

RECC

01-14-2004



1/12/04

TO THE HONORABLE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE FOR ORIGINAL DOCUMENTS OR COPY THEREOF.

102644735

PLEASE RECORD THE ATTACHED

<p>1. Name of conveying parties:</p> <p>(a) DataPlay, Inc.</p> <p>Additional name(s) of conveying party(ies) attached?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party:</p> <p>Name: Silicon Valley Bank</p> <p>Street Address: 303 Tasman Drive</p> <p>City: Santa Clara State: California 95054</p> <p>Country: U.S.A.</p> <p>Additional name(s) of receiving party(ies) attached?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3. Nature of Conveyance:</p> <p><input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger</p> <p><input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name</p> <p><input type="checkbox"/> Other _____</p> <p>Execution Date: <u>March 4, 2003</u></p>	<p>2004</p>
<p>4. Application number(s) or patent number(s):</p> <p>If this document is being filed together with a new application, the execution date of the application is: _____</p>	
<p>A. Patent Application No.(s) - <u>29/160,536</u></p> <p>Title: <u>Cartridge For A Data Storage Disk</u></p>	<p>B. Patent No.(s)</p>
<p>Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Theodore P. Lopez</u></p> <p>Internal Address: <u>MACPHERSON, KWOK CHEN & HEID LLP</u></p> <p>Street Address: <u>1762 Technology Drive, Suite 226</u></p> <p>City <u>San Jose</u> State <u>CA</u> Zip <u>95110</u></p>	<p>6. Total number of applications and patents involved: <u>One</u></p> <p>7. Total fee (37 CFR 3.41): \$40.00</p> <p><input checked="" type="checkbox"/> Authorized to be charged to Deposit Account 50-2257.</p> <p><input checked="" type="checkbox"/> Charge Deposit Account 50-2257 for any additional fees required for this conveyance and credit deposit account 50-2257 any amounts overpaid</p>
<p>DO NOT USE THIS SPACE</p>	
<p>8. Statement and signature.</p> <p><i>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.</i></p> <p><u>Theodore P. Lopez</u> 44,881 <u>January 8, 2004</u></p> <p>Name of Person Signing Signature Date</p> <p>Total number of pages comprising cover sheet: 11</p>	

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Additional Name and address of receiving party:

Name: GATX Ventures, Inc. ("GATX")

Street Address: 3687 Mt. Diablo Boulevard, Suite 200

City: Lafayette State: California 94549

Country: U.S.A.

Name: Sequel Entrepreneurs' Fund II, L.P.

Street Address: 4430 Arapahoe Avenue, Suite 220

City: Boulder State: Colorado 80303

Country: U.S.A.

VOLUNTARY SURRENDER AGREEMENT

THIS VOLUNTARY SURRENDER AGREEMENT (the "Agreement") dated as of March 4, 2003, is by and between **DATAPLAY, INC.**, a Delaware corporation ("Borrower"), on the one hand and **SILICON VALLEY BANK** (the "Bank"), **GATX VENTURES, INC.** ("GATX"), (collectively, Bank and GATX are referred to as "Senior Lenders") and **SEQUEL ENTREPRENEURS' FUND II, L.P.**, in its capacity as **Collateral Agent** ("Sequel") on the other hand (collectively, Sequel and Senior lenders are referred to as "Lenders").

RECITALS

A. Senior Lenders and Borrower are parties to an Equipment Loan and Security Agreement dated December 20, 2001, which together with all other documents, instruments and writings which related thereto or executed in connection therewith are collectively referred to as the "Loan Agreement," and pursuant to which Senior Lenders made loan to Borrower (the "Loan").

B. Borrower was and is indebted under certain Secured Notes to the persons and entities named on the Schedule of Purchasers ("Purchasers") attached to that certain Secured Note and Warrant Purchase Agreement dated as of May 10, 2002 by and among Borrower and the Purchasers (the "Purchase Agreement"). Pursuant to the Purchase Agreement, the Purchasers appointed Sequel as Collateral Agent.

C. Borrower acknowledges that Lenders claim a valid and perfected security interest in all or substantially all of the Borrower's assets, and proceeds thereof (the "Collateral"), including without limitation, (a) inventory; (b) all accounts and contract rights of the Borrower; (c) all interests of the Borrower arising in the goods, the sale or lease of which give rise to any accounts; (d) all chattel paper, documents and instruments relating to any such accounts; (e) all rights, title and interest to technologies ("Technology") including, but not limited to, all versions of any software, firmware, hardware, chip layout and design, manufacturing processes, methods and system (including, without limitation, computer applications), ideas, inventions, original works of authorship, developments, improvements, modifications, or enhancements, created, acquired and/or developed by or on behalf of Borrower including, without limitation, all object code and source code; all designs, drawings, specifications, models, data, algorithms, documentation, diagrams, flow charts and development plans, know-how and techniques, trade secrets and materials; all derivative works of the foregoing by whomever created (in object code, source code, or any other form and/or any media); and all tangible embodiments of the foregoing (in whatever form or media); said rights, title and interest including, but not limited to, all patent rights, copyrights, trademark rights, mask rights, trade secret rights and all other intellectual and industrial property rights anywhere in the world thereto; (f) all furniture, fixtures and equipment; and (g) proceeds of the foregoing.

