



5-1701

05-25-2001



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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Form TMO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
Tab settings ⇨ ⇨ ⇨ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Verdugo Banking Company

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other Bank

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: TeraZoo, Inc.
 Internal
 Address: _____
 Street Address: 35 W 712 Bluff Drive
 City: St. Charles State: IL Zip: 60175

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State Delaware
 Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
 (Designations must be a separate document from assignment)
 Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: _____

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)
75/666,091

B. Trademark Registration No.(s) 2,360,500
2,189,628
2,091,628

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Susan D. Reinecke
 Internal Address: Mayer, Brown & Platt

 Street Address: P.O. Box 2828

 City: Chicago State: IL Zip: 60690-2828

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....\$ 115.00

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
13-0019

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Susan D. Reinecke Susan D. Reinecke May 16, 2001
 Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 11

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231



BILL OF SALE AND PURCHASE AGREEMENT

This bill of Sale and Purchase Agreement ("**Agreement**") is entered into by and between Verdugo Banking Company ("**Lender**"), and TeraZoo Inc., a Delaware corporation ("**Purchaser**"), effective as of December 29, 2000 (the "**Effective Date**").

RECITALS

WHEREAS, Lender entered into certain financing arrangements (collectively the "**Loans**") with DogByte Development, Inc. ("**Borrower**") pursuant to certain loan documents and other instruments and documents previously executed and existing between Lender and Borrower (hereinafter collectively referred to as the "**Loan Documents**").

WHEREAS, pursuant to the terms of the Loan Documents, Lender extended loans, advances and other financial accommodations to the Borrower, and Borrower granted Lender a security interest in the personal property assets of the Borrower, which included general intangibles, including without limitation, Software, Patents, Marks, Copyrights and Technology general intangibles, and as set forth in the Definitions and in Exhibit "1" attached hereto and incorporated herein by reference (collectively the "**Intellectual Property Collateral**").

WHEREAS, the Loans were in default and Borrower has surrendered possession of the Intellectual Property Collateral, waived and renounced its rights under the California Uniform Commercial Code ("**UCC**") §9504.

WHEREAS, the Purchaser submits to Lender the following purchase offer ("**Purchase Price**") to purchase the Intellectual Property Collateral, and the parties hereto believe that this is a fair and reasonable value of the Intellectual Property Collateral. The Purchase Price is as follows:

- (i) Forty percent (40%) of the gross revenue from fees collected that result from Technical Support provided by Purchaser for Existing Licenses;
- (ii) Forty percent (40%) of the gross revenue from fees collected that result from Technical Support provided by Purchaser under licenses to Software granted by Purchaser after the date of this Agreement.
- (iii) Forty percent (40%) of the gross revenue from fees collected from the sale and/or license of Software; and,
- (iv) Two percent (2%) of the gross revenues collected that result from the Initial License Fees.

DEFINITIONS

"**Copyrights**" shall mean the registered copyrights listed in Schedule "A" of Exhibit 1, the right to apply for any copyrights and any other copyrights, whether registered or not, that Borrower owned, or had an ownership interest in.

"**Development Fees**" mean the fees charged by Purchaser for making changes or modifications to either Software or Products, implementation assistance and application processing.

"**Existing Licenses**" shall mean licenses to Software, Patents and Technology granted by Borrower prior to the date of this Agreement which are still in effect as of the date of this Agreement.

"**Initial License Fees**" shall mean the amounts paid at the time the first license is initiated with a third party for licenses in Products granted by Purchaser after the date of this Agreement; specifically excluded are any Technical Support, Development Fees and/or Transactional Fees.

"**Marks**" shall mean the trademarks, service marks, trademark applications, and service mark applications listed in Schedule "C" of Exhibit 1, and trademark or service mark rights resulting under any state law or the common law, and any other trademarks, service marks or applications for trademarks or

service marks that Borrower owned, or had an ownership interest in and any goodwill of the business associated with the same.

“**Patents**” shall mean (a) the patents and patent applications set forth in Schedule “D” of Exhibit 1 as updated from time to time (b) all provisional, continuation, continuation-in-part, divisional, and continued prosecution applications claiming priority based on the patents and patent applications listed in Schedule “D”, (c) any reissues and re-examinations resulting from any of the foregoing, and (d) all other patents and patent applications the Borrower owned, or had an ownership interest in.

“**Products**” shall mean products developed by Purchaser that incorporate, in whole or in part, any of the Patents, Copyrights, Software or Marks.

“**Software**” shall mean software programs, in source and executable object code forms, developed by Borrower, prior to the date of this Agreement and listed in Schedule “B” of Exhibit 1, the Copyrights, and any other software, copyright or rights in Software that Borrower owned or had an ownership interest in.

“**Technical Support**” shall mean help, guidance or aid provided to licensees of Borrower Software or Products that is in verbal or written format; specifically excluded are Development Fees, implementation assistance, and application processing.

“**Technology**” shall mean (a) information, whether patentable, pertaining to the Intellectual Property Collateral, (b) all files, engineering drawings, show-how, specifications, processes, technology, know-how, methods, manuals, unregistered copyrights, artwork, designs, formulas, trade secrets and other information as updated from time to time, all of which pertain to the Intellectual Property Collateral and the utilization thereof and to item (a) above.

“**Transactional Fees**” shall mean fees charged by the Purchaser that are determined, in whole or in part, by the number of transactions processed.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereto agree as follows:

1. In consideration of the payment of the Purchase Price, Lender does hereby exclusively, unconditionally and irrevocably sell, convey, assign, transfer and deliver to Purchaser all of Borrower’s right title and interest in and to the Intellectual Property Collateral. Lender makes no representation or warranty with respect to the Intellectual Property Collateral other than that Lender is hereby conveying all of Borrower’s right, title and interest in and to the Intellectual Property Collateral to Purchaser as may be conveyed pursuant to UCC §9504(4).

2. The Purchaser shall begin paying the Purchase Price to Lender on December 1, 2000, and continue payments on the first day of each month thereafter until either (a) November 1, 2003, or (b) when the aggregate amount of the amounts required to be paid herein equals the sum of \$300,000, which ever occurs first (the Purchaser’s entire and total obligation shall in no case exceed \$300,000). The “**Term**” of this Agreement shall commence on the Effective Date and end upon the occurrence of (a) or (b) in this Section 2, or other termination as provided under this Agreement, whichever occurs first.

3. To secure the performance of this Agreement and payment of the Purchase Price, Purchaser will execute concurrently herewith, a security agreement (the terms and conditions of which are incorporated herein) granting a security interest in the Intellectual Property Collateral to Lender.

4. Except as set forth in Section 1 herein, the Intellectual Property Collateral is sold without covenant or warranty by Lender, express or implied, as to the rights, interest or title sold, the merchantability or fitness of the Intellectual Property Collateral for any particular purpose or of any other matter or purpose, and by acceptance of delivery of the Intellectual Property Collateral, Purchaser affirms that it has not relied on Lender’s skill or judgment to select or furnish the Intellectual Property Collateral for any particular purpose.

5. Lender makes no representation or warranty, expressed, implied or statutory, except that (i) the Intellectual Property Collateral is sold by Lender in conformance with the provisions of UCC §9504, (ii) Lender has received no notice from any other secured party of a claim or interest in the Intellectual Property Collateral and (iii) Lender has the power and authority, to convey the Intellectual Property Collateral to Purchaser pursuant to the provisions of UCC §9504. Lender assumes no responsibility with respect to the condition of the Intellectual Property Collateral and the Intellectual Property Collateral is sold "AS IS" and "WHERE IS;" further, Lender is relieved of any and all liability and/or responsibility for the condition of the Intellectual Property Collateral, including without limitation, those conditions which are visible (patent defects) as well as conditions which cannot be detected through investigations (latent defects).

6. Purchaser represents and warrants that (i) as it has deemed appropriate, it has made its own credit and valuation analysis as to the purchase the Intellectual Property Collateral; and, (ii) has independently, without reliance upon Lender, and based on such documents and information as it has deemed appropriate at the time, made its own decision to purchase the Intellectual Property Collateral.

7. Purchaser acknowledges that the Intellectual Property Collateral is being sold by Lender in the exercise of its rights as a secured creditor under the UCC and that Lender is neither a manufacturer nor distributor of, nor dealer or merchant in, the Intellectual Property Collateral.

8. The parties each agree to execute, acknowledge, verify, deliver, furnish, or cause to be furnished all documents and information necessary to do or cause to be done all other acts and things at such times and in such forms or substance as are reasonably necessary to effectuate the terms of the Agreement.

9. The parties represent and warrant that: (i) the execution and delivery of this Agreement has been duly authorized by all necessary actions; (ii) that this Agreement will constitute legal, valid and binding obligations of the parties; and (iii) the person(s) executing this Agreement are authorized to do so on behalf of their respective party.

10. Lender acknowledges that (i) the Intellectual Property Collateral embodies highly valuable information; (ii) any accounting data or business information of Purchaser may embody highly valuable confidential information which is not generally known to the public and which is proprietary to Purchaser; (iii) any such information under (i) and/or (ii) may properly be considered to be trade secrets, and consists of information, know-how, software, processes and compilations of technical information which are secret, confidential and not generally known to the public and which was the product of the expenditure of time, effort, money and/or creative skills. Collectively, (i)-(iii) being known as "**Confidential Information.**" Lender shall maintain the Confidential Information and shall not disclose such Confidential Information to any third parties without the express written consent of the Purchaser. The confidentiality obligations under this Section 10 shall be in effect for the Term of this Agreement and for three (3) years thereafter. Such Confidential Information may be used by Lender within its place of business and disclosed to its advisors, agents, representatives, employees and their respective employees to whom disclosure is reasonably necessary.

11. Purchaser shall pay and protect, defend and indemnify Lender, its employees and agents, against, and hold Lender, its employees and agents, harmless from, all claims, actions, proceedings, liabilities, damages, losses, expenses (including, without limitation, attorneys' fees and costs) and other amounts incurred by Bank, its employees and agents, arising from the sale of the Intellectual Property Collateral by Lender to Purchaser. This indemnification shall survive the payment and satisfaction of all of Borrower's obligations and liabilities to Lender. **THE FOREGOING STATES THE ENTIRE LIABILITY OF PURCHASER, AND THE EXCLUSIVE REMEDY OF LENDER WITH REGARD TO THE SALE OF THE INTELLECTUAL PROPERTY COLLATERAL BY LENDER TO PURCHASER HEREIN.**

12. **EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, LENDER AGREES THAT PURCHASER PARTY SHALL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CLAIM OR FORM OF ACTION ASSERTED, INCLUDING CONTRACT, TORT OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFITS, REVENUE**

OR DATA EVEN IF PURCHASER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

13. To the fullest extent permitted by applicable law, the total aggregate liability to Purchaser, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise under this Agreement shall be limited to the Purchase Price paid by Purchaser to Lender.

14. Purchaser shall have the right to immediately terminate this Agreement, upon notice to Lender, if in its sole discretion, Purchaser determines that an action or claim has or may be made against Lender or Purchaser alleging that the Intellectual Property or Purchaser's use of the Intellectual Property in accordance with the terms set forth in this Agreement, infringes or violates the rights of others, or that Lender is not the owner thereof, or that Lender does not have the right to sell the Intellectual Property sold under this Agreement, wherein such action is likely to materially effect Purchaser's ability to exercise its rights under this Agreement.

15. Upon termination of this Agreement under Section 14, Purchaser shall have no further obligations hereunder, except to pay any Purchase Price that accrued to the date of termination.

16. Termination of this Agreement for any reason shall not release Purchaser from any obligation to pay any Purchase Price accrued and unpaid at the effective date of such termination, nor shall such termination release any party of any part of any obligation accrued prior to the date of such termination, or obligations continuing beyond termination of the Agreement. Additionally, Lender shall destroy or return to Purchaser the Confidential Information and all copies thereof.

17. This Agreement shall be binding on the parties hereto and their respective successor and assigns.

18. No amendment of any provision of this Agreement shall be effective unless it is in writing and is signed by all parties.

19. If any one or more of the provisions contained in this Agreement shall be deemed by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the legality and enforceability of the remaining provisions contained herein shall not in any way be impaired.

20. If any type of legal proceeding is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to attorneys' fees, expenses and costs.

21. This Agreement, and all other documents referred to herein, constitute the entire and exclusive Agreement between Lender and Purchaser with respect to the matter hereof. All prior or contemporaneous oral Agreements relating to the subject matter hereof are merged herein.

22. Lender and Purchaser agree that all disputes between them arising out of, connected with, relate to, or incidental to the relationship established between them in connection with this Agreement, shall be resolved only by the state or federal courts located in California. However, Purchaser agrees that Lender shall have the right to proceed against the Purchaser or the Intellectual Property Collateral in a court in any location to enable Lender to realize on the Intellectual Property Collateral, or to enforce a judgment or other court order entered in favor of Lender.

23. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

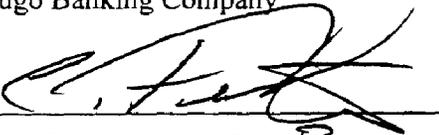
24. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

25. The parties have had the opportunity to seek the advice of independent legal counsel prior to the signing of this Agreement, and have either obtained such advice or have voluntarily chosen not to do

so. In either event, the parties execute this Agreement voluntarily, with full knowledge of its significance and the legal consequences thereof.

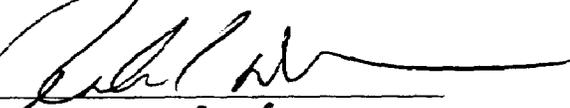
"Lender"

Verdugo Banking Company

By: 
Its: Exec. VP.

"Purchaser"

TeraZoo, Inc., a Delaware corporation

By: 
Its: President

12751222v3



EXHIBIT 1

All of DogByte Development, Inc.'s general intangibles, including without limitation, software, patents, trademarks, service marks, copyrights and technology general intangibles, including those listed in Schedules "A", "B", "C" and "D" attached hereto and incorporated herein by this reference.

SCHEDULE A
Copyrights

Stationery Store
Sticker and Label Store
Stationery Store

11/18/1996
11/18/1996
03/14/1998

Registered
Registered
Registered in Japan

SCHEDULE B
DogByte Software

- Amazing Stickers
- Amazing Greeting Cards
- Avery Printertainment
- Avery Self Seal Mailer
- Birthday In A Box
- Business Card Ink & More
- Business Card Maker
- Business Card Microtek Edition
- Business Printing Solutions
- Color Store 1.0
- Color Store 2.0
- Color Store 3.0
- Creative Crafts & Gifts
- Creative Photo Albums Deluxe
- Creative Photo Albums
- Creative Photo Albums: Baby Edition
- Creative Photo Albums Microtek Special Edition
- Custom Video Labels and Covers
- DogByte Collection 1.0
- DogByte Collection 2.0
- Fiskars Memories
- Frame-It
- Greeting Card Store
- Greeting Card Store Interplay Edition
- Holiday Store
- Holiday Store Interplay Edition
- Key Creative Stationery
- Key Creative Business Cards
- Key T-Shirts & More
- Key Stickers and Labels
- Label Store
- Label Store Interplay Edition
- Lisa Frank Forever Funworks
- Lisa Frank Paper Play Studio
- McDonald's Stickers "N" Fun
- Photo Album Creator
- Photo Max
- Print-It-Up
- Sticker Maker
- Sticker Store Interplay Edition
- Sticker Store Deluxe Microtek Special Edition
- Sticker Store Deluxe (Photo Max version)
- Sticker Store Deluxe (Photo Maxine version)
- Sticker Store Deluxe (Club Max version)
- Stationery Store 1.0
- Stationery Store 1.5
- Stationery Store 1.7
- Stationery Store 1.8
- Stationery Store 1.9
- Stationery Store 2.0
- Stationery Store 250
- Stationery Store Special Edition
- Stationery Store Junior
- Sticker Store Junior
- Sticker Store Junior Interplay Edition
- T-Shirt Store
- T-Shirt Store & More
- T-Shirt Store & More Interplay Edition

SCHEDULE C
Marks

Trademarks:

Frame-It

Registration Date: 6/20/00 Registration Number 2,360,500

Xersoft

Registration Date: 03/23/1999 Serial Number 75/666,091

Little Man Software

Filing Date: 9/15/98 Registration Number 2,189,628

Xphotoflicks

Filing Date: 01/25/1999 Serial Number 75/625,684

Service Mark:

DogByte Development & design

09/09/1994

Registered

SCHEDULE D

Patents

Photo Display Frame Made From Paper (Design Patent)
Computer Program for Generating Picture Frames (Utility Patent)
Lenticular Media for Use With An Ink Jet Printer (Utility Patent)

11/11/97 (Issue date)
8/10/99 (Issue date)
04/25/1999 (Filing
Date)

Patent No. D386,008
Patent No. 5,936,862
Serial No. 09/560,79