

1 CRAIG M. PRIM (077820)
 2 JANICE M. MURRAY (099996)
 3 STEPHEN T. O'NEILL (115132)
 4 MURRAY & MURRAY
 5 A Professional Corporation
 6 3030 Hansen Way, Suite 200
 7 Palo Alto, CA 94304-1009
 8 (650) 852-9000

Attorneys for Debtor

FILED
 FEB 11 1999

RECEIVED
 United States Bankruptcy Court
 San Jose, California

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

11 In re: 12 Site Technologies, Inc., 13 dba DeltaPoint, Inc. 14 Debtor. 15 EIN No.: 77-0212760	Case No. 99-50736-JRG-11 Chapter 11 Date: March 9, 1999 Time: 2:00 p.m. Place: Room 3020 Judge: Hon. James R. Grube
---	--

MURRAY & MURRAY
 A Professional Corporation
 3030 Hansen Way, Suite 200
 Palo Alto, CA 94304-1009
 TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244
 E-MAIL mail@murraylaw.com

**NOTICE OF MOTION AND MOTION TO ASSUME AND ASSIGN
 EXECUTORY CONTRACTS (11 U.S.C. §§ 365(a), (f))**

Affected Parties to Contracts:

- | | |
|--|--|
| 20 Adaptec, Inc.
21 Anawave Software, Inc.
22 BlueSky Software Corp.
23 Claris Corporation
24 CNET Direct, Inc.
25 Cybersource Corporation (Software.net)
26 Data-Arts
27 Eclipse Marketing, Inc.
28 FairCom Corporation
Frame Technology Corporation
Global Entrepreneurs Net
Global Technologies Corp.
HomeCom
Installshield Software Corporation
International Business Machines Corp.
Internet Direct
Lotus Development Corp.
MacMillan Digital Publishing USA
McAfee Associates, Inc.
McLeod USA Telecommunications Services | Microsoft Corporation
Molly Penguin Software
Netcom, Inc.
NetNation Communication
Netscape Communications Corporation
Omnium Software Publishing Corporation
OpenCube Technologies
Preview Software, Inc.
Programmer's Paradise, Inc.
SCO
Site/technologies/inc.
Symantic Corporation
System Connect
TestDrive Corporation
Tidal Wave Communications, Inc.
Total Access Communications
Unisys Corporation
VisionTeq, Inc.
William G. Pryor |
|--|--|

NOTICE OF MOTION AND MOTION TO ASSUME AND
 ASSIGN EXECUTORY CONTRACTS (11 U.S.C. §§ 365(a), (f))

ORIGINAL

EXHIBIT 13

1 TO: THE HONORABLE JAMES R. GRUBE, UNITED STATES BANKRUPTCY
2 JUDGE

3 COMES NOW Site Technologies, Inc., the Debtor and Debtor-In-Possession (the
4 "Debtor") who hereby moves for an Order approving the assumption and assignment of certain
5 executory contracts to StarBase Corporation ("StarBase") in connection with the sale of the
6 Debtor's core technology and related assets to StarBase for a purchase price consisting of
7 625,000 shares of StarBase common stock. The purchase price is subject to adjustment at the
8 closing of the sale to cause the aggregate estimated value of the StarBase common stock to be
9 not less than \$500,000 and not greater than \$1,500,000.

10 I. NOTICE

11 PLEASE TAKE NOTICE that a hearing will be held on March 9, 1999 at 2:00 p.m.
12 before the Honorable James R. Grube, United States Bankruptcy Judge, in Courtroom 3020,
13 United States Courthouse and Federal Building, 280 South First Street, San Jose, California, to
14 consider the MOTION TO ASSUME AND ASSIGN EXECUTORY CONTRACTS (11 U.S.C.
15 §§ 365(a), (f)) (the "Motion") filed by the Debtor.

