IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: THQ Inc. et al.,[1] Debtors.	Chapter 11 Case No- 12-13398 (_____) (Joint Administration Requested)

DECLARATION OF BRIAN FARRELL IN SUPPORT OF THE DEBTORS' CHAPTER 11 PETITIONS AND REQUESTS FOR FIRST DAY RELIEF

I, Brian Farrell, hereby declare, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I am over eighteen (18) years of age and if called upon I would competently testify to the matters set forth herein from my own personal knowledge, except as otherwise stated. I am the Chief Executive Officer and the Chairman of the Board of Directors of THQ, Inc. THQ, Inc. ("**THQI**", THQ Digital Studios Phoenix, Inc. ("**THQ Phoneix**", THQ Wireless, Inc. ("**THQ Wireless**"), Volition, Inc. ("**Volition**"), and Vigil Games, Inc. ("**Vigil**") (collectively, the "**Debtors**").

2. As of the date hereof (the "**Petition Date**"), each of the Debtors has filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). To enable the Debtors to operate effectively and minimize potential adverse effects from the commencement of their chapter 11 cases, the Debtors have requested certain relief in "first day" motions and applications filed with the Bankruptcy Court (collectively, the "**First Day Papers**"). The First Day Papers, described more

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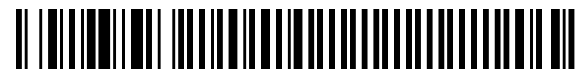
[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: THQ, Inc. (1686), THQ Digital Studios Phoenix, Inc. (1056), THQ Wireless, Inc. (7991), Volition, Inc. (4944), and Vigil Games, Inc. (8651). The mailing address for THQ Inc. is 29903 Agoura Road, Agoura Hills, CA 91301 (Attn: Ed Kaufman).



fully below, seek, among other things, to (a) ensure the continuation of the Debtors' cash management system and other business operations without interruption, (b) obtain postpetition debtor in possession financing, (c) preserve valuable relationships with suppliers and customers, (d) maintain employee morale and confidence, and (e) establish certain administrative procedures that will promote a seamless transition into chapter 11. This relief is critical to the Debtors' chapter 11 efforts.

3. I submit this Declaration in support of the Debtors' voluntary petitions and First Day Papers. Any capitalized term not expressly defined herein shall have the meaning ascribed to that term in the relevant First Day Paper. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, my opinion based upon my experience and knowledge, and/or information provided to me in reports concerning the operations and financial affairs of the Debtors. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Declaration on behalf of the Debtors.

4. This Declaration is intended to provide a summary overview of the Debtors and these chapter 11 cases. Sections I through IV of this Declaration provide a description of the Debtors' organizational structure, businesses, and liabilities, as well as the circumstances giving rise to the commencement of these chapter 11 cases. Part V summarizes the First Day Motions and the relief they seek, which the Debtors believe is crucial to their successful reorganization.

I. Organizational Structure

5. THQI is a Delaware corporation. Its principal offices are located in Agoura Hills, California. THQI, owns 100% of the equity in (1) Volition, a Delaware corporation that operates a development studio in Champaign, Illinois; (2) THQ Phoenix, an Arizona corporation that previously operated a development studio in Phoenix, Arizona, that was closed in August of 2011, and limited remaining operations that are being terminated during December, 2012; (3) THQ Wireless, a Delaware corporation that has no current operations; and (4) Vigil, a Texas corporation, which operates development studios in Austin, Texas.

6. THQI also owns the equity in THQ Canada, Inc., d/b/a Relic Entertainment ("**Relic**"), THQ Montreal Inc. ("**THQ Montreal**"), and THQ International GmbH, a Swiss company ("**TIG**"). Relic operates a development studio in Vancouver, British Columbia, and THQ Montreal operates a development studio in Montreal, Quebec. Both studios develop games for THQI.

7. TIG is a holding company that owns the equity in subsidiaries that operate in various jurisdictions outside of the United States, including the following: (1) THQ (UK) Ltd., which now distributes THQ's games in the United Kingdom, and is the contracting party for distribution agreements in other territories around the world, including Australia Scandinavia, Spain, Italy, the Middle East, and Africa ("**THQ UK**"); and (2) THQ (Holdings), Ltd., a United Kingdom corporation ("**THQ Holdings**"), which owns the equity in (a) THQ Entertainment GmbH, a German corporation ("**THQ Germany**"), and (b) THQ France S.a.r.l., a French corporation ("**THQ France**"). THQ Germany distributes THQ's games in Germany, Austria and Switzerland. THQ France distributes those games in France. THQ France also markets product in the Netherlands, through a division commonly referred to as "**THQ Benelux**." TIG coordinates the cash management of these European subsidiaries on a consolidated basis through a "cash-pooling" arrangement.

8. TIG also owns the equity in THQ Software Development (Shanghai) ("**THQ Shanghai**"), which provides development services to THQI. THQ Shanghai is based in Shanghai, China.

9. TIG also owns the equity in a number of corporations that have been or are currently being liquidated, which previously distributed the Debtors' games in other countries. The operations in these other countries have either been completely terminated or have been reduced to such a level that they are not material to the Debtors' ongoing sales or operations. TIG and its subsidiaries, including THQ UK, THQ France, and THQ Germany, are collectively referred to as the "**European Subsidiaries**." The European Subsidiaries, Relic and THQ Montreal are not debtors in these chapter 11 cases.

II. The Debtors' Business Operations

10. The Debtors are leading developers and publishers of interactive entertainment software for all popular gaming systems, including home video game consoles, hand-held platforms, wireless devices, and personal computers, including games played online. The Debtors also develop and publish titles for digital distribution and offer certain content through online download stores and services, including Amazon. The Debtors have created, licensed, and acquired interests in numerous well-known brands in the video gaming industry, including *Saints Row*, *Company of Heroes*, *Homefront*, *Darksiders*, *Metro: Last Light*, *Warhammer 40,000*, *Games Workshop*, and *World Wrestling Entertainment*. The Debtors own the rights to each of these franchises except (i) *World Wrestling Entertainment* ("**WWE**"), which the Debtors license from World Wrestling Entertainment, Inc., (ii) *Warhammer: 40,0000*, which the Debtors license from Games Workshop PLC, and (iii) *Metro: Last Light*, which the Debtors license from 4A Ltd. and Dmitry Glukhovsky. The Debtors are currently developing and licensing new intellectual property, including a game based on the *South Park universe*, which is scheduled for release in 2013.

11. In North America, the Debtors' products are primarily sold directly by THQI to mass merchandisers, consumer electronics stores, discount warehouses and national retail chain stores. These products are also sold to smaller, regional retailers, as well as distributors who, in turn, sell the Debtors' products to retailers that the Debtors do not service directly, such as grocery and drug stores. The Debtors' North American sales activities are conducted by THQI sales representatives throughout the United States, Canada and Mexico.

12. The international publishing activities for the Debtors' games are conducted via the European Subsidiaries' offices throughout Europe, including international offices in the United Kingdom, Germany, France, and the Netherlands, which market and distribute to direct-to-retail customers and through distributors in both their home territories and collectively, to over 80 territories outside of the United States.

13. The Debtors also globally distribute games and content digitally via the Internet through Sony Computer Entertainment's PlayStation Network ("**PSN**") Microsoft's Xbox Live and Xbox Live Arcade Services ("**Xbox Live**" and "**XBLA**", respectively"), and digital distribution services including Amazon, Electronic Arts' Origin, and Valve Software's Steam Services, and through smartphone devices, such as the Apple iPhone, iTouch, and iPad.

14. The core value of the Debtors is the combination of their intellectual property and the required talent to exploit that intellectual property. The Debtors' owned intellectual property and right to develop certain games, includes *Company of Heroes 2*, *Saints Row 4*, *Homefront 2*, and a new as yet untitled game from Patrice Desilets, the creator of the successful *Assassin's Creed* series of games. The Debtors employ a core group of development teams comprised of highly skilled individuals with the knowledge and experience to develop successful games, including multiple games that are currently in development. The Debtors are also currently developing several new free to play ("**FTP**") games which allow consumers to "sample" a game before paying for it. These FTP games have developed a rapid following in Asia over the past decade and have begun to make inroads in the markets in the United States and in Europe.

15. THQI develops products using both internal and external development teams. On each game development team, internal resources consist of producers, game designers, software engineers, artists, animators and game testers. Each team may also use external development resources that consist of third-party software developers and other independent resources such as artists, motion-capture facilities, sound effects and mixing, voice-over acting and music and sound composition.

16. THQI makes the decision as to which development resources to use based upon the creative and technical challenges of the product, including whether the intellectual property being developed into a game is licensed, an original concept that THQI created, or an original concept created by a third-party developer. Once THQI determines where a product will be developed, the Debtors' product development team oversees the internal or external resources in its design, technical assessment and construction and progression of each game.

17. Most of the members of the Debtors' internal development teams are employed by THQI's subsidiaries, Volition, Relic, Vigil, and THQ Montreal. THQI pays these subsidiaries for their services developing games and owns the games that these subsidiaries develop.

18. Vigil operates a development studio in Austin, Texas. The team has been the developer of the *Darksiders'* series of game, including the recently released *Darksiders II.* The team at Vigil is now developing a game with the working title *Crawler*.

19. Volition operates a development studio in Champaign, Illinois. The team of developers at Volition is responsible for the *Saints Row* series of games, and is currently developing a new installment of the game with the working title *Saints Row 4*, which is scheduled for release in calendar year 2013.

20. The Canadian subsidiaries, Relic and THQ Montreal, are not debtors in these chapter 11 cases, but develop games for THQI and are dependent on THQI to fund the development costs for the services these subsidiaries provide. Relic operates a development studio in Vancouver, British Columbia, Canada. The Relic studio was acquired by THQI in April, 2004. The teams at Relic are responsible for developing multiple games in the real-time strategy genre, including *Warhammer: 40,000: Dawn of War*, and the *Company of* Heroes series of games. Relic is currently developing Company *of Heroes 2* for a calendar year 2013 release and a new game with the working title *"Atlas"* for release in calendar year 2014. THQ Montreal operates a development studio in Montreal, Quebec, Canada. The team of developers at THQ Montreal is developing the yet-as-untitled Patrice Desilets game.

21. The expertise and continuity of the teams at Vigil, Volition, Relic, and THQ Montreal are critical to maximizing the value of the Debtors' assets. There are fewer than one hundred game development teams worldwide that have the skills to develop "AAA" core console games, like those developed by the Debtors. Retaining the key members of these teams intact is critical to realizing value from the Debtors' ongoing development business

22. Game development is a unique hybrid of sophisticated programming skills, creative design in developing unique "gameplay hooks" which make the game fun, and artistic

talent to create a visual aesthetic which appeals to the core audience. Successful game development teams are ones that can continually recruit, satisfy, and retain very highly skilled personnel and compete with other skilled technology businesses for the best employees.

23. Game development is primarily an apprenticeship business where game developers learn and hone their craft over multiple game development cycles. With an "AAA" core game taking eighteen (18) to thirty-six (36) months to develop, each team member works closely with each other under intense deadlines to make and perfect each game under strict budget and time deadlines. Recruiting new development talent is an expensive and time consuming process, and the Debtors strive to maximize retention of their game development employees using mechanisms such as performance bonuses, regular management reviews and market salary adjustments and employee perquisites.

24. In addition to developing games in-house, the Debtors have key contracts with outside developers. These developers include (1) Obsidian, which is participating in the development of the *South Park* game, (2) Crytek UK, which is the outside developer of *HomeFront 2*, (3) 4A Games, which is developing of *Metro: Last Light*, and (4) Turtle Rock Studios, which is developing a co-op multiplayer action game. Continuity of these contractual relationships is also critical to maintaining the maximum value of the Debtors. Each of the respective studios has specific talent and expertise in both the game genre and the specific intellectual property, and once a project is started with a development team, it is nearly impossible to transition the development to a new team, as each team develops and uses a proprietary set of tools and techniques to develop the game.

III. The Debtors' Liabilities

25. As of the Petition Date, on a consolidated basis, the Debtors had liabilities of approximately $150 million, excluding contingent liabilities that might arise from the rejection of executory contracts. This does not include the liabilities of the Canadian subsidiaries, TIG or the European Subsidiaries.

26. Prior to the Petition Date, THQI depended on a revolving credit facility (the "**Pre-Petition Credit Facility**") from Wells Fargo Capital Finance, LLC ("**Wells Fargo**") to finance the Debtors operations. Volition, Vigil, and THQ Wireless are guarantors of the Pre-Petition Credit Facility. The Pre-Petition Credit Facility (a) is an asset-based revolving credit facility providing for up to $50 million in aggregate loans and other financing accommodations, but limited by a borrowing base calculation, (b) allows for up to $10 million of availability to be used as a letter of credit sub-facility, and (c) is secured by a first priority security interest and lien on most of the Debtors' assets. The balance owing to Wells Fargo as of the Petition Date was approximately $20 million.

27. Wells Fargo declared a covenant default under the Credit Facility, on November 7, 2012. The Debtors and Wells Fargo thereafter negotiated a forbearance agreement, pursuant to which Wells Fargo has continued to fund the Debtors' working capital needs based on a borrowing base formula calculation. Wells Fargo has agreed to provide debtor in possession financing in conjunction with Clearlake Capital ("**Clearlake**").

