLEDGES THAT HE UNDERSTANDS THE RESTRICTIONS, TERMS AND CONDITIONS IMPOSED UPON THE EXECUTIVE BY THIS AGREEMENT AND UNDERSTANDS THAT THESE RESTRICTIONS, TERMS AND CONDITIONS MAY BE BINDING UPON THE EXECUTIVE DURING AND AFTER TERMINATION OF THE EMPLOYMENT OF THE EXECUTIVE.

IN WITNESS WHEREOF, the parties have executed this Agreement as of date set forth in the first paragraph of this Agreement.

The Company:

SEGMENTZ, INC.

By: \_\_\_\_\_ Witness: \_\_\_\_\_

John S. Flynn

President & Chief Financial Officer

Jeff Wiseman:

\_\_\_\_\_ Witness: \_\_\_\_\_

Jeff Wiseman

## SEGMENTZ, INC. ENTERS INTO AGREEMENT TO ACQUIRE

### DASHER EXPRESS & AIR FREIGHT

#### FOR IMMEDIATE RELEASE

Company Contact: Investor Relations Contact:

Segmentz, Inc. Hayden Communications, Inc.

Allan Marshall Mark McPartland

813-989-2232 843-272-4653

**TAMPA, Fla.-(BUSINESS WIRE) - January 6, 2004**—Segmentz, Inc. (OTCBB: SEGZ), announced today the closing of an acquisition agreement signed December 31, 2003 to acquire all outstanding capital stock of Dasher Express & Air Freight, a privately held Lexington, KY based Company.

The terms of the transaction are valued at approximately \$2,000,000 in cash and stock, as well as incentive and bonus payments to be paid to the acquisition candidate based on management achieving certain financial milestones. Dasher Express & Air Freight generated over \$8 million in revenues over the past twelve months and has been historically cash flow positive. The acquisition is expected to be accretive to Segmentz's earnings in 2004.

Allan Marshall, Chief Executive Officer of Segmentz, Inc., stated, "Our team is extremely pleased to finalize this agreement as it represents a continuance of our acquisition strategy which remains focused in the Southeast and Midwest United States. Dasher operates in three of our current cities and an additional three including Greensboro, Charlotte and the Detroit area, which will allow us to increase utilization and extend our expedited services to the new locations. The Detroit location gives us an additional foothold in our pursuit of future automotive dedicated delivery contracts. In addition to overlapping geographic areas of coverage, the company provides niche specialty services which can be marketed to our existing customer base, thus creating additional organic growth opportunities."

Jeff Wiseman, Executive Financial Officer of Dasher Express stated, "We are very excited about the synergies between the companies and the opportunity to expand additional services to our customers." Brad Kelley, Executive Operations Officer of Dasher Express stated, "We look forward to working with the Segmentz team to provide single source logistics solutions to our combined customer base."

#### About Dasher Express & Air Freight

Dasher Express & Air Freight specializes in expedited trucking, scheduled line haul movements, trade show transportation and integrated third party logistics services. The Company currently operates six service centers in the Southeast and Midwest, which facilitate time definite delivery service levels. The Company began operations in 1990 and is headquartered in Lexington, KY.

#### About Segmentz, Inc.

Segmentz, Inc. is a provider of transportation and logistics management services to its target client base, ranging from mid-sized to Fortune 100 companies. The Company's services include regional outsourced trucking, time definite transportation, dedicated delivery and supply chain management services. The Company operates a network of terminals in the Southeast and Midwest United States. The Company is dedicated to

providing services that are customized to meet its client's individual needs and flexible enough to cope with an ever-changing business environment. Segmentz, Inc. is publicly traded on the NASDAQ OTC-BB under the symbol SEGZ.

## Forward-Looking Statements

This report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve risks and uncertainties. Factors that could cause actual results to differ materially from those predicted in any such forward-looking statement include our ability to continue to lower our costs, our timely development and customers' acceptance of our transportation products, including acceptance by key customers, pricing pressures, rapid technological changes in the industry, growth of the transportation and third party logistics market, increased competition, our ability to attract and retain qualified personnel, our ability to identify and successfully consummate future acquisitions; adverse changes in customer order patterns, adverse changes in general economic conditions in the U.S. and internationally, risks associated with foreign operations and political and economic uncertainties associated with current world events. These and other risks are detailed from time to time in Segmentz periodic reports filed with the Securities and Exchange Commission, including, but not limited to, its report on Form 10-KSB for its fiscal year ended December 31, 2002.

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