16 Any opposition to the Motion must be filed with the United States Bankruptcy Court,
17 United States Courthouse and Federal Building, 280 South First Street, Room 3035, San Jose,
18 CA 95113 and served on the Debtor's counsel, Janice M. Murray, Esq., Murray & Murray, A
19 Professional Corporation, 3030 Hansen Way, Suite 200, Palo Alto, CA 94304-1009, telephone
20 (650) 852-9000, facsimile (650) 852-9244 no later than February 23, 1999.

21 The Debtor is serving a separate notice of this Motion on all creditors and parties in
22 interest concurrently herewith. Further, the Debtor is serving this Motion on each party identified
23 as a non-debtor party to an executory contract which the Debtor seeks to assume and assign.

24 **THE DEBTOR WILL REQUEST THE COURT TO DETERMINE THAT A**
25 **NON-DEBTOR PARTY TO AN EXECUTORY CONTRACT WHICH IS TO BE**
26 **ASSUMED AND ASSIGNED IS DEEMED TO HAVE CONSENTED TO SUCH**
27 **ASSUMPTION AND ASSIGNMENT AND TO HAVE AGREED THAT THE CURE**
28 **AMOUNT STATED IN EXHIBIT "A" CURES ALL OUTSTANDING MONETARY**

MURRAY & MURRAY
A Professional Corporation
3030 Hansen Way, Suite 200
Palo Alto, Ca 94304-1009
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244
E-MAIL: mail@murraylaw.com

1 **DEFAULTS UNLESS IT FILES AND SERVES AN OBJECTION TO THE MOTION**
2 **NO LATER THAN FEBRUARY 23, 1999.**

3 **II. SUMMARY OF RELIEF SOUGHT**

4 1. The Debtor requests an Order approving the assumption and assignment of various
5 executory contracts to StarBase in connection with the Debtor's motion to sell its core
6 technology and related assets to StarBase. The background and details of the proposed sale to
7 StarBase are more fully described in the notice which is being served concurrently herewith and
8 will not be restated here.

9 **III. MOTION TO ASSUME AND ASSIGN**
10 **EXECUTORY CONTRACTS (11 U.S.C. §§ 365(a), (f))**

11 2. The Debtor moves to assume the executory contracts listed on Exhibit "A"
12 attached hereto and incorporated herein by reference pursuant to § 365(a) of the Bankruptcy
13 Code and to assign all such contracts to StarBase pursuant to § 365(f) of the Bankruptcy Code.
14 All existing defaults are shown as the Cure Amount on Exhibit "A" and will be paid by the
15 Debtor as soon as practicable following closing of the sale and the Debtor's liquidation of the
16 StarBase common stock, unless the contracting party disputes the amount of the cure. If the
17 contracting party disputes the amount of the cure, the Debtor will reserve the full amount claimed
18 by such party and will file and serve on such party a motion to determine the amount of the cure
19 within ten (10) days of the closing of the sale.

20 3. StarBase has substantial expertise in this area and intends to incorporate the
21 Debtor's core technology and related assets with its existing business. Accordingly, the Debtor
22 believes that upon the closing of the sale to StarBase, StarBase will have the requisite skill,
23 expertise and financial resources to fully perform all obligations under the executory contracts
24 and that such skill, expertise and financial resources provide adequate assurance of future
25 performance of the Debtor's obligations.

26 4. The listing of a contract or agreement on Exhibit "A" attached hereto shall not be
27 deemed an admission by the Debtor that such contract or agreement is an executory contract.
28 Accordingly, the Debtor reserves the right to make a determination as to the proper

MURRAY & MURRAY
A Professional Corporation
3030 Hansen Way, Suite 200
Palo Alto, Ca 94304-1009
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244
E-MAIL: mail@murraylaw.com

MURRAY & MURRAY
A. Professional Corporation
3030 Hansen Way, Suite 200
Palo Alto, Ca 94304-1009
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244
E-MAIL mail@murraylaw.com