28. THQI also issued $100 million of 5% convertible unsecured senior notes due August 2014 (the "**Unsecured Notes**"). The bulk of the Unsecured Notes are held by a relatively small number of sophisticated investors (the "**Noteholders**"). Prior to the Petition Date the Debtors engaged in discussions with an ad hoc committee consisting of ten (10) Noteholders. The Debtors have been informed that the members of that ad hoc prepetition committee own collectively approximately 85% of the issued and outstanding Unsecured Notes.

29. The extent of other unsecured claims against the Debtors will depend to a great extent on what executory contracts are assumed or rejected in these chapter 11 cases and what critical obligations the successful bidder for the Debtors' assets will assume. The Debtors' best estimate is that their unsecured claims in addition to the claims of the Noteholders will likely be in the range of $30 million to $225 million, which includes intercompany claims by the European Subsidiaries of anywhere from no such claims to approximately $115 million. Where in this broad range the other debts will fall will depend on various factors, including whether the

Debtors are able to find parties willing to accept assignments of various executory contracts that Clearlake is not buying and the enforceability of penalty provisions in several agreements.

IV. Events Leading Up To Chapter 11 Cases

A. Generally

30. The Debtors suffered operating losses during each of the last five fiscal years. The Debtors operate on a fiscal year that ends on March 31, of each year. During that time, the market for the Debtors' traditional children's and movie based licensed games was in steep decline, and as the Debtors focused more on the market for core games its ratio of "hits" to games released was low, resulting in operating losses. During November 2010, the Debtors introduced a new product to the market, the *uDraw* Game Tablet, a drawing peripheral device for use with the Nintendo Wii. Based on the initial success of that device for the Nintendo Wii, the Debtors introduced a version of the *uDraw* peripheral for the PlayStation 3 and Xbox 360 in November, 2011. Unit volumes and pricing for these versions fell far short of expectations, resulting in substantially reduced net sales, operating income, and cash flow.

31. Unlike the software products typically developed by the company, the *uDraw* was a hardware device which had a "Bill of Materials" (the cost of the raw materials plus assembly) substantially higher than a typical software product. While the company was eventually able to sell the majority of its *uDraw* peripheral units in 2012, it did so at a net sales price which was, on average, substantially lower than the cost to manufacture the device, resulting in significant cash drain on the company. The Debtors have discontinued *UDraw* and negotiated out of all of their related obligations.

32. In Fiscal Year 2012, the Debtors (1) exited from the development of traditional children's and movie-based licensed console games, (2) modified their strategy to focus on the Debtors' premium core franchises and to expand digital revenues, and (3) implemented a comprehensive operational restructuring plan across all business segments designed to simplify

and rationalize its cost structure and reposition the Debtors to focus on growth in emerging segments.

33. In June of 2012, the Debtors hired Jason Rubin as President and Jason Kay as Chief Strategy Officer. Prior to joining the Debtors, Jason Rubin co-founded Naughty Dog, the developer of *Crash Bandicoot* and *Jak and Daxter* franchises. While Jason Rubin was at Naughty Dog, its games sold more than 40 million units, grossing over $1 billion. In 2004, Mr. Rubin co-founded Flektor, a media mash-up company. Jason Kay co-founded Flektor with Jason Rubin. Prior to co-founding Flektor, Mr. Kay had more than 15 years of experience in the media and technology industry, including extensive experience at Activision, HBO, and News Corporation. The Debtors have also begun to bring in additional key personnel.

34. During calendar year 2012, all corporate functions were realigned to the Debtor's new strategy and revenue expectations. As of December of 2011, the Debtors and their non-debtor subsidiaries employed approximately 1,400 individuals. By June of 2012, they had reduced their combined workforce to fewer than 850 employees. As part of the Debtors' transition, the Debtors have begun the process of winding down European Subsidiaries in Spain, Italy, Japan, Australia, and Korea, each of which previously distributed the Debtors' products in these jurisdictions.

B. <u>Time Constraints Created By Inadequate Liquidity</u>

35. On November 7, 2012, Wells Fargo informed the Debtors that an event of default had occurred under the terms of the Credit Facility. The default was a result of exceeding the maximum excess availability trigger, which obligated the Company to be in compliance with a fixed charge coverage covenant, which the Company was unable to meet. Wells Fargo and the Debtors negotiated a forbearance agreement. Under that forbearance agreement Wells Fargo began sweeping the Debtors' depository accounts, which meant that the Debtors no longer had access to cash on hand. The Debtors have been required to request new advances to pay expenses incurred by the Debtors during the forbearance period. In addition, the Debtors' ability

to draw was conditioned on them meeting pre-approved cash flow projections. The forbearance agreement was set to expire by its own terms on January 15, 2013.

36. Before Wells Fargo's declaration of a default the Debtors' cash flow projections were generated on a consolidated basis, including the cash generated by TIG and its subsidiaries (collectively, the "**European Subsidiaries**"). The European Subsidiaries' business consists of distributing THQI's products in various foreign jurisdictions. They are dependent on THQI's ongoing operations to support their future revenues. After the declaration of a default by Wells Fargo, the independent directors of the European Subsidiaries raised concerns about any more transfers of cash from the European Subsidiaries to THQI during the short forbearance period, because the future operations of the European Subsidiaries in the ordinary course was dependent on the ongoing operations of THQI. The inability to transfer cash held by the European Subsidiaries reduced the Debtors' liquidity and substantially shortened the time available to complete a transaction before the Debtors ran out of cash.

37. The Debtors' normal business cycle includes lengthy periods of negative cash flow, while the Debtors are developing and marketing a game prior to its actual release date, followed by period of significant positive cash inflows after the release of a new game. The Debtors are not scheduled to release any new games until March, 2013 and they will require additional cash to pay current operating expenses from the Petition Date through the release of their next game. The Debtors had anticipated that at least part of the cash required to address the negative cash flow during the current development cycle would be received from the European Subsidiaries. The reaction of the European subsidiaries to Wells Fargo's declaration of an event of default and short term forbearance agreement generated a more immediate cash short fall than had been projected.

38. Given the Debtors' deteriorating cash situation, their negative cash flow until new games are released in March 2013, and the short term of the forbearance agreement, the Debtors and their advisors determined that an out-of-court restructuring was not achievable. Wells Fargo and Clearlake agreed to provide debtor in possession financing to provide the Debtors with

additional liquidity during a chapter 11. The Debtors had no available out-of-court financing. The Debtors decided that the best course of action would be to file chapter 11 to implement either the Clearlake transaction or a competing transaction if a timely overbid is received.

39. A prompt sale is also necessary to preserve the core value of the Debtors' operating business: the development teams that are creating new games. Those teams are the primary value of the Debtors' ongoing operations. The only way to avoid the loss of key members of those teams who are likely to have concerns created by the Debtors' recent financial challenges and the chapter 11 filings, is the ability to provide them with reasonable certainty that a transaction will be implemented in the near term future. The Debtors have filed with this Court the proposed "Sale Procedures" (as defined in the Sale Motion). The proposed expedited Sale Procedures are designed to provide certainty to the Debtors' key employees as soon as practicable. Members of the development teams will know that a transaction is moving forward to fully fund ongoing operations and provide them with job security going forward.

C. Pre-Petition Marketing Efforts

40. During December of 2011 the Debtors engaged Citibank Global Markets, Inc. ("**Citibank**") to run a process to raise capital or sell the Debtors' assets. Citibank conducted a process seeking to locate a buyer or investor during the period from December of 2011 through February of 2012. Citibank contacted 26 potential strategic buyers and 29 potential financial buyers. Six potential strategic buyers and 7 potential financial buyers entered into Non-Disclosure Agreements ("**NDAs**") with the Debtors and were invited to participate in management presentations during December, 2011 through February of 2012. None of the participants in the Citibank process submitted an indication of interest or a proposal. The Debtors halted the Citibank process because of a lack of expressions of interest.

41. The Debtors engaged Centerview Partners, LLC ("**Centerview**") on June 11, 2012, with the primary goal of finding an investor that would provide new liquidity to fund the

Debtors' business plan, or a buyer for substantially all of the Debtors' assets.[2] When Centerview initiated its process, it began by reviewing the earlier efforts of Citibank.

42. On October 26, 2012, the Debtors signed Clearlake's revised proposal, granting Clearlake a 45-day period during which the Debtors agreed to negotiate exclusively with Clearlake. This exclusivity provision was thereafter extended to December 17, 2012.

D. The Proposed Sale

43. The Debtors and Clearlake negotiated the Asset Purchase Agreement, a true and correct copy of which is attached to the Sale Motion as Exhibit "2" and incorporated herein by this reference. The Asset Purchase Agreement provides that Clearlake will serve as a stalking horse bidder and allows the Debtors to solicit competing bids pursuant to the Sale Procedures. Clearlake will pay off the secured debt, pay the Debtors $6.65 million in cash, assume approximately $15 million in liabilities, and deliver to the Debtors a $10 million seven year note, that bears interest at 2% per annum.

44. Although the Debtors conducted an extensive pre-bankruptcy marketing campaign with the assistance of Centerview, the Debtors negotiated with Clearlake the terms of the Sale Procedures, which are designed to establish a fair, open and competitive postpetition bidding process, subject to the time limitations driven by the Debtors' lack of liquidity and ongoing negative cash flow.

45. The sale of the Acquired Assets to Clearlake or a competing bidder, is the best way to obtain the maximum value for the Debtors' assets. The DIP Facility is designed to provide liquidity sufficient to allow the Debtors to maintain their operations, and going-concern value, until the sale of the Acquired Assets can be completed. Absent an expedited sale, the value of the Debtors as a going-concern will be jeopardized because the Debtors will not have sufficient liquidity to continue operating pending any sale.

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[2] After the Citibank process was terminated, the Debtors consulted with Houlihan Lokey, LLC ("**Houlihan**"). Houlihan was terminated before it commenced a marketing process. During November, 2012, Houlihan was engaged by the ad hoc committee of Noteholders. The Debtors consented to that engagement.

46. If Clearlake is not the Successful Bidder, the Debtors have agreed to pay a break-up fee of $1.75 million (the "**Break-Up Fee**") and the Expense Reimbursement to which Clearlake is entitled under its Asset Purchase Agreement ("**Expense Reimbursement**"). The Debtors agreed to these provisions because Clearlake informed the Debtors that it would not agree to serve as a stalking horse bidder for an auction sale process or provide the Debtors with financing to allow the Debtors to continue operating pending a sale, absent this agreement by the Debtors.

47. The Sale Procedures provide for a sale or other disposition of the Acquired Assets without representations or warranties of any kind, nature or description by the Debtors, their agents or representatives other than as expressly set forth in the final asset purchase agreement. The Acquired Assets shall be transferred on an "As Is" and "Where Is" basis.

48. The Debtors have retained the right, after consultation with the Committee, in their sole discretion, and in accordance with the terms of the Asset Purchase Agreement, to conduct the Auction in a manner they determine is designed to achieve the maximum value for the Debtors' assets and maximum recovery for the Debtors' constituents.

V. Summary of First Day Papers

49. Concurrent with the filing of their chapter 11 petitions, the Debtors have filed the First Day Papers,[3] which the Debtors believe are necessary to enable them to operate in chapter 11 with minimum disruption. The Debtors respectfully request that the relief requested in each of the First Day Papers be granted as such relief is a critical element in stabilizing and facilitating the Debtors' operations during the pendency of these chapter 11 cases. A description of the relief requested and the facts supporting each of the First Day Papers is set forth below:

A. Motion of Debtors for an Order Directing Joint Administration of Chapter 11 Cases Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure

50. By this motion, the Debtors request, pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1, that the Court enter an order directing joint administration of the Debtors'

[3] Capitalized terms not defined herein shall have the meanings ascribed to them in the relevant First Day Paper.

chapter 11 cases. Joint administration of these cases will save the Debtors and their estates substantial time and expense by removing the need to prepare, replicate, file, and serve duplicative notices, applications, and orders. Further, joint administration will relieve the Court of entering duplicative orders and maintaining duplicative files and dockets. Accordingly, I believe that joint administration of the Debtors' chapter 11 cases is in the best interests of the Debtors, their estates and all parties in interest, and should be granted in all respects.

B. Application of Debtors for Authority to Retain and the Appointment of Kurtzman Carson Consultants LLC as Claims And Noticing Agent Pursuant to 28 U.S.C. § 156(C) and Local Rule 2002-1(F)

51. By this Section 156(c) Application, the Debtors request entry of an order, pursuant to 28 U.S.C. §156(c) and Local Rule 2002-1(f) for authority to retain and the appointment of KCC as the Claims and Noticing agent, with full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors' chapter 11 cases, as described above.

52. The Debtors have obtained and reviewed engagement proposals from at least three (3) other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that KCC's rates are competitive and reasonable given KCC's quality of services and expertise.

53. For these reasons, the Debtors submit, and I believe, that the relief requested in this application is in the best interest of the Debtors, their estates, and their creditors and, therefore, should be approved.