D. Borrower is in default under the Loan Agreement and the Purchase Agreement. Lenders have declared a default and accelerated the Loan and the Secured Notes.

E. Borrower is currently a debtor in possession in connection with Case No. 02-26846 ABC (the "Bankruptcy Case"), pending in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court").

F. On February 12, 2003, the Bankruptcy Court granted Lenders' Motion for Stay Relief to Foreclose Collateral, lifting the automatic stay of 11 U.S.C. § 362(a) to permit Lenders to exercise their rights with respect to the Collateral under applicable non-bankruptcy law.

G. Lenders have requested Borrower to voluntarily surrender the Collateral to Lenders and Borrower has agreed to do so. Borrower desires to voluntarily surrender the Collateral to Lenders in order to minimize costs to Lenders in exercising their secured rights with respect to the Collateral.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lenders agree as follows:

1. **Voluntary Surrender.** Borrower hereby voluntarily surrenders possession of the Collateral to Lenders, including the tangible personal property located at Borrower's former offices located in Boulder, Colorado. Borrower further agrees to transfer directly to DPHI Acquisitions, Inc., which is purchasing the Collateral from Lenders, \$625,000, which is a portion of proceeds attributable to, or derived from, the liquidation of DataPlay Japan, Inc. and DataPlay Pte. Ltd. (the "Liquidation Proceeds"). DPHI Acquisitions, Inc. shall hold the Liquidation Proceeds in a separate account pending resolution of the Borrower's motion to dismiss filed with the Bankruptcy Court or any legal determination whether Lenders and/or Sequel have perfected security interests therein. If any court of competent jurisdiction finally determines that the Lenders and/or Sequel are not perfected in the Liquidation Proceeds, DPHI Acquisitions shall return the Liquidation Proceeds to the Borrower (or to the Chapter 7 Trustee if the case is converted or otherwise as any court directs). Such restrictions shall terminate, and any remaining Liquidation Proceeds shall be paid to DPHI Acquisitions, Inc., upon the earlier of (i) dismissal of the Borrower's bankruptcy petition or (ii) a judicial determination that Senior Lenders and/or Sequel have perfected security interests in the Liquidation Proceeds.

2. **Obligations Under Loan Agreement Not Relieved.** Borrower expressly acknowledges and agrees that execution and performance under this Voluntary Surrender Agreement does not and shall not relieve, satisfy, alter or otherwise affect the obligations of Borrower under the Loan Agreement, the Purchase Agreement or the Secured Notes. Specifically, Borrower acknowledges and agrees that delivery to and possession by

Lenders of the Collateral shall not constitute transfer in payment or satisfaction of the obligations owing under the Loan Agreement, the Purchase Agreement or the Secured Notes and all indebtedness owing thereunder remains outstanding and enforceable. However, Lenders do hereby release any claims they might have in any cash in the hands of DataPlay's professionals and consent to the payments made prior to this Agreement but after October 18, 2002 for Borrower's ordinary course of business expenses.

3. Borrower's Acknowledgments, Representations and Warranties. Borrower hereby acknowledges to Lenders, that: (a) Borrower is in default of the Loan Agreement, the Purchase Agreement and the Secured Notes; (b) to the best of Borrower's knowledge, information and belief, Senior Lenders have a first priority perfected security interest in the Collateral, subject only to 2001 and 2002 personal property taxes owing to Boulder County, Colorado; (c) to the best of Borrower's knowledge, information and belief, Borrower has no defenses to Lenders' exercise of their rights in connection with the Loan Agreement, the Purchase Agreement, and the Secured Notes and (d) the Loan Agreement, the Purchase Agreement and the Secured Notes are in full force and effect and remain enforceable in accordance with their terms.

4. Subsequent Disposition of Collateral. Borrower acknowledges and agrees that under the prevailing circumstances a sale in bulk of the Collateral by Lenders will likely maximize the value thereof and will generate maximum net value to be applied to Borrower's outstanding obligations under the Loan Agreement, the Purchase Agreement and the Secured Notes.

5. Documentation to be Provided. Borrower agrees to timely and fully cooperate with Lenders in all respects of the turnover and disposition of the Collateral, specifically including, but not limited to executing any reasonable additional documentation required to carry out the terms of this Agreement.

6. Counterparts/Facsimile Signatures. This Agreement may be executed in counterpart and by telefacsimile signatures.

7. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8. Modification. This Agreement may not be modified, amended or changed unless such modification, amendment or change is evidenced in writing by Lenders and Borrower.