1 characterization of the agreements listed therein. The Debtor desires to assume those executory
2 contracts set forth on Exhibit "A" to the extent, and only to the extent, that any such contract
3 constitutes an executory contract and to assign its rights and obligations under each such
4 executory contract to StarBase. **The Debtor reserves the right to withdraw any of the**
5 **executory contracts or agreements from said list at any time up to the time of the conclusion**
6 **of the hearing on this Motion.**

7 5. The Debtor believes that except for and to the extent of the amount listed on
8 Exhibit "A" as the "Cure Amount", the Debtor is not in default under any of the contracts listed
9 on Exhibit "A". The Cure Amount will be paid to the respective parties to the executory
10 contracts to cure all defaults, if any, under such executory contracts. The cure amount will be
11 paid by the Debtor as soon as practicable following closing of the sale and the Debtor's
12 liquidation of the StarBase common stock.

13 **IV. OBJECTIONS**

14 6. Any party to an executory contract to be assumed which (i) objects to the
15 assumption and assignment of such contract to StarBase, or (ii) asserts arrearages in an amount
16 different from the amount stated in Exhibit "A" must file with the Court and **serve on the**
17 **Debtor's counsel an objection to such assumption no later than February 23, 1999. The**
18 **Debtor will request the Court to determine that failure to timely file such an objection shall**
19 **constitute consent to the assumption and assignment of the executory contract, an**
20 **agreement to the cure on the terms provided for herein and an acknowledgment that (a) the**
21 **proposed assumption provides adequate assurance of future performance, and (b) no other**
22 **defaults exist under such executory contract except for the Cure Amounts listed on Exhibit**
23 **"A".**

24 7. Section 365 of the Bankruptcy Code allows the Debtor to assume an executory
25 contract if there has been a default in the executory contract, if the Debtor cures or provides
26 adequate assurance that the default will be cured, compensates the other parties for any actual
27 pecuniary loss resulting from such default and provides adequate assurance of future
28 performance. As set forth above, the existing defaults under the contracts listed on Exhibit "A"


1 will be cured as soon as practicable following the closing of the StarBase transaction and the
2 assignment of such contracts to StarBase provides adequate assurance of future performance of
3 the Debtor's obligations thereunder.

4 8. Inasmuch as the ability to cure existing defaults and provide adequate assurance of
5 future performance is contingent upon the closing of the sale to StarBase, the Debtor requests
6 that the assumption and assignment of the contracts listed on Exhibit "A" be effective as of the
7 closing under the StarBase sale agreement.

8 WHEREFORE, the Debtor prays that this Court enter its Order authorizing the Debtor
9 to assume the executory contracts listed on Exhibit "A" hereto and to assign the same to StarBase
10 effective as of the closing under the StarBase sale agreement.

11
12 Dated: February 9, 1999

MURRAY & MURRAY
A Professional Corporation

13
14
15 By: 
16 JANICE M. MURRAY
17 Attorneys for Debtor

18
19
20
21
22
23
24
25
26
27
28
MURRAY & MURRAY
A Professional Corporation
3030 Hansen Way, Suite 200
Palo Alto, Ca 94304-1009
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244
E-MAIL mail@murraylaw.com

EXHIBIT "A"

MOTION TO ASSUME AND ASSIGN EXECUTORY CONTRACTS
EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED
TO STARBASE CORPORATION

Schedule 2.01 (c)

Section 2.01(c) shall be limited to the following assets and properties:

	<u>Cure Amount</u>
Sales Team <u>Act</u> Database & Act Software License	\$0.00
Point of Sales <u>Filemaker</u> Databases & Filemaker Software License	\$0.00
POS 1 st Quarter 1998	
POS 1 st Quarter 1997	
POS 2 nd Quarter 1998	
POS 2 nd Quarter 1997	
POS 3 rd Quarter 1997	
POS 4 th Quarter 1997	
Product Codes	
Product Codes 1 st Quarter 1998	
Product Registration	
Purchase Order Log 8	
Purchase Order Log 7	
Purchase Order Log 6	
RMA Log 1998	
TS Call log	
Customer List	
 <u>License Agreements</u>	
Active Outbound Agreements:	
Seller entered into an Electronic and Packaged Goods Distribution Agreement with <u>Anawave Software, Inc.</u> , on December 5, 1997 and an Amendment #1 to this Agreement on May 15, 1998. The agreement allows for Anawave Software, Inc. to distribute Seller's products QuickSite 2.5, QuickSite 3.0 ESD, WebAnimator 1.1 ESD, a Promo Bundle and SiteSweeper 2.0 Boxed Product. This agreement automatically renews unless terminated with thirty (30) days written notice by either party.	\$0.00
Seller entered into a Software Commerce Agreement with <u>CNET Direct, Inc.</u> , dated June 23, 1997, by which CNET Direct, Inc. will act as an agent to accept payment for such software from customers pursuant to CNET's developer advocate program. This agreement remains in effect until terminated by either party with thirty (30) days notice by either party.	\$0.00

EXHIBIT A
Page 1 Of 9

Schedule 2.01 (c) continued

Cure
Amount

Seller entered into an Electronic Software Reseller Agreement with Cybersource Corporation (Software.net), dated August 6, 1996, by which Cybersource Corporation will electronically package and distribute Seller's software products to end-user customers. This agreement automatically renews annually but may be terminated upon ninety (90) days written notice by either party.

\$0.00

Seller entered into an Agreement with MacMillan Digital Publishing on June 4, 1997 which allowed MacMillan Digital Publishing to ship Seller's software, DeltaPoint QuickSite Express 2.5, in the MacMillan Digital Publishing product Professional Web Design Kit 2.0 (ISBN #1-562-05737-5). This agreement is for an eighteen (18) month period and automatically terminates on December 4, 1998.

\$0.00

Seller entered into an Agreement with MacMillan Digital Publishing USA on February 17, 1998 and an addendum to this agreement on March 31, 1998 which allowed MacMillan Digital Publishing to ship the Seller's software QuickSite 2.5x and QuickSite 3.0x in the MacMillan Digital Publishing products Web Page Construction Kit 4.0 (ISBN # 1-57595-075-8) and Web Page Construction Kit Deluxe (ISBN # 1-57595-097-9). The term of the agreement is two years from date of signing and will automatically terminate on February 17, 2000.

\$0.00

Seller entered into a Dealer Agreement with Programmer's Paradise, Inc. on November 7, 1996 which allowed Programmer's Paradise to resell Seller's SiteSweeper 1.0 product. This agreement automatically renews annually and may be terminated with ninety (90) days written notice by either party.

\$0.00

Seller entered into an Electronic Distribution Services Agreement with TestDrive Corporation on February 20, 1998. This agreement allows TestDrive Corporation to electronically distribute Seller's SiteSweeper 2.0, QuickSite 3.0 and WebAnimator 1.1 products on their Internet store sites. This agreement will automatically terminate on February 20, 1999.

\$0.00

Seller entered into a Software License Agreement with William G. Pryor on September 16, 1997, which grants Mr. Pryor a perpetual license to manufacture, copy, modify create derivative work of, sublicense, transfer and distribute the executable binary object code of Seller's QuickSite version 2.x. This agreement may only be terminated by certain conditions that are addressed in Section 10 of the Software License Agreement.

\$0.00

EXHIBIT A
PAGE 2 OF 9

Schedule 2.01 (c) continued

Cure
Amount

Inactive Outbound Agreements (These agreements have been entered into by Seller but have had no current activity on them. Neither party has sent any termination notice):

Seller entered into a binding Letter of Intent with Data-Arts on July 15, 1996 by which Data-Arts would provide Seller's QuickSite customers a free 30 day trial hosting service and thereafter pay the Seller a 20% finders fee for ongoing monthly service revenue for any QuickSite customers. Either party can terminate this agreement with thirty (30) days advance notice.

\$0.00

Seller entered into a binding Letter of Intent with Eclipse Marketing Inc. on July 15, 1996 by which Eclipse Marketing Inc. would provide Seller's QuickSite customers a free 60 day trial hosting service and thereafter pay Seller a 20% finders fee for ongoing monthly service revenue for any QuickSite customers. Either party can terminate this agreement with thirty (30) days advance notice.

\$0.00

Seller entered into a binding Letter of Intent with Global Entrepreneurs Net on July 15, 1996 by which Global Entrepreneurs Net would provide Seller's QuickSite customers a free 30 day trial hosting service and thereafter pay Seller a 30% finders fee for ongoing monthly service revenue for any QuickSite customers. Either party can terminate this agreement with thirty (30) days advance notice.

\$0.00

Seller entered into a binding Letter of Intent with HomeCom on November 5, 1996 that allows HomeCom to receive the QuickSite product at a discounted rate. Either party can terminate this agreement with thirty (30) days advance notice.

\$0.00

Seller entered into a Software License Agreement with International Business Machines Corp ("IBM") on September 6, 1996. This agreement allows IBM to market and distribute a customized version of QuickSite. This agreement may be terminated by IBM with sixty (60) days' written notice and by Seller with six (6) months written notice.

\$0.00

Seller entered into a Term Sheet with Internet Direct on July 30, 1996 by which Seller provided a special 30 day trial edition of QuickSite for free distribution by Internet Direct. In addition, Internet Direct has the right to include and distribute a copy of the QuickSite 2.5 software in its GoSite client software. The agreement automatically renews annually unless either party provides thirty (30) days written notice.

\$0.00

Schedule 2.01 (c) continued

Cure
Amount

Seller entered into a Distribution Agreement with McAFEE Associates, Inc. on September 5, 1996 by which McAfee Associates, Inc. would electronically distribute Seller's products. This agreement automatically renews unless terminated by thirty (30) days written notice.

\$0.00

Seller entered into a binding Letter of Intent with NetNation Communication on November 26, 1996 by which NetNation Communication provides Seller's QuickSite customers a free 30 day trial hosting service and thereafter pays Seller a 10% finders fee for ongoing monthly service revenue for any QuickSite customers. Either party can terminate this agreement with thirty (30) days advance notice.

\$0.00

Seller entered into an Agreement with Netcom Interactive on July 16, 1996 by which Seller and Netcom Interactive agreed to cooperate in the marketing, sales, licensing and distribution of their respective products. This agreement automatically renews and may terminate upon sixty (60) days advance notice.

\$0.00

Seller entered into a binding Letter of Intent with System Connect on November 4, 1996 that allows System Connect to receive the QuickSite product at a discounted rate. Either party can terminate this agreement with thirty (30) days advance notice.

\$0.00

Seller entered into a binding Letter of Intent with Tidal Wave Communications, Inc. on October 5, 1996 by which Tidal Wave Communications, Inc. provides Seller's QuickSite customers a free 30 day trial hosting service and thereafter pays Seller a 30% finders fee for ongoing monthly service revenue for any QuickSite customers. Either party can terminate this agreement with thirty (30) days advance notice.

\$0.00

Seller entered into a binding Letter of Intent with Total Access Communications on October 10, 1996 by which Total Access Communications provides Seller's QuickSite customers a free 30 day trial hosting service and thereafter pays Seller a 30% finders fee for ongoing monthly service revenue for any QuickSite customers. Either party can terminate this agreement with thirty (30) days advance notice.

\$0.00

Seller entered into a binding Letter of Intent with VisionTeq, Inc. on July 15, 1996 by which VisionTeq, Inc. provides Seller's QuickSite customers a free 30 day trial hosting service and thereafter pays Seller a 30% finders fee for ongoing monthly service revenue for any QuickSite customers. Either party can terminate this agreement with thirty (30) days advance notice.

\$0.00