C. Motion of Debtors for (I) Authority to (A) Continue Their Existing Cash Management System, (B) Maintain Existing Bank Accounts and Business Forms, and (C) Continue Existing Intercompany Funding Arrangements, and (II) An Extension Time to Comply with and Waiver of the Requirements of Section 345(b) of the Bankruptcy Code

54. By this motion, the Debtors request authorization to (a) continue the use of their cash management system (as defined below), (b) maintain their existing bank accounts, (c)

continue the use of existing business forms, (d) continue performance of intercompany transactions in the ordinary course of business; and (e) a limited waiver of section 345(b) of the Bankruptcy Code deposit and investment requirements.

1. Description of Cash Management System.

55. In the ordinary course of business, and as is common with businesses of this kind, the Debtors maintain an integrated cash management system that provides well-established mechanisms for the collection, management, and disbursement of funds used in their operations (the "**Cash Management System**"). The Cash Management System is structured to serve the Debtors' operational needs and reflects all aspects of their prepetition capital structure—in particular, maintenance of the Cash Management System is critical to ensuring the seamless payment to employees and continued operation of the Debtors. As such, the Debtors' current system provides numerous benefits, including the ability to: (a) quickly create status reports on the location and amount of funds, thereby allowing management to track and control corporate funds; (b) ensure cash availability and prompt payment of corporate, employee and vendor related expenses; and (c) reduce administrative costs by facilitating the efficient movement of funds.

56. The Debtors seek relief to continue their Cash Management System, and in connection with this relief, the Debtors respectfully request a waiver of certain of the operating guidelines established by the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") that require the Debtors to close all prepetition bank accounts and open new accounts designated as debtor-in-possession accounts.

57. As of the Petition Date, the Cash Management System included various bank accounts (each a "**Bank Account**" and collectively, the "**Bank Accounts**"), including Bank Accounts with Union Bank ("**Union**"), JP Morgan Chase Bank, N.A. ("**JP Morgan**"), and UBS Financial Services, Inc. ("**UBS**" and, together with Union, JP Morgan and UBS, the "**Banks**")[4]

[4] THQI also maintained a bank account at Bank of America, N.A., which is noted in the list of Bank Accounts in ***Exhibit B*** and demonstrative chart in ***Exhibit C*** attached to the Cash Management Motion, but is in the process

used in the ordinary course of the Debtors' business. The Debtors utilize a number of methods for disbursing funds, including: (a) debit; (b) wire and Automated Clearing House ("**ACH**") transfer; and (c) written check. Each of the Bank Accounts maintained by the Debtors is listed on **Exhibit B** attached to the Cash Management Motion.

58. A demonstrative chart of the Cash Management System is attached to the Cash Management Motion as **Exhibit C**, which provides additional detail regarding the Cash Management System and the flow of funds from the Bank Accounts to pay expenses and costs. The following describes the Debtors' Bank Accounts and how the Cash Management System satisfies both the Debtors' operational needs and the requirements of their Senior Lender.

(a) *Collection Accounts.* The Cash Management System operates primarily through bank accounts maintained at Union. The Debtors maintain four depository accounts at Union (each a "**Collection Account**" and, collectively, the "**Collection Accounts**") for collection of cash receipts segregated by certain business lines: general customer cash receipts (the "**General Receipts**"), Valusoft customer cash receipts (the "**Valusoft Receipts"**), Wireless customer cash receipts (the "**Wireless Receipts**"), and Paypal customer cash receipts (the "**Online Gaming Receipts**"). The Collection Accounts are maintained as follows:

(1) General Receipts constitute the majority of cash receipts received by the Debtors in the ordinary course of their business and are remitted by Debtors' customers either directly to a designated Collection Account at Union or to THQI for remote deposit to such designated Collection Account.

(2) Valusoft Receipts relate to cash receipts generated from a business sold by THQI approximately five years ago. Over the past three months approximately $3,000 of Valusoft Receipts was deposited in the designated Collection Account. The Valusoft Receipts are remitted to a designated Collection Account at Union.

(3) Wireless Receipts relate to cash generated from a business sold by THQI approximately six months ago. The Wireless Receipts are remitted to a designated Collection Account at Union.

(4) Online Gaming Receipts relate to cash receipts from the Debtors' online gaming platform and is linked to a Paypal account maintained by the Debtors. The Online Gaming Receipts are remitted to a designated Collection Account at Union.

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of being closed. The Debtors do not intend to maintain this account and will complete the process of closing the account as soon as possible if not by the Petition Date.

(b) *Wells Fargo Control of Collection Accounts*. The Collection Accounts are subject to control agreements of the Debtors' Senior Lender, Wells Fargo. On or about November 14, 2012, Wells Fargo began exercising its rights under such control agreements and related loan documents to take dominion of the cash in the Collection Accounts. Wells Fargo began to sweep funds from the Collection Accounts on or about November 20, 2012. Pursuant to the Credit Agreement and the Forbearance Agreement, Wells Fargo agreed to advance funds to the Debtors prior to the Petition Date to fund the Debtors' ongoing operations. Advances from Wells Fargo are deposited in a master settlement account (the "**Settlement Account**") to fund the payment of the Debtors' expenses, either directly or through other bank accounts.[5]

(c) *Disbursement Accounts*. Specifically, the advances to the Settlement Account fund: (i) the Bank Account for vendor checks (the "**Controlled Vendor Checking Account**"); (ii) the Bank Account for payroll, 401(k) contributions, payroll taxes to certain jurisdictions and for processing employee-related manual checks such as for terminated employees (the "**Payroll Account**"); (iii) the Bank Account for the flexible spending account vendor to administer the employee flexible spending account program (the "**Flex Spending Account**"); (iv) the Bank Account for video production vendor paychecks (the "**Video Production Vendor Checking Account**" and together with the Controlled Vendor Checking Account, Payroll Account and Flex Spending Account, the "**Disbursement Accounts**"); and (v) intercompany transfers for the operational expenses such as payroll for the Canadian and Chinese subsidiaries of THQI (discussed below regarding Intercompany Transfers).[6] The Disbursement Accounts are maintained as follows:

(1) The Controlled Vendor Checking Account is used to satisfy checks presented to Union that day for amounts owed by the Debtors to various payees. In the ordinary course of operations, the Settlement Account funds the Vendor Checking Account with only the amount of money necessary to satisfy the obligations of that day. As a result, the Vendor Checking Account is left with a zero balance at the end of each day.

(2) The Payroll Account is used to fund Automatic Data Processing, Inc. ("**ADP**") and Fidelity Management Trust Company ("**Fidelity**") through ACH credit transfers. In the ordinary course of operations, the Settlement Account funds the Payroll Account with only the amount of money necessary to satisfy the payroll and 401(k) obligations. Historically, the Payroll Account is left with a zero balance at the end of each pay period; however, as of the Petition Date, the Payroll Account is controlled by manual disbursement to ensure timely payment through the Payroll Account.

(3) The Flex Spending Account is used to fund Flex-Plan Services, Inc. through ACH credit transfers. In the ordinary course of operations, the

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[5] A more detailed factual discussion of the Debtors' proposed use of cash collateral and postpetition financing is contained in the statement of facts regarding the Financing Motion.

[6] The Debtors also maintained a bank account at Bank of America, N.A., for THQ Digital Studios Phoenix, Inc. that had previously received disbursements from the Settlement Account. This account is in the process of being closed.

Settlement Account funds the Flex Spending Account twice monthly for amounts due for the flexible spending program. As a result, the Flex Spending Account is left with a zero balance at the end of each pay period.

(4) The Video Production Vendor Checking Account is used to pay certain vendors outside the standard disbursement and payroll process. This account is typically used for special events such as trade shows where vendors are paid by check for same-day services. The Video Production Vendor Checking Account has a balance as of the Petition Date of approximately $10,000. Manual disbursements are made from a checkbook that is currently locked with THQI's accounts payable department.

(d) *Investment Accounts*. The Debtors maintain a money market account with Union (the "**Money Market Account**") and investment account with UBS (the "**UBS Account**") that are currently dormant. The Debtors also maintain an investment account with JP Morgan (the "**Yuke's Investment Account**" and together with the Money Market Account and UBS Account, the "**Investment Accounts**"). Funds are not regularly disbursed from the Investment Accounts. The purpose of maintaining the Investment Account is as follows:

(1) The Money Market Account is a FDIC-insured, interest bearing account that is maintained for receipt of funds outside the ordinary course of customer receipts. This account could be used for deposit of funds in connection with a sale process.

(2) The UBS Investment Account holds bonds with a current value of $0.00. The nominal face value of these bonds (Sigma Fin Inc MTN Rate 05.450% Matures 6/15/09) is $2 million. This account is pledged to Wells Fargo and subject to a control agreement with Wells Fargo.

(3) JP Morgan serves as custodian of 776,000 shares owned by THQI of Yuke's Co., Ltd., a Japanese interactive software developer. The shares are held in the Yuke's Investment Account and dividends generated from such shares are deposited in this account. The Yuke's Investment Account has a cash balance as of the Petition Date of approximately $87,000. No disbursements are made from the Yuke's Investment Account.

59. The Debtors have maintained a Cash Management System with Union Bank for approximately fourteen (14) years. The Cash Management System has evolved over time into a mainstay of the Debtors' ordinary, usual, and essential business practices. To minimize expenses to the Debtors' estates, avoid delays, and facilitate the Debtors' smooth transition into chapter 11, the Debtors seek authority to (a) continue using the existing Cash Management System and Bank Accounts; (b) treat the Bank Accounts for all purposes as accounts for the Debtors as

debtors in possession; (c) disburse funds as described above from the Bank Accounts by all usual methods, including written check, wire and ACH transfer, and debit; and (d) perform obligations under the documents governing the Cash Management System and the Bank Accounts, including paying ordinary course bank fees incurred in connection with the Bank Accounts.

60. The Debtors will ensure that all postpetition transfers and transactions are documented in their books and records to the same extent as before the commencement of the Chapter 11 Cases and are readily ascertainable from their books and records documenting transfers and transactions. As of December 12, 2012, the Debtors ceased issuing written checks except in very limited circumstances such as issuing a final check for employee departures. All checks issued prepetition are readily identifiable by check sequence. As described below regarding the Debtors' request to continue use of existing check stock, all checks issued postpetition will begin with a new sequence number for ready identification and reference the Debtors' status as debtors in possession and bankruptcy case number. Any prepetition check that is authorized by Court order or the Bankruptcy Code will be reissued by the Debtors using the postpetition check sequence. In addition, all electronic transfers of funds will stop as of the Petition Date and only authorized going forward pursuant to the Court's orders.

2. Importance of Continued Use of Existing Check Stock

61. The Debtors seek relief to continue use of its preprinted checks as part of their continued use of the Cash Management System, and in connection with this relief, the Debtors respectfully request a waiver of certain of the operating guidelines established by the U.S. Trustee. The Debtors print their own checks from existing check stock and as debtors in possession will print checks with a new postpetition sequence number and reference to the Debtors' status as debtors in possession and bankruptcy case number.

3. Description of Intercompany Transactions.

62. Prior to the Petition Date, in the ordinary course of their business, the Debtors engaged in intercompany transactions and transfers (the "**Intercompany Transactions**"). The

Intercompany Transactions may result in intercompany receivables and payables (the "**Intercompany Claims**"). In general, there are two types of Intercompany Transfers further described below that the Debtors enter into in the normal course of their operations: (a) payments made by THQI to or on behalf of its subsidiaries for services performed by its subsidiaries for THQI; and (b) payments received by its subsidiaries on behalf of THQI.

(a) Payments made by THQI to or on behalf of its subsidiaries for services performed by its subsidiaries for THQI.

63. THQI develops products using internal development teams employed by its subsidiaries Volition, Vigil, Relic, THQ Montreal and THQ Shanghai (the "**Development Subsidiaries**"). THQI pays the Development Subsidiaries for their services at cost to develop interactive software owned by THQI. Accordingly, the Development Subsidiaries do not generate profits for themselves on account of payments from THQI. The services rendered by the Development Studios are integral to THQI's business enterprise and creates value for THQI through the development of the product THQI sells either directly or through its other subsidiaries. The operational expenses of these subsidiaries result in the creation of intercompany receivables on the subsidiaries' books, and intercompany payables on THQI's books. These Intercompany Claims are settled either by book entry or by transfer of cash to satisfy these intercompany balances in the ordinary course of business. Cash payments made to Relic and THQ Montreal in the ordinary course of business are sent through JP Morgan in a foreign exchange transfer, and payments to THQ Shanghai are sent through Union in a foreign exchange transfer.

(b) Payments received by its subsidiaries on behalf of THQI.

64. Relic collects payments from time to time on behalf of THQI. For historical business reasons customers of THQI in Canada have made payments to Relic and deposited in a bank account at Bank of America in Canada held by Relic for the benefit of THQI. This bank account is subject to a control agreement with Wells Fargo. Wells Fargo exercised its rights to sweep funds from this account prior to the Petition Date and is being applied to THQI's debt.

Wells Fargo continues to sweep funds from this account as part of the arrangement further described in the Financing Motion.

65. THQI sells and markets its product in foreign territories other than Canada through TIG and its subsidiaries. TIG and its subsidiaries collect payments for sales of THQI's product. Intercompany Claims exist as between THQI and TIG and its subsidiaries resulting from this sales and marketing business in foreign territories, but no transfers of cash are being made between THQI, on the one hand, and TIG and its subsidiaries, on the other hand, as of the Petition Date and are not planned postpetition without first seeking Court authority at a later time if necessary.

66. The Debtors track all Intercompany Transactions in their accounting system and can ascertain, trace, and account for them as needed. Continuing the Intercompany Transactions and other intercompany services will benefit the Debtors' estates and will preserve the value of the Debtors' ownership interest in their non-filing affiliates. If the Intercompany Transactions were discontinued, the Cash Management System and related administrative controls would be disrupted to the Debtors' detriment.

67. Accordingly, the Debtors seek authority to continue the Intercompany Transactions and request, pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, that postpetition Intercompany Claims resulting from the ordinary course Intercompany Transactions be accorded administrative priority. In addition, the Debtors seek authority to continue performing Intercompany Transactions in the ordinary course of business and to honor and pay obligations in connection with the Intercompany Transactions, *provided, however*, that cash payments on account of prepetition intercompany obligations shall not exceed $50,000. Discontinuing the Intercompany Transactions would disrupt the Debtors' estates, harming their creditors and other parties in interest.

4. **Description of Investment Policies and Practices**

68. Most of the Debtors' Bank Accounts, including all Bank Accounts maintained at Union, are covered by FDCI insurance and contain amounts which are within the limits of such insurance. The Yuke's Investment Account is covered by SIPC insurance up to $500,000. The UBS Account is pledged to Wells Fargo and holds investments currently valued at $0.00. The Debtors do not maintain any other Bank Accounts.

69. I believe the relief requested in the Cash Management Motion is critical to the Debtors' ability to effectively and efficiently maintain their financial operations and preserve business continuity. The use of the Cash Management System has historically reduced the Debtors' expenses by enabling the Debtors to use funds optimally within the system. The Debtors' business operations and the operations of its non-debtor affiliates rely heavily on the Debtors' Cash Management System and any disruption in the continuation of these practices would severely disrupt the THQI's business operations and cause a severe decline in the value of the Debtors' estates.

70. Based on the foregoing, I believe that maintenance of the Cash Management System is in the best interests of the Debtors and their estates.

D. Motion of Debtors for Interim and Final Orders (I) Prohibiting Any Utility Company from Altering, Refusing, Or Discontinuing Service, (II) Approving the Debtors' Proposed Adequate Assurance, and (III) Establishing Procedures to Determine Additional Adequate Assurance of Payment Pursuant to Sections 105(a) and 366 of the Bankruptcy Code

71. By this motion, the Debtors respectfully requested entry of interim and final orders pursuant to Sections 105(a) and 366 of the Bankruptcy Code prohibiting Utility Providers (as defined below) from altering, refusing or discontinuing utility services and that adequate assurance of payment for postpetition services has been furnished to the Utility Providers. Uninterrupted Utility Services (defined below) are essential to the continued operation of the Debtors' businesses and, consequently, to the success of the Chapter 11 Cases. The Debtors maintain large studio and computer operations that depend on the constant and reliable provision

of Utility Services. A termination of or disruption in Utility Services would significantly disrupt the Debtors' businesses and could reduce their revenue and profits, thereby jeopardizing the Debtors' chances for a successful reorganization. Accordingly, the relief requested herein is necessary and in the best interests of the Debtors' estates and their creditors.

72. In the normal course of their businesses, the Debtors obtain traditional utility services related to the day-to-day operation and/or maintenance of their United States facilities from approximately thirty-one (31) different utility providers (each, a "**Utility Provider**" and collectively, the "**Utility Providers**"), for electricity, water, gas, local and long-distance telecommunication services, data service, fiber transmission, waste disposal, sewer service and other services (the "**Utility Services**"). The Utility Providers include, without limitation, the entities set forth on the list as **Exhibit C** (the "**Utility Providers List**") in the Utilities Motion. On an aggregate monthly basis, the Debtors spend approximately $138,687.55 for the various Utility Services. The Debtors have consistently made payments to the Utility Providers on a regular and timely basis. To the Debtors' knowledge, there are no material defaults or arrearages with respect to the Debtors' undisputed invoices for Utility Services, other than the payment interruptions that may be caused by the commencement of the Chapter 11 Cases.

73. Consistent with section 366(c)(1)(A) of the Bankruptcy Code, which defines the phrase "assurance of payment" to include, among other things, a cash deposit, the Debtors propose to deposit, within 20 days of the Petition Date, an amount equal to the cost of two weeks' supply of Utility Services, calculated on the basis of the historical average cost over the past year (the "**Adequate Assurance Deposit**") into one segregated bank account designated for the Adequate Assurance Deposit (the "**Adequate Assurance Deposit Account**") for the benefit of all Utility Providers. During the past 52 weeks, the Debtors paid an average of approximately $138,687.09 per month on account of all Utility Services.

74. The Debtors propose to deposit $69,343.55, equal to approximately fifty percent (50%) of the Debtors' estimated monthly cost of the Utility Services, into the Adequate Assurance Deposit Account within 20 days of the Petition Date through at least the final hearing

on the Motion. Thereafter, the Debtors propose to adjust the amount in the Adequate Assurance Account to reflect several factors: (i) the termination of Utility Services by the Debtors regardless of any Additional Assurance Requests (as defined below), (ii) agreements with Utility Providers, and (iii) to remove from the monthly spending figure cited in the preceding paragraph any amount spent on Utility Services from Utility Providers that already hold deposits or other security from the Debtors for such Utility Services. These adjustments will permit the Debtors to maintain the Adequate Assurance Account with an amount that consistently provides the Utility Providers that do not otherwise hold deposits or security for their Utility Services with a half-month deposit on account of such services.

75. Based on the foregoing, I believe the relief requested in the Utilities Motion is not prejudicial to any party in interest and, in fact, only benefits the Debtors' estates and their creditors. Accordingly, I believe the relief requested in the Utilities Motion should be granted.

E. Debtors' Motion for Order Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees

76. By this motion, the Debtors respectfully request the authority to remit and pay certain prepetition Taxes and Fees (as defined herein). In the ordinary course of business, the Debtors: (a) incur and/or collect sales and use, property, and franchise taxes (collectively, the "**Taxes**"); (b) incur business license, permit, and other similar fees or charges (collectively, the "**Fees**") in connection with obtaining licenses and permits necessary to operate their businesses; and (c) remit such Taxes and Fees to various taxing, licensing, and other governmental authorities (collectively, the "**Authorities**"). A list of the Authorities is attached as **Exhibit B** to the Taxes and Fees Motion. The Debtors pay the Taxes and Fees monthly, quarterly, or annually, in each case as required by applicable laws and regulations.

1. Sales and Use Taxes

77. The Debtors incur sales, use, and miscellaneous similar taxes in connection with the operation of their business and services to their customers (the "**Sales and Use Taxes**").

Generally, sales taxes are remitted to the Authorities in the month or quarter following acquisition or transportation of the corresponding goods. Although the Debtors are timely with respect to Sales and Use Taxes, they estimate that, as of the Petition Date, approximately $25,000 of Sales and Use Taxes has accrued and is unpaid.

2. Personal Property Taxes

78. State and local laws in some of the jurisdictions where the Debtors operate generally grant Authorities the power to levy property taxes against the Debtors' personal property. To avoid the imposition of statutory liens on their personal property, the Debtors typically pay these taxes in the ordinary course of business on a monthly basis. The Debtors estimate that, as of the Petition Date, approximately $60,000 in personal property taxes is accrued and unpaid.

3. Business License, Permits and Other Similar Fees

79. Certain state and local taxing Authorities require the payment of Fees for the authority to conduct business within their jurisdictions. The Fees are typically for business licenses, permits, and other similar charges and assessments. Depending on the jurisdiction, the Debtors remit these Fees on a monthly, quarterly, or annual basis. The Debtors believe they are current with respect to these Fees and estimate that, as of the Petition Date, there are no Fees accrued and are unpaid.

80. I believe that the Debtors' failure to pay the Taxes could have a material adverse impact on their ability to conduct an orderly reorganization and thus harm the value of their assets. Additionally, any attempt to collect the Taxes and Fees from the Debtors' officers and directors has the potential to divert the attention of those individuals away from the chapter 11 process.

81. For the foregoing reasons, the Debtors submit, and I believe, that the relief requested in this motion is in the best interest of the Debtors, their estates, and their creditors and, therefore, should be approved.

F. Debtor's Motion For Interim and Final Orders Authorization to Honor Prepetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business

82. By this motion, the Debtors request the authority, but not direction, to maintain and administer certain customer programs and honor prepetition obligations related to such programs.

83. THQI markets and distributes games directly to mass merchandisers, consumer electronic stores, discount warehouses, and other national retail stores. Prior to the Petition Date, both in the ordinary course of its business and as is customary in the interactive entertainment software industry, THQI offered and engaged in certain customer and other programs and practices (the "**Customer Programs**") to drive customer sales, develop and sustain a positive reputation in the marketplace, engender customer loyalty, ensure customer satisfaction, meet competitive pressures, and generate goodwill for the THQ brand, thereby maximizing revenue and profitability.

84. THQI believes that assurance to its customers that all Customer Programs will be honored on an uninterrupted basis is crucial to its ongoing business operations and value as a going concern. Programs such as the Customer Programs have become standard in the highly competitive interactive entertainment software industry and customers have come to expect these types of programs to be offered in the ordinary course of business by all industry participants, including THQI. As set forth in more detail below, maintenance of the Customer Programs will serve to protect long-standing relationships with customers, protect and promote the Debtors' competitive position in the marketplace, and preserve the continued vitality of the THQ brand for the benefit of all parties in interest. The aggregate cost to THQI to continue the Customer Programs and perform and honor prepetition obligations with respect thereto is insignificant when compared to the irreparable harm and detrimental impact their businesses would suffer if

these programs are abandoned. The following are general descriptions and examples of the Customer Programs.[7]

85. Price Protection. In the ordinary course of business and consistent with industry practice, if consumer demand for a product drops, THQI regularly offers price protection to its customers to spur additional sales (the "**Price Protection Program**"). Under the Price Protection Program, THQI issues a credit (the "**Price Protection Credit**") to the customer for the difference in price between the initial price at which the customer purchased the inventory and the new price for the remaining inventory. Price Protection Credits are negotiated from time to time with customers, who then deduct the agreed-upon Price Protection Credit from outstanding invoices. THQI later reconciles the deduction taken by the customer with the amount of approved Price Protection Credit. If a customer over-deducts, THQI pursues repayment from the customer.

86. To account for Price Protection Credits, THQI accrues a reserve against revenue recorded based on an internal THQI model that predicts when price drops will occur with respect to the titles in the distribution channel. THQI's accrued reserve for Price Protection Credits as of December 12, 2012 equaled approximately $4,395,440, which amount remains subject to further reconciliation at the end of this quarter.[8]

87. Co-operative Advertising. In the ordinary course of business, THQI enters into agreements with certain of its customers pursuant to which each customer agrees to advertise and/or promote THQI's product by, for example, placing the product in a strategic place in the customer's store or by including the product in the customer's weekly circular. In consideration thereof, THQI will issue the applicable customer a credit equal to a certain percentage or amount of each invoice issued to the customer during the promotional period (i.e., a percentage of

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[7] The description of the Customer Programs is meant to be a summary of the various programs. Some of the terms comprising the Customer Programs vary customer-by-customer. To the extent of any inconsistencies between the descriptions herein and any written documents between THQI and its customers, such written documents shall control.

[8] The Debtors' fiscal year is April 1 – March 30. The Debtors are currently in the third quarter of fiscal year 2013, which ends on December 30, 2012.

THQI's sales to the customer) (the "**Co-Op Credit**"), which percentage amount is agreed to up-front by the customer and THQI (the "**Co-Op Allowance**"). As with price protection, customers will typically deduct Co-op Credits from their payment to THQI based on the Co-Op Credit they believe they are entitled to at the time of payment (taking into consideration the amount purchased by the customer and the agreed upon Co-Op Allowance). THQI later reconciles the deduction taken by the customer with the amount of approved Co-Op Credit. If a customer over-deducts, THQI pursues repayment from the customer.

88. To account for Co-Op Credits, as invoices are issued to applicable customers, THQI accrues a reserve against revenue based on the period of the promotions and the agreed upon Co-Op Allowances (the "**Co-Op Reserve**"). As of December 16, 2012, the Co-Op Reserve equaled approximately $2.8 million. However, because a portion of the Co-Op reserve is not reconciled, THQI expects that the amount of Co-Op Credits earned but not applied to customers' accounts as of the Petition Date will change upon reconciliation at the end of THQI's third quarter. In the third and fourth quarters of THQI's last fiscal year, the accrued Co-Op Credit Reserve equaled approximately $7.1 million and $3.5 million. In the first and second quarters of this fiscal year, the accrued Co-Op Credit Reserve equaled approximately $2.9 million and $2.7 million, respectively. Although sales are typically higher in the third quarter, due to declining sales in the past year, THQI anticipates, but cannot be certain, that the Co-Op Credits outstanding as of the Petition Date will be closer to the first and second quarter of this fiscal year.

89. Back-End Rebates. The back-end rebate program is typically negotiated on customer-by-customer basis. Under such an arrangement, a customer will temporarily reduce the retail price of THQI's product and THQI will fund an agreed amount of the discount (typically 80%) for every unit sold during that time period. The portion funded by THQI for each unit sold is provided in the form of a credit to the customer (the "**Back-End Rebate**"). Such credit is not "earned" by the customer unless and until the customer actually sells the product to an end consumer.

90. To account for Back-End Rebates, THQI accrues a reserve against revenue recorded (the "**Back-End Rebate Reserve**"). THQI reconciles this reserve on a quarterly basis and, upon reconciliation, issues Back-End Rebates to the participating customers based on the customer's sales during the given time period. As of December 16, 2012, THQI estimates that its accrued reserve for Back-End Rebates is approximately $4.436 million, which amount remains subject to reconciliation at the end of THQI's third quarter.

91. Defective Product Credit. THQI offers certain of its customers a 1-2% allowance, which is typically deducted off of the invoice amount, to account for the chance that the customers receive defective inventory. The deduction is given when the sale is made, and the THQI retail customer is ultimately responsible for remedying any issue with its own customers.

92. Certain other THQI customers prefer to take deductions for the actual amount of defective inventory they receive. Upon receiving a claim for defective inventory, THQI will issue the respective customer a credit on account of such claim (the "**Defective Inventory Credit**"). THQI accrues a reserve (the "**Defective Product Reserve**") to account for known and unknown claims for defective inventory (the "**Defective Inventory Claims**"). At the end of a quarter, THQI reconciles the Defective Product Reserve and, following such reconciliation, issues Defective Inventory Credits. Because THQI does not reconcile this reserve until the end of a quarter, it is difficult for THQI to estimate the amount of the reserve as of the Petition Date. The amount of Defective Inventory Credits at the end of the third and fourth quarters of last fiscal year equaled approximately $925,000 and $434,000, respectively. The amount of Defective Inventory Credits at the end of the first and second quarters of this fiscal year equaled approximately $132,000 and $241,000, respectively. Due to declining sales, THQI anticipates, but can be certain, that the Defective Inventory Credits outstanding as of the Petition Date will be closer to the first and second quarters of this fiscal year.

93. Freight Rebate. With respect to certain of its customers, THQI issues a per shipment rebate each time an eligible customer selects an authorized common carrier to deliver THQI inventory (the "**Freight Rebates**"). The Freight Rebates range from $0.05 to $0.30 per

shipment. Based on shipping information THQI receives from its warehouse that details shipments by carrier for each customer, THQI accrues a reserve to account for Freight Rebates (the "**Freight Reserve**"). At the end of a quarter, THQI reconciles the Freight Reserve with the customers' shipping activity for that quarter and, following such reconciliation, issues the Freight Rebates. Because THQI does not reconcile the Freight Reserve until the end of a quarter, it is difficult for THQI to estimate the amount of accrued and outstanding Freight Rebates as of the Petition Date. The amount of Freight Reserve at the end of the third and fourth quarters of last fiscal year equaled approximately $38,543 and $40,469, respectively. The amount of Freight Reserve at the end of the first and second quarters of this fiscal year equaled approximately $48,478 and $49,867, respectively.

94. Other Customer Programs. THQI also offers various other Customer Programs on a case-by-case basis (the "**Other Customer Programs**"). For example, THQI may offer to discount the price of one game if a customer agrees to purchase a different game or if the customer buys a certain amount of a particular product. If a customer opens a new store, THQI often offers the customer a discount on its products for the new store. THQI estimates that the amount owing as of the Petition Date on account of the Other Customer Programs, if any, is *de minimis*.

95. The Customer Programs are ordinary course programs that are standard in the interactive entertainment software industry. Moreover, THQI believes the continuation of the Customer Programs is necessary to retain THQI's valuable and loyal customers and maintain the value of the THQ brand for the benefit of all parties in interest.

96. The necessity of the Customer Programs in THQI's competitive industry cannot be overstated. If the obligations under the Customer Programs are not honored, THQI risks alienating their customers and encouraging them to obtain services from the THQI's competitors. The failure to honor the Customer Programs could erode THQI's hard-earned reputation and customer loyalty, adversely affecting the THQI's going-concern value and prospects for a successful reorganization.

97. For the foregoing reasons, the Debtors submit, and I believe, that the relief requested in this motion is in the best interest of the Debtors, their estates and their creditors and, therefore, should be approved.

G. Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Employee Obligations and Maintain and Continue Employee Benefits and Programs and (II) Authorizing and Directing Applicable Banks and Other Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations

98. By this motion, the Debtors request the (i) authority, but not direction, to (a) pay prepetition wages, salaries, and other compensation, taxes, withholdings, and related costs, and reimbursable employee expenses, (b) pay and honor obligations relating to employee medical, insurance, and other benefit programs, and (c) continue their employee medical, insurance, and other benefits programs on a postpetition basis; and (ii) the authorization and direction to applicable banks and other financial institutions to honor and process checks and transfers related to such obligations. In connection with their operations, the Debtors currently employ approximately 462 full-time employees (the "**Employees**"). The Debtors also regularly engage temporary employees (the "**Temporary Employees**") and independent contractors (the "**Independent Contractors**") to provide clerical, marketing, accounting, product development, information technology, as well as other services for the Debtors. The Debtors' Employees, Temporary Employees, an Independent Contractors are collectively referred to herein as the "**Debtors' Workforce**."

99. The Debtors' Employees are the lifeblood of their business and their value cannot be overstated. The management, marketing, sales, technical, and software development skills of their Employees are essential to the Debtors' ability to develop and bring high-quality, competitive products to market. The Independent Contractors and Temporary Employees also fill critical and immediate business needs of the Debtors. In such capacity, certain of the Temporary Employees and Independent Contractors play key roles in the development process of the Debtors' games, while others have become intimately familiar with the Debtors' business

operations, such as their financial affairs, books and records, marketing strategies, and administration. Thus, as with the Debtors' regular Employees, if the Debtors fail to honor their prepetition compensation obligations to the Independent Contractors and Temporary Employees, it is likely that the Debtors will lose such individuals' valuable services to the detriment of the Debtors' ongoing business operations.

100. In the ordinary course of business, the Debtors incur payroll and other compensation obligations for their Workforce. The Debtors also provide other benefits to their Employees for the performance of services. These benefits and obligations are described in more detail below.

1. Workforce Compensation Obligations

(a) Employee Compensation Obligations

101. In the ordinary course of business, the Debtors incur payroll obligations to their Employees, comprised generally of salaries and wages. Approximately 354 Employees are paid a fixed salary (the "**Salaried Employees**") and approximately 108 Employees are paid on an hourly basis (the "**Hourly Employees**"). The Debtors pay Salaried Employees on a current, bi-weekly basis, on Fridays. The Debtors pay Hourly Employees on a bi-weekly basis, on Fridays, in arrears. Any adjustments are processed in the next pay period. The last date Employees were compensated prior to the Petition Date was December 14, 2012, which primarily included all salaries earned through December 15, 2012 and all wages earned through December 9, 2012.

102. Approximately ninety-eight percent (98%) of the Debtors' payroll is made by direct deposit, with the remainder issued via checks. The Debtors utilize ADP to process their payroll and coordinate the payment of Withholding Obligations (defined below). Employees are paid from one of the Debtors' disbursement accounts maintained at Union Bank (the "**Payroll Account**").[9] In the case of Employees paid by direct deposit, ADP transfers the appropriate amounts from the Payroll Account to such Employees' respective designated accounts. For

[9] As set forth in more detail in the Cash Management Motion, the Payroll Account is funded by Wells Fargo Capital Finance, LLC ("***Wells Fargo***").

Employees receiving checks, ADP issues individual checks against the Payroll Account, and the Debtors then distribute those checks to such Employees.

103. The ongoing services of ADP are imperative to the smooth functioning of the Debtors' payroll system. The Debtors pay ADP approximately $6,000 per month for its services. As of the Petition Date, the Debtors estimate that they owe ADP approximately $2,822 in outstanding fees in connection with its payroll services (the "**ADP Obligations**").

104. The next scheduled payroll date for Employees is December 28, 2012 and will include salaries and wages earned prepetition. The Debtors estimate that, as of the Petition Date, they owe approximately $415,403 on account of accrued and unpaid prepetition salaries and wages (the "**Employee Compensation Obligations**"). To the best of the Debtors' understanding, no Employee is owed more than $11,725 in accrued and unpaid prepetition wages or salaries.

(b) Temporary Employees Obligations

105. In the ordinary course of business, the Debtors utilize the services of various staffing agencies to engage a supplemental workforce of Temporary Employees. Approximately seventy-eight (78) Temporary Employees are currently working for the Debtors, although the exact number varies as the Debtors' business needs change. The Debtors do not pay wages, withhold taxes, or provide benefits for the Temporary Employees. Rather, the Debtors remit compensation for the Temporary Employees to the staffing agencies through the Debtors' accounts payable system. As of the Petition Date, the Debtors estimate that approximately $253,354 has accrued in respect of the prepetition services of the Temporary Employees (the "**Temporary Employee Obligations**").

(c) Independent Contractor Obligations

106. The Debtors also regularly employ Independent Contractors in the ordinary course of business. As of the Petition Date, the Debtors estimate that the aggregate amount owing to Independent Contractors for services performed prior to the Petition Date is

approximately $94,036 (the "**Independent Contractor Obligations**" and collectively with Employee Compensation Obligations, ADP Obligations, and Temporary Employee Obligations, the "**Compensation Obligations**"). To the best of the Debtors' knowledge, as of the Petition Date, one Independent Contractor is owed more than $11,725 in accrued but unpaid Independent Contractor Obligations. Such Independent Contractor is owed approximately $25,000 for services rendered within 90 days of the Petition Date in connection with the development of the Saints Row 4 game, for which he is currently composing music. This same Independent Contractor also provided similar services to the Debtors in connection with the Saints Row 3 game and, thus, is familiar with the Saints Row brand. As a result, I believe that it would be extremely difficult to replace him given then Debtors' present circumstances. If the Debtors fail to promptly pay such Independent Contractor the unpaid prepetition compensation he is owed, it is likely that he will cease working for the Debtors.

(d) Withholding Obligations

107. For each applicable pay period, the Debtors routinely deduct, directly, certain amounts from Employees' paychecks, including, without limitation, (a) garnishments, child support and service charges, and similar deductions and (b) other pre- and after-tax deductions payable pursuant to certain of the Employees' benefit plans discussed herein (such as an Employee's share of health care benefits and insurance premiums and 401(k) contributions), legally ordered deductions, and miscellaneous deductions (collectively, the "**Deductions**").

108. In connection with the salaries and wages paid to Employees, the Debtors are required by law to withhold from their Employees' wages amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes (collectively, the "**Employee Withholding Taxes**") and to remit the same to the applicable taxing authorities. In addition, the Debtors are required to make matching payments from their own funds for, among other things, social security and Medicare taxes and to pay, based on a percentage of gross payroll, state and federal unemployment insurance, employment training taxes, and state disability insurance

contributions (the "**Employer Payroll Tax Obligations**," and together with Employee Withholding Taxes, the "**Payroll Tax Obligations**"). The Debtors seek authorization, but not direction, to pay the Deductions and the Payroll Tax Obligations (collectively, the "**Withholding Obligations**") and to remit amounts withheld on behalf of third parties postpetition in the ordinary course of business.

(e) Reimbursable Expense Obligations

109. Prior to the Petition Date and in the ordinary course of business, the Debtors reimbursed Employees for approved, legitimate expenses incurred on behalf of the Debtors in the scope of the Employee's employment (the "**Reimbursable Expense Obligations**"). The Reimbursable Expense Obligations typically include expenses for, among other things, air travel, meals, parking, automobile mileage, office supplies, cellular telephones, and business development. All such expenses are incurred with the understanding that they will be reimbursed by the Debtors in accordance with the Debtors' reimbursement policy, as described in more detail below. In some cases, Employees pay for such expenses directly from their own funds and are reimbursed upon the submission of an expense reimbursement form itemizing the business expenses.

110. The Debtors also maintain a corporate credit card program with American Express (the "**Corporate Card Program**"). Under such program, certain Employees have been issued American Express Corporate Cards (the "**Employee Corporate Cards**") to be used to pay business expenses. Employees may be personally liable to American Express for charges on the Employee Corporate Cards.

111. Under the Corporate Card Program, the Debtors also maintain corporate credit cards known as procurement cards (the "**P Cards**") and business travel account cards (the "**BTA Cards**" and together with the P Cards and Employee Credit Cards, the "**AMEX Cards**"). The Debtors are primarily liable for expenses incurred on the P Cards and BTA Cards and the Debtors remit payment for such expenses directly to American Express. However, if the Debtors

fail to pay American Express for expenses incurred on such cards, American Express might attempt to seek repayment from the individual who signed for the applicable transaction(s).

112. The Debtors process expense and reimbursement claims on a rolling basis. It is difficult for the Debtors to determine the exact amount of Reimbursable Expenses Obligations outstanding as of the Petition Date because Employees may have expenses that they have yet to submit to the Debtors for reimbursement. As of the Petition Date, the Debtors estimate that the total amount of unpaid prepetition Reimbursable Expense Obligations is approximately $2,604.10. I believe that that no amounts are owing to American Express on account of Reimbursable Expense Obligations incurred on the AMEX Cards, but I cannot be certain that is true.

2. Incentive Programs

113. In the ordinary course of business, the Debtors have typically maintained discretionary incentive and bonus programs for their Employees (collectively, the "**Incentive Programs**"). The Incentive Programs under which amounts are owed to Employees as of the Petition Date are described below.

(a) Sales Incentive Bonus Plan

114. The Debtors offer a sales incentive bonus plan (the "**Sales Incentive Bonus Plan**") to their five sales Employees in the United States (the "**Sales Employees**"). The Sales Incentive Bonus Plan consists of two components – the quarterly incentive and the annual incentive.

115. The next quarterly bonus is scheduled to be paid in the fourth quarter of the Debtors' current fiscal year, likely in February, and will cover bonuses earned during the third quarter (i.e., October – December 2012) (the "**Quarterly Sales Bonuses**"). Although the exact amounts of the Quarterly Sales Bonuses will be determined at the end of the third quarter, such bonuses will likely be in the aggregate approximate amount of $65,195. Assuming each of the

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Sales Employees hits 100% of his or her individual targets, certain of them will be entitled to receive a Quarterly Sales Bonus in an amount that exceeds $11,725.

116. The Sales Incentive Bonus Plan represents an integral component of the Sales Employees' cash compensation. and failure to honor amounts owed under the Sales Incentive Bonus Plan could detrimentally affect the applicable Employees motivation and morale, impacting sales results and productivity levels.

(b) Product Development Profit Sharing Bonus Plan

117. Prior to the Petition Date, a certain game developed by the Employees of Volition Inc. ("**Volition**") reached the profitability threshold under the Debtors' profit sharing plan following its release in November 2011, and, as a result, in April 2012, the Debtors determined that the Employees of Volition were entitled to share in a bonus pool. The aggregate bonus pool will be approximately $2.6 million based on the game's profitability to-date and the projected profitability over the lifetime of the game. In May 2012, the Debtors paid out $1.3 million of the Profit Sharing Bonus. At or around the same time, the Debtors announced that the remaining amount of the Profit Sharing Bonus would be payable in the fourth quarter of the Debtors' fiscal year 2013 (i.e., January – March 2013) (the "**Outstanding Profit Sharing Bonus**"). Although the exact amount of the Outstanding Profit Sharing Bonus will be determined closer to the payment date, the Debtors estimated that it would be approximately $1.3 million.

118. The general manager of the Volition studio will allocate the Outstanding Profit Sharing Bonus amongst the 184 Volition Employees. The amount that each Employee will receive depends on a variety of factors, such as an Employee's contribution to the game and retention concerns. The Debtors' executive management approves the allocations prior to distribution. Because the Debtors do not know the exact amount of the Outstanding Profit Sharing Bonus or the final allocations amongst the Volition Employees, the Debtors cannot determine whether any Employees will receive amounts in excess of $11,725. However, the

Debtors anticipate that approximately 15-20 Employees may receive an amount greater than $11,725.

119. The Debtors' failure to honor and pay the Profit Sharing Bonus would detrimentally affect the applicable Employees' motivation and morale, impacting productivity levels and jeopardizing the Debtors' ability to retain such critical Employees.

3. Employee Benefit Programs

120. In the ordinary course of business, the Debtors have established various benefit plans and policies for their Employees that can be divided into the following categories: (i) prescription and medical benefits, dental care, vision care (the "**Health Plans**"); (ii) basic life and accidental death and dismemberment insurance, supplemental life insurance, short- and long-term disability insurance, and other voluntary insurance plans (collectively, the "**Income Protection Plans**"); (iii) The Vacation and PTO Plan (defined below); (iv) the 401(k) Plan (defined below); and (v) the Flexible Spending Account Plan (as defined below and, together with the Health Plans, Income Protection Plans, the Vacation and PTO Plan, and the 401(k) Plan, the "**Employee Benefits Plans**"). In certain instances, the Debtors deduct specified amounts from the participating Employees' wages in connection with the Employee Benefits Plans. All obligations with respect to the Employee Benefits Plans are hereinafter referred to as the "**Employee Benefits** Obligations."

(a) Health Plans

121. The Debtors offer their Employees a range of Health Plans. All premiums for such plans are paid on a cost-sharing basis between the Debtors and the Employees. The estimated monthly payment by the Debtors to the Health Plans is approximately $320,000, which amounts are inclusive of the participating Employees' contributions. The Debtors also offer their Employees a dental benefits plan and a vision benefits plan. Premiums are paid on the first of the month for the same month, with appropriate adjustments in subsequent months. The

estimated monthly payment by the Debtors for these plans is less than $35,000, which amounts are inclusive of the participating Employees' contributions.

122. Employee contributions to the Health Plans have been and are collected through payroll deductions from participating Employees. The Debtors believe that it is necessary and appropriate to continue to honor their obligations to existing employees under the Health Plans. The Debtors believe that they are current with all obligations with respect to Health Plans. However, to the extent that there remain any prepetition amounts due, the Debtors request authority, but not direction, to pay all such prepetition amounts. The Debtors also request authorization, but not direction, to continue to offer the Health Plans and honor their obligations thereunder in the ordinary course during the administration of these Chapter 11 Cases.

(b) Income Protection Plans

i. Life and AD&D Insurance

123. The Debtors maintain primary life and accidental death and dismemberment coverage with total costs of approximately $3,700 per month. As of the Petition Date, the Debtors estimate that there are no outstanding prepetition amounts due on account of these plans.

ii. Short- and Long- Term Disability Benefits

124. The Debtors provide Employees with short- and long-term disability benefits through Standard (the "**STD Plan**" and the "**LTD Plan**," respectively). As of the Petition Date, the Debtors estimate that there are no outstanding prepetition amounts due on account of the STD Plan or the LTD Plan.[10] In addition to the LTD Plan, the Debtors provide Employees at or above the Vice President level an individual executive long-term disability policy. From October 2011 through October 2012, the Executive LTD Plan cost the Debtors approximately $5,869 per month. As of the Petition Date, the Debtors estimate that there are no outstanding prepetition amounts due on account of the Executive LTD Plan.

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[10] The Debtors also offer eligible Employees an employee assistance program (i.e., counseling and referral services) and a travel assistance program. Such programs are bundled with the LTD Plan and do not cost the Debtors additional amounts per month.

iii. Supplemental Healthcare Reimbursement Program

125. The Debtors also offer Employees at or above the Senior Vice President level a supplemental healthcare reimbursement program (the "**Supplemental Healthcare Reimbursement Program**") administered by Exec-u-care. The Debtors pay for monthly reimbursements to the executives, quarterly administrative fees and per-claim processing fees. From January 2012 through November 2012, the Debtors paid $81,272 on account of the Supplemental Healthcare Reimbursement Program. As of the Petition Date, the Debtors estimate that there are no outstanding prepetition amounts due on account of the Supplemental Healthcare Reimbursement Program.

(c) The Vacation and PTO Plan

126. Employees are eligible for certain amounts of paid vacation time per year ("**Vacation Time**"). The rate at which an Employee accrues Vacation Time varies depending on the Employee's position and length of employment. An Employee is only entitled to a cash payment for accrued Vacation Time in the event that such Employee is terminated form the Debtors' employment or leaves the Debtors' employment, in either case, prior to using accrued Vacation Time. As of the Petition Date, the Debtors estimate that the value of accrued and unused or unpaid Vacation Time is approximately $2,638,849.[11] The Debtors are not requesting at this time authority to make cash distributions on account of accrued prepetition Vacation Time in the event that an Employee leaves or is terminated from the Debtors' employment.

(d) The 401(k) Plan

127. The Debtors maintain a retirement savings plan for eligible Employees pursuant to section 401 of the Internal Revenue Code (the "**401(k) Plan**"). Approximately 295 Employees currently participate in the 401(k) Plan, and the total approximate monthly amount

[11] In addition to Vacation Time, Employees are entitled to a certain amount of other paid time off per year for sick days, personal days and holidays ("***PTO***"). Accrued but unused PTO does not carry over between calendar years and Employees are not entitled to cash payments in the event they do not take PTO. Thus, as of the Petition Date, the Debtors owed no amount in connection with PTO.

withheld from the participating Employees' paychecks for 401(k) contributions (the "**Employee Contributions**") is $151,430.

128. The 401(k) Plan also provides that the Debtors may, in their sole discretion, make a matching contribution equal to 100% of the first 4% of funds contributed to the 401(k) Plan by each participating Employee (the "**401(k) Match**"). The Debtors have historically made matching contributions each pay cycle. The Debtors intend to use forfeiture funds rather than cash to make the 401(k) Match for the December 28, 2012 payroll. The Debtors also estimate that there are no outstanding administrative fees relating to the 401(k) Plan as of the Petition Date. However, to the extent that there remain any prepetition amounts due, the Debtors request authority, but not direction, to pay all prepetition amounts under in respect of the 401(k) Plan as and when they come due and to continue to honor their obligations thereunder in the ordinary course during the administration of these Chapter 11 Cases.

(e) The Flexible Spending Account Plan

129. Under the Flexible Spending Account Plan, the Debtors offer their Employees the ability to contribute a portion of their pre-tax compensation to flexible spending accounts to pay for eligible out-of-pocket health care and dependent care premiums and expenses. On average, Employees participating in the Flexible Spending Account Plan designate approximately $10,000 in the aggregate per pay period to be withheld through payroll deductions. The Debtors also pay a monthly fee to Flex-Plan Services, Inc. ("**Flex-Plan**") to administer the Flexible Spending Account Plan.

130. As of the Petition Date, the Debtors estimate that they hold approximately $9,914 on account of designated Flexible Spending Account Plan contributions. In addition, the Debtors estimate that they owe Flex-Plan approximately $215 in outstanding fees as of the Petition Date in connection with the Flexible Spending Account Plan. The Debtors request authority, but not direction, to honor their obligations under the Flexible Spending Account Plan and pay any prepetition amounts due thereunder in the ordinary course of business.

4. Sufficient Cause Exists to Authorize the Debtors to Honor Employee Obligations.

131. I understand that most of the Debtors' Employees rely exclusively on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses and maintain their health and well-being. Consequently, these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor the Employee Obligations. In the absence of such payments, the Debtors believe that their Employees may seek alternative employment opportunities. This would hinder the Debtors' ability to develop quality product and meet scheduled release dates, and likely diminish creditors' confidence in the Debtors.

132. In addition, any failure by the Debtors to pay the Employee Obligations as set forth herein would negatively impact the morale of the Debtors' Workforce at a critical time for the Debtors and their businesses when the Debtors' Workforce is most needed.

5. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

133. Assuming the Court approves the Debtors' Financing Motion, the Debtors will have sufficient cash to pay the amounts described herein in the ordinary course of business by virtue of cash advances provided by Wells Fargo and Clearlake. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment in respect of the Employee Obligations particularly because of the Debtors' use of ADP. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and the Court should authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the relief requested herein.

H. Debtors' Motion for Entry of Interim and Final Orders Authorizing the Sale of Certain of THQ Inc.'s Accounts Receivable

134. By this motion, the Debtors request interim and final orders authorizing the sale of certain accounts receivables pursuant to the Receivables Purchase Agreement (as defined herein). On or about November 3, 2010, THQI and the Purchaser entered into that certain Receivables Purchase Agreement (the "**Receivables Purchase Agreement**") whereby THQI agreed to offer for sale, and the Purchaser agreed to consider the purchase of , accounts owing and payable to THQI by Walmart Stores, Inc. ("**Walmart Stores**") arising pursuant to the sales of goods or services in the ordinary course of business to Walmart Stores (the "**Walmart Receivables**"). A copy of the Receivables Purchase Agreement is attached to the Receivables Sale Motion as **Exhibit C**.

135. Pursuant to the Receivables Purchase Agreement, upon the Purchaser's receipt of a Walmart Receivables invoice, the Purchaser in its discretion agrees to purchase from THQI the Walmart Receivables at a slight discount (LIBOR plus 1.25% times the number of days to maturity of the Walmart Receivable divided by 360) of the Walmart Receivables' face value. Purchaser pays THQI within two business days of notice of such invoice. If THQI were to retain possession of the Walmart Receivables, collection of cash on account of these receivables would be delayed by approximately 60 days.

136. Walmart Stores typically provides an invoice of its Walmart Receivables at least once per week, and each week's invoice is an average total of about $1 million. THQI relies on the Purchaser's purchase of the Walmart Receivables for its cash collections to fund business operations. Accordingly, THQI seeks authority to sell the postpetition Walmart Receivables to the Purchaser to ensure that the Debtors maintain the necessary cash flow to continue operating the business.

137. The Debtors propose to sell the postpetition Walmart Receivables to the Purchaser at the purchase price stated in the Receivables Purchase Agreement. The significant terms of the Receivables Purchase Agreement are set forth in the Motion.

138. THQI seeks authority to sell the postpetition Walmart Receivables pursuant to the terms of the Receivables Purchase Agreement to ensure that the Debtors maintain the necessary cash flow to continue operating the business.

139. Wells Fargo Capital Finance, LLC (the "**Secured Lender**") holds a security interest in THQI's inventory, and, to the extent the Secured Lender has a lien on the Walmart Receivables, the Secured Lender has consented in writing to the sale of the Walmart Receivables free and clear of its lien. The Walmart Receivables are not otherwise encumbered.

140. For the foregoing reasons, the Debtors submit, and I believe, that the relief requested in this motion is in the best interest of the Debtors, their estates, and their creditors and, therefore, should be approved.

I. Debtors' Motion for Order Authorizing the Payment of Prepetition Claims of Shippers and Warehousemen

141. By this motion, the Debtors request the authority, but not direction, to pay certain prepetition claims of shipping vendors and warehousemen in the ordinary course of business. The Debtors' supply and delivery system depends upon the use of reputable common carriers, dedicated carriers, rail carriers, barge operators, less-than-truckload carriers, freight-forwarders, parcel carriers, and non-asset based carriers (brokers) (collectively, the "**Shippers**"), as well as a network of third-party warehousemen and fuel terminal operators who store goods in transit on behalf of the Debtors (the "**Warehousemen**"). The Debtors also use certain customs and other brokers as well as agents to facilitate the manufacturing and delivery of raw materials and distribution of products (collectively, the "**Brokers and Agents**"). References to the Shippers and Warehousemen herein shall also include such Brokers and Agents, and the Debtors request that the relief granted pursuant to this Motion extend to the claims of the Brokers and Agents.

142. The Debtors use the Shippers and Warehousemen to provide replication and assembly, distribution, order processing and return processing services to the Debtors to facilitate the delivery of the Debtors' interactive entertainment software products to their customers. Generally, the Debtors' products are developed and sold as follows: (a) interactive entertainment

software products are developed by the Debtors, a non-debtor affiliate or other third party on behalf of THQI; (b) upon completion of the development of the interactive entertainment software products, in certain circumstances the products are sent to platform entities (such as Microsoft Licensing, Inc., Sony Disc Manufacturing or Nintendo of America Inc.) for approval; (c) upon approval if applicable, the interactive entertainment software products are manufactured and/or replicated by a third party, which may be the platform entities or an authorized third-party disk replicator such as Technicolor, and packaged; (d) most of the replicated and assembled products, to the extent not already in the possession of Technicolor, are then delivered to a Technicolor warehouse in Michigan.[12] (e) Technicolor manages the Debtors' inventory and reviews, fulfills, packages and distributes orders; and (f) Technicolor manages all returns from the customers.

143. Certain of the Debtors' interactive entertainment software product may remain stored at the Technicolor warehouse and other third-party facilities for weeks and sometimes months. The Debtors' business operations depend in large part on the efficient and timely delivery of their product to their customers. It is critical to the Debtors' operations and efforts to maximize value of their estates that they maintain a reliable and efficient transport system, which will require the continued and uninterrupted services of disk manufacturers, Warehousemen, which includes Technicolor, and Shippers utilized in the process. The Warehousemen and Shippers utilized by the Debtors include the following:

CONTRACTORS	SERVICES PROVIDED	AVERAGE MONTHLY COST	APPROXIMATE AMOUNT DUE AS OF THE PETITION DATE
TECHNICOLOR GLOBAL LOGISITICS	Shipper of product from China.	$-[13]	$-

[12] Technicolor serves as a warehouseman, shipper and replicator for the Debtors, but the Debtors are not seeking authority to pay Technicolor in this Motion. Rather, the Debtors seek authority to pay Technicolor under the Critical Vendor motion filed concurrently herewith.

[13] The average annual cost of services provided by Technicolor Global Logistics is approximately $30,000.

ANDLAUER TRANSPORTATION SERVICES	Shipper of Canadian freight.	$10,000	$4,263.00
HANKYU HANSHIN EXPRESS (USA) INC	Shipper of Asian freight and supply agent.	$10,000	$-
LIVINGSTON INTERNATIONAL, INC.	Freight broker (Canada) and return freight broker (Mexico)	$5,000	$-
CINLAT LOGISTICS, S.A. DE C.V.	Warehouseman (Mexico)	$4,000	$-
APPROXIMATE TOTAL:		***$29,000***	***$4,263.00***

144. As such, the Debtors' business model is heavily dependent on various service providers along the Debtors' supply chain. The Debtors utilize the above-listed five (5) third parties to ensure that their supply-chain system runs smoothly. The average monthly amount paid by the Debtors to Shippers and Warehousemen is approximately $29,000. The estimated amount due as of the Petition Date to certain Warehousemen and Shippers based on invoices received from such Warehousemen and Shippers is $4,263.00. The Debtors engage Shippers to transport, store and deliver goods to the Debtors' customers. The Debtors contract with Warehousemen to store goods at various points along the supply chain between the Debtors' suppliers and the ultimate end-users of the Debtors' products.

145. As a result, in the ordinary course of business, Shippers and Warehousemen regularly have possession of goods and supplies being provided to the Debtors as well as goods intended for delivery to the Debtors' customers. The Debtors expect that, as of the Petition Date, certain of the Shippers and Warehousemen will have outstanding invoices as estimated above for goods that were delivered to the Debtors and the Debtors' customers prior to the Petition Date.

146. Under most state laws, a Shipper or a Warehouseman may have a lien[14] on the goods in its possession, which lien secures the charges or expenses incurred in connection with

[14] By this Motion, the Debtors do not concede that any liens (contractual, common law, statutory or otherwise) described in this Motion are valid, and the Debtors expressly reserve the right to contest the extent, validity, and perfection of all such liens, and/or to seek avoidance thereof.

the transportation or storage of such goods.[15] Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Shippers or Warehousemen, as bailees, may be entitled to adequate protection in the form of a possessory lien. As a result, certain Shippers and Warehousemen may refuse to deliver or release goods in their possession or control, as applicable, before the prepetition amounts owed to them by the Debtors (collectively, the "**Shipping and Warehousing Claims**") have been satisfied and their liens redeemed.

147. The Debtors' business is necessarily freight intensive and dependent upon the timely delivery of their products to customers and receipt of raw materials and goods. Any disruption in this system would have deleterious effects on the Debtors' business. The Debtors believe that the value of the Debtors' products in the possession of the Shippers and Warehousemen, and the potential injury to the Debtors if they are not timely released, is likely to substantially exceed the amount of Shipping and Warehousing Claims asserted by such parties. Indeed, even if the Shippers and Warehousemen did not have valid liens under applicable state law, their possession (and retention) of the Debtors' products would severely disrupt, and potentially cripple, the Debtors' relationship with their customers.

148. For these reasons, the Debtors submit, and I believe that it is necessary and essential to their chapter 11 efforts and the enhancement and preservation of the value of their estates that they be permitted to make payments on account of certain Shipping and Warehousing Claims.

J. Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors and (II) Authorizing and Directing Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers

149. By this motion, the Debtors seek to pay certain prepetition claims of critical vendors and service providers. The successful operation of the Debtors' business requires them

[15] For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." *See* U.C.C. § 7-307(1) (2003).

to purchase goods and services from select third-party vendors, without which the Debtors could not continue to operate their businesses, or the loss of which would result in their operation at significantly reduced profitability (collectively, the "**Critical Vendors**").[16] Each of the Critical Vendors provides critical and necessary goods and/or services to the Debtors (collectively, the "**Critical Goods and Services**"). The Debtors have reviewed their business relationships and identified the Critical Vendors that are so essential that the loss of their particular goods or services would cause immediate and irreparable harm to the Debtors' businesses.

150. For a vendor to be identified as critical by the Debtors it had to meet one of the following two general criteria: either (a) the vendor provides unique or specifically engineered goods or services that are crucial to the continued operation of the Debtors' businesses, and for which no ready alternative vendors can be found with reasonable diligence; or (b) the vendor provides essential goods and services, for which replacement with alternative vendors would be prohibitively expensive due to the lead time required by the alternative vendors, the alternative vendors' geographical remoteness from the Debtors' operations, and/or the preferential terms that have been locked in with the current vendor. It is therefore essential to preserving the Debtors' value as a going concern that the Debtors are allowed to pay the Critical Vendors.

151. The Critical Vendors operations generally provide the following categories of Critical Goods and Services:

152. <u>Critical Product Development Vendors and Service Providers</u>. The Debtors cannot provide, through their own resources, all of the essential services and tools necessary to develop a game. Rather, the Debtors rely on outside service providers and vendors throughout the development process. For example, the Debtors regularly utilize the services of external game developers who are ultimately responsible for designing and building a game. A game

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[16] The Debtors may need to identify vendors as Critical Vendors even if the Debtors' relationships with those vendors are contractual. Additionally, for contracts of a short duration or where the vendor is operating under a purchase order, there is a risk that failure to pay prepetition amounts may result in the counterparties refusing to renew those contracts or accept a new purchase order. Moreover, to the extent the Debtors' relationships with Critical Vendors are contractual, the Debtors will likely assume the contracts with those Critical Vendors later in these Chapter 11 Cases, in which case the prepetition obligations owed to those Critical Vendors would be paid in full.

developer assumes a unique role in the development process and, therefore, becomes extremely difficult, if not impossible, to replace without critically damaging the viability of the respective title. The Debtors also retain the services of programming specialists who are responsible for creating technical features, addressing technical issues, and providing related support. These programming specialists have unique skillsets that are difficult to find in the Debtors' industry. Without the services of the programming specialists, games in the development process may ultimately lack functionality and, therefore, be unplayable.

153. Vendors also create and provide the Debtors animation and videos that play before, during, and after a game and serve to tell the story of the game ("**Cinematics**"). The Debtors also outsource certain visual/aesthetic components of a game to third parties. Without these providers, the Debtors would not be able to create the massive amount of animation assets required to build a game in a practical amount of time. Similarly, the Debtors also outsource audio production to third-parties who provide voice talent, audio recording professionals, and studios for the creation of audio to be used in the game and in Cinematics. Without the audio production and talent provided by these third-parties, the experience of the game would be incomplete and the Cinematics would not be functional. Finally, the Debtors use third-party vendors to provide key software components for use in the Debtors' game. This software would be too difficult, time consuming and/or expense to develop internally.

154. Critical Operational Vendors and Service Providers. In the ordinary course of business, the Debtors enter into license agreements with platform entities (i.e., the providers of gaming consoles) (the "**Platform Entities**") to develop games that will play on the platform entities' respective gaming consoles. The Platform Entities are sole-source providers for their gaming consoles. The Platform Entities approve the quality of a game prior to authorizing the replication of the game for their respective gaming consoles. Any disruption in the Debtors' relationship with the Platform Entities would jeopardize the development and production of a game. The Debtors' critical Platform Entities require the Debtors to use certain replicators to replicate the code for the game onto discs (the "**Authorized Replicators**"). In connection with

replication, the Authorized Replicators also store the finished goods for assembly and/or ship to retail customers and distribution centers. Thus, the Authorized Replicators play critical roles in the distribution and supply chain. Because the Platform Entities require the Debtors to use the services of the Authorized Replicators, the Authorized Replicators are essentially sole-source providers of their services.

155. Third-party vendors provide the raw material components for final packaging of the Debtors' product and the materials for retail displays. Such vendors' raw materials are necessary for final assembly prior to distribution.

156. Critical Marketing Service Providers. The extremely competitive nature of the interactive software entertainment industry demands a high level and degree of marketing exposure. The success of a game often depends on the promotion of the game prior to its release. In the ordinary course of business, the Debtors rely on third-party service providers to create and maintain the Debtors' corporate website, brand-specific websites for each of the Debtors' games, and social media channels and forums (the "**Internet Marketing Service Providers**"). The Debtors regularly use their online platforms to deliver updates and other information regarding their games, provide links to retailers that carry the Debtors' games, and provide social forums where users can communicate with each other and with the Debtors. Consumers from around the world utilize the Debtors' online content on a regular basis. Interruption of the services provided by the Internet Marketing Service Providers, therefore, would have a significant adverse effect on the Debtors' customer relationships and marketing efforts, thereby impacting sales and overall revenue.

157. Prior to the release of a new game, the Debtors spend a tremendous amount of resources on promoting the game, primarily through the use of promotional videos and trailers, which can be costly and time consuming to produce. The Debtors rely on third-party service providers to create the promotional videos and trailers, as well as other advertising content and promotional materials (the "**Marketing and Advertiser Providers**"). The Debtors expend an extensive amount of time and money to ensure the seamless coordination among the Debtors and

the Marketing and Advertising Providers with respect to the implementation of a promotional campaign (a "**Promotional Campaign**") prior to a game's release. The goal of a Promotional Campaign is to generate interest in a new game before it is released to market. The development of a Promotional Campaign generally begins a year or more before the scheduled release date.

158. Marketing and Advertising Providers are currently developing and creating a Promotional Campaign, including videos and trailers, for the games in development. Certain of these Promotional Campaigns are scheduled to begin in the next few months. Because of the Marketing and Advertising Providers' expertise and familiarity with the Debtors' operations and the games to be released in 2013, and the resources the Debtors have already expended in connection with existing Promotional Campaigns, replacing the Marketing and Advertising Providers would be unduly burdensome, prohibitively expensive and time consuming, especially given the potential customer interactions lost in the process. To ensure that product launches are successful and on-time, it is critical that there is no disruption in the services provided by the Marketing and Advertising Providers.

159. The Debtors, with their advisors, examined whether the payment of prepetition claims of Critical Vendors for Critical Goods and Services (the "**Critical Vendor Claims**") is necessary. Specifically, the Debtors and their advisors have reviewed their accounts payable and undertaken a process to identify those vendors who are essential to the Debtors' operations.

160. The Debtors currently estimate that between the Petition date and January 18, 2013, the outstanding amounts that will become due to Critical Vendors will total approximately $6 million. This includes (1) postpetition accruals and prepetition accruals. For suppliers of goods, a portion of the prepetition accruals may be entitled to priority pursuant to Bankruptcy Code § 503(b)(9). The Debtors do not have the ability to break down the total amounts that will come due between prepetition and postpetition accruals. This estimate is based on a review of all vendor transactions, identifying all outstanding claims from the vendors that most likely fit within the criteria for Critical Vendor. Accordingly, the Debtors estimate the maximum amount needed to pay the Critical Vendor Claims during the interim period for both prepetition and

administrative priority claims combined is approximately $6 million (the "**Critical Vendor Claims Cap**").

161. To determine the amount of the Critical Vendor Claims Cap, the Debtors considered, among other things, which vendors/service providers: (a) the Debtors absolutely needed to continue to operate without disruption; (b) would be prohibitively expensive or difficult to replace under the circumstances; and (c) present an unacceptable risk should they threaten to not provide services or supplies postpetition. The Debtors also considered the financial condition of the vendors/service providers to the extent such information was known, including each vendor's/supplier's level of dependence on the Debtors' continued business and whether such vendor/supplier is itself financially distressed. Once they accumulated this information, the Debtors estimated the amounts they believed would be required to pay each vendor/service provider to ensure the continued supply of Critical Goods and Services. The Critical Vendor Claims Cap represents this estimated amount.

162. The Debtors propose to pay the Critical Vendor Claims of each Critical Vendor that agrees, to the Debtors' satisfaction, to continue to supply goods or services to the Debtors on either the Critical Vendor's Customary Trade Terms or on other such favorable terms as are acceptable to the Debtors. The Debtors firmly believe that the uninterrupted supply of goods and services provided by Critical Vendors are imperative to their ongoing operations and viability as a going concern.

163. For the foregoing reasons, the Debtors submit, and I believe, that the relief requested in this motion is in the best interest of the Debtors, their estates and their creditors and, therefore, should be approved.

K. Motion of the Debtors for Order (I) Authorizing Debtors to (A) Obtain Interim Postpetition Financing on a Superpriority, Secured and Priming Basis in Favor of Wells Fargo Capital Finance, LLC; (B) Turn Over Cash Collateral on an Interim Basis; (C) Provide Adequate Protection to Wells Fargo Capital Finance, LLC; (D) Modifying the Automatic Stay; and (E) Authorizing Debtors to Enter into Postpetition Agreements with Wells Fargo Capital Finance, LLC; and (II) Scheduling, and Establishing Deadlines Relating to a Final Hearing and Order Authorizing the Debtors to Obtain Postpetition Financing and Use of Cash Collateral

164. By this motion, the Debtors request entry of an Interim Financing Order and Final Financing Order authorizing, among other things, the Debtors to obtain postpetition financing pursuant to the terms and conditions of the DIP Credit Agreement.

165. The Debtors are unable to continue their business operations absent debtor in possession financing. The Debtors' cash collections consist primarily of collection of accounts receivable from customers, which accounts are part of Wells Fargo's collateral. Wells Fargo objects to the Debtors' use of that cash collateral for any purpose other than paying down the Pre-Petition Debt owed to Wells Fargo. Even if the Debtors obtained the right to use such cash collateral to fund their operations, their projected cash receipts are insufficient to pay the Debtors' projected operating expenses. Attached hereto as Exhibit "1" and incorporated herein by this reference is the projected cash collections and cash expenditures for the Debtors for the next eight (8) weeks. These projections demonstrate that the Debtors could not pay their necessary expenses even if this Court authorized them spend every dollar they would collect in that period. Accordingly, the Debtors need debtor in possession financing if they are to continue operating long enough to complete a sale as a going concern.

166. The DIP Credit Facility will provide financing according to a borrowing base formula consistent with the Pre-Petition Credit Facility from Wells Fargo, plus up to $10 million of term loan. Wells Fargo will provide the DIP Facility, but Clearlake will provide the term loan availability through a "last-out" participation in the DIP Credit Facility provided by Wells Fargo. Wells Fargo will make periodic advances pursuant to the terms and conditions of the DIP Credit Facility Loan Documents and the Interim Financing Order (and later the Final Financing Order). The DIP Credit Facility will be secured by a first-priority lien on most of the Debtors' assets (but

excluding Avoidance Actions, which are defined to exclude causes of action under Bankruptcy Code § 549), subject to Permitted Senior Liens and the Carve-Out, and Wells Fargo will receive a superpriority administrative expense claim for any unpaid obligations under the DIP Credit Facility, subject to the Carve-Out. The DIP Credit Facility will bear interest at two different rates. The revolving portion will bear interest at LIBOR +4% and the term loan will bear interest at 15% per annum. The DIP Credit Facility is due on January 15, 2013, unless otherwise extended or shortened under certain circumstances.

167. Under the proposed DIP Credit Facility, all cash proceeds that are received from the Pre-Petition Collateral will be paid to Wells Fargo to be applied to the Pre-Petition Debt. Wells Fargo will advance new credit against new accounts receivable and inventory and Clearlake will make additional advances under the DIP Credit Facility, based on the Debtors' Approved Budget (as defined in the DIP Credit Facility).

168. The proceeds of the DIP Credit Facility will be used to operate the Debtors' business. The proposed DIP Facility increases the availability above the existing borrowing basis formula by the $10 million term loan being provided by Clearlake. Even with this additional liquidity the Debtors will exhaust their liquidity by January 15, 2013.

169. For the foregoing reasons, the Debtors submit, and I believe, that the relief requested in this motion is in the best interest of the Debtors, their estates and their creditors and, therefore, should be approved.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Brian Farrell
Brian Farrell

EXHIBIT 1

Projected Cash Collections and Cash Expenditures

Lifetime Game P&Ls

Title	Unit Sales (mm)	Net Sales ($mm)	Contribution Margin ($mm)
Saints Row 4	5.0	$181.0	$57.7
Company of Heroes 2	2.0	55.9	15.2
Homefront 2	4.0	118.6	21.1
Darksiders 2	2.4	78.2	(0.5)
WWE '13	1.9	75.0	6.6
Metro: Last Light	1.9	63.8	11.1
South Park: The Stick of Truth	3.1	108.4	23.9
Evolve	4.0	124.7	40.0
1666	4.0	157.2	72.0
Atlas	n/a	31.6	7.1

Financial Projections

$ in millions

	Q4 FY13	Q1 FY14	Q2 FY14	Q3 FY14	Q4 FY14	FY15	FY16	FY17
Net Sales	$77.7	$119.1	$157.6	$44.8	$109.7	$288.0	$476.7	$349.7
Cost of Sales	(21.0)	(38.8)	(44.7)	(13.2)	(27.5)	(83.3)	(94.5)	(87.9)
Gross Profit	**$56.7**	**$80.3**	**$112.9**	**$31.6**	**$82.2**	**$204.7**	**$382.2**	**$261.8**
% Margin	*73.0%*	*67.4%*	*71.6%*	*70.6%*	*74.9%*	*71.1%*	*80.2%*	*74.9%*
Direct PD	(33.0)	(29.1)	(39.0)	(27.9)	(27.1)	(114.6)	(132.5)	(110.1)
Direct SG&A	(18.3)	(25.1)	(28.4)	(9.6)	(16.1)	(61.8)	(52.3)	(25.2)
Contribution Margin	**$5.4**	**$26.1**	**$45.5**	**($5.9)**	**$38.9**	**$28.3**	**$197.4**	**$126.6**
% Margin	*6.9%*	*21.9%*	*28.8%*	*(13.2%)*	*35.5%*	*9.8%*	*41.4%*	*36.2%*
Indirect PD	(1.9)	(1.2)	(1.2)	(1.2)	(1.2)	(5.0)	(5.2)	(5.4)
Indirect SG&A	(20.7)	(19.1)	(13.6)	(12.8)	(12.8)	(51.4)	(52.6)	(54.7)
Modified Op. Income	**($17.3)**	**$5.8**	**$30.7**	**($19.9)**	**$24.9**	**($28.1)**	**$139.6**	**$66.4**
% Margin	*(22.2%)*	*4.9%*	*19.5%*	*(44.4%)*	*22.7%*	*(9.7%)*	*29.3%*	*19.0%*

Projected Balance Sheet & Cash Flow Summary

$ in millions

A. Key Balance Sheet Items	Q4 FY 2013	FY 2014				FY 2015
	3/31/2013	**6/30/2013**	**9/30/2013**	**12/31/2013**	**3/31/2014**	**3/31/2015**
Assets						
Accounts Receivable, Net	$57.2	$45.4	$55.8	$19.6	$72.1	$27.2
Inventory, Net	12.9	13.1	14.2	13.0	14.8	12.6
Licenses	49.8	42.5	39.9	38.9	37.9	37.1
Software Development	111.8	104.8	96.6	102.9	80.6	102.4
Income Tax Receivable	6.8	6.7	5.1	8.1	9.3	16.0
Deferred Income Tax Asset	5.7	5.7	5.7	5.7	5.7	5.7
Net Prepaid and Other Current Assets	25.5	25.5	25.5	25.5	25.5	25.5
Fixed Assets	21.9	21.9	21.9	22.0	22.0	22.1
Other Long Term Assets, Net	12.8	12.8	12.8	12.8	12.8	12.8
Liabilities						
Accounts Payable	$54.6	$42.8	$48.5	$36.5	$62.8	$38.9
Accrued Expenses	118.8	116.1	122.6	123.2	128.0	137.8
Accrued Royalties	61.2	57.8	54.1	51.5	50.4	48.6
B. Cash Flow Summary						
Modified Operating Income	($17.3)	$5.8	$30.7	($19.9)	$24.9	($28.1)
+ Depreciation	2.1	2.3	2.3	2.3	2.3	9.0
- CapEx	(1.3)	(2.3)	(2.3)	(2.3)	(2.3)	(9.1)
+/- Change in Working Capital	(13.9)	(5.1)	(4.3)	23.6	(27.4)	20.8
- Expected Cash Taxes	(0.8)	(0.8)	(1.5)	(0.5)	(1.3)	(3.6)
Unlevered Free Cash Flow	($31.1)	($0.2)	$24.9	$3.2	($3.8)	($11.0)

Product Development Budget

Titles	Studio	Fiscal Year Ending March 31,							Total
		2011	2012	2013	2014	2015	2016	2017	
Metro: Last Light	4A Games	30%	39%	31%	0%	0%	0%	0%	100%
Company of Heroes 2	Relic	2%	17%	33%	25%	21%	0%	0%	100%
South Park RPG	Obsidian	0%	36%	53%	11%	0%	0%	0%	100%
Saints Row 4	Volition	0%	13%	54%	33%	0%	0%	0%	100%
WWE 2014	Yukes/THQ Ag.	0%	1%	49%	50%	0%	0%	0%	100%
Homefront 2	Crytek UK	0%	16%	41%	41%	3%	0%	0%	100%
Evolve	Turtle Rock	4%	21%	31%	35%	9%	0%	0%	100%
1666	THQ Montreal	1%	12%	20%	29%	31%	9%	0%	100%

Weekly Cash Flows and Borrowing Base Availability

$ in millions

	Week of										
	12/17/12	**12/24/12**	**12/31/12**	**1/7/13**	**1/14/13**	**1/21/13**	**1/28/13**	**2/4/13**	**2/11/13**	**2/18/13**	**2/25/13**
Net Inflows	$3.2	$1.8	$1.3	$1.8	$1.8	$2.9	$10.9	$4.5	$3.7	$4.2	$4.6
Net Outflows	(5.0)	(10.0)	(5.0)	(4.2)	(5.6)	(5.6)	(5.2)	(6.1)	(4.9)	(6.4)	(8.8)
Net Cash Flows	**($1.8)**	**($8.2)**	**($3.6)**	**($2.3)**	**($3.8)**	**($2.7)**	**$5.7**	**($1.6)**	**($1.3)**	**($2.2)**	**($4.1)**
Max Borrowing Base	**$21.4**	**$22.9**	**$22.5**	**$21.1**	**$20.5**	**$19.5**	**$15.6**	**$12.8**	**$10.5**	**$8.3**	**$8.3**

Debtor-in-Possession Financing Maturity

Note: Projections do not include a projected sale date. Post-sale the Debtors must pay for transaction expenses, accrued expenses and the wind-down of the estate.