9. Severability. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such term, covenant, or condition and shall otherwise remain enforceable.

10. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without giving effect to principles of conflict of laws.

11. **Construction.** In the event of any inconsistency, ambiguity or conflict between or among the provisions of this Agreement and the Loan Agreement, the terms of this Agreement shall prevail. In the event of any inconsistency, ambiguity or conflict between or among the provisions of this Agreement, the provision which best assures the payment and performance of the obligations of Borrower under the Loan Agreement or enlarges the interest of Lenders in and to the Collateral shall prevail. The terms of this Agreement shall be construed without regard to who drafted the various provisions hereof and shall be construed as though all parties hereto had participated equally in the drafting. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

12. **No Other Representations.** It is expressly understood by the Borrower that there have been no representations, express or implied, other than as set forth in this Agreement and any other document executed and delivered in connection herewith. This Agreement together with the other documents executed and delivered in connection herewith or pursuant hereto, contains the entire and complete understanding of the parties and supersedes all previous verbal and written agreements; there are no other agreements, representations, or warranties not set forth herein.

13. **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the permitted successors and assigns of the parties hereto.

14. **Time of Essence.** Borrower hereby acknowledges and agrees that time is strictly of the essence with respect to each and every term, condition, obligation and provision of this Agreement.

15. **Voluntary Execution.** By their signatures below, each party affirms that they have all requisite authority, corporate or otherwise, to enter into this Agreement and that they have read and fully understand this Agreement. The parties further affirm that they are entering into this Agreement voluntarily and have not been threatened, coerced, or intimidated or in any way pressured into signing this Agreement, they have had sufficient time to reflect upon the finality of this Agreement, and they have had sufficient opportunity to consult with legal counsel regarding this Agreement.

16. **Further Assurances.** Each party to this Agreement hereby agrees to execute and deliver such other and further documents as may be reasonably requested by the other party to more fully effectuate the terms, conditions and transactions contemplated by this Agreement.

DATED as of the date first above written.

SILICON VALLEY BANK

DATAPLAY, INC., a Delaware corporation

By: *Marla Johnson*
Name: Marla Johnson
Title: *Senior Vice President*

By: _____
Name: _____
Title: _____

GATX VENTURES, INC., a Delaware corporation

SEQUEL ENREPRENEURS FUND II, L.P.
in its capacity as Collateral Agent

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

DPHI Acquisitions, Inc., as to section 1 concerning the Liquidation Proceeds

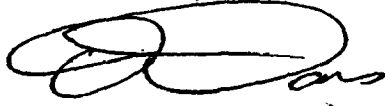
By: _____
Name: _____
Title: _____

DATED as of the date first above written.

SILICON VALLEY BANK

DATAPLAY, INC., a Delaware corporation

By: _____
Name: Marla Johnson
Title:

By: 
Name: D H DAVIET
Title: DIRECTOR

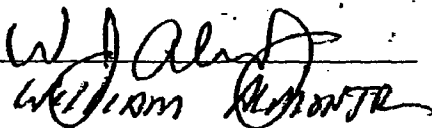
GATX VENTURES, INC., a Delaware corporation

SEQUEL ENREPRENEURS FUND II, L.P.
in its capacity as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

DPHI Acquisitions, Inc., as to section 1 concerning the Liquidation Proceeds

By: 
Name: WILLIAM A. MONTE
Title: PRESIDENT

DATED as of the date first above written.

SILICON VALLEY BANK

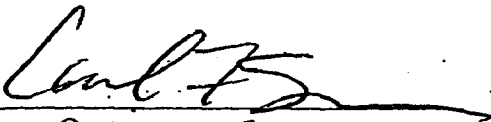
DATAPLAY, INC., a Delaware corporation

By: _____
Name: Marla Johnson
Title:

By: _____
Name:
Title:

GATX VENTURES, INC., a Delaware corporation

SEQUEL ENREPRENEURS FUND II, L.P.
in its capacity as Collateral Agent

By: 
Name: CARL F. SWANSON
Title: VP

By: _____
Name:
Title:

DPHI Acquisitions, Inc., as to section 1 concerning the Liquidation Proceeds

By: _____
Name:
Title:

DATED as of the date first above written.

SILICON VALLEY BANK

DATAPLAY, INC., a Delaware corporation


By: _____
Name: Marla Johnson
Title:

By: _____
Name:
Title:

GATX VENTURES, INC., a Delaware corporation

SEQUEL ENREPRENEURS FUND II, L.P.
in its capacity as Collateral Agent

By: _____
Name:
Title:

By: 
Name: John T. GREFF
Title: MANAGER

DPHI Acquisitions, Inc., as to section 1 concerning the Liquidation Proceeds

By: _____
Name:
Title: