IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
	:	
MIDWAY GAMES INC., *et al.*,[1]	:	Case No. 09-10465 (___)
	:	
Debtors.	:	(Joint Administration Requested)

DECLARATION OF RYAN G. O'DESKY IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY RELIEF

I, Ryan G. O'Desky, do hereby declare, under penalty of perjury, that:

1. I serve as the Treasurer and Chief Financial Officer ("CFO") of debtor and debtor in possession Midway Games Inc. ("Midway Games" or "Parent"), a Delaware corporation, and certain of its direct and indirect subsidiaries. I have acted as CFO of the Debtors since February 2008. In my capacity as CFO, I have detailed knowledge of and experience with the business and financial affairs of the Debtors. From 2002 to 2007, I worked in the Audit and Enterprise Risk Services Division of Deloitte & Touche LLP. Prior to joining Deloitte & Touche, I worked as a senior auditor within the Assurance and Business Advisory Department of Arthur Andersen LLP.

[1] The Debtors and the last four digits of their respective tax identification numbers are: Midway Games Inc., a Delaware corporation (6244); Midway Home Entertainment Inc. ("MHE"), a Delaware corporation (3621); Midway Amusement Games, LLC ("MAG"), a Delaware limited liability company (4179); Midway Interactive Inc. ("Midway Interactive"), a Delaware corporation (6756); Surreal Software Inc. ("Surreal Software"), a Washington corporation (1785); Midway Studios - Austin Inc. ("Midway Austin"), a Texas corporation (2584); Midway Studios - Los Angeles Inc. ("Midway LA"), a California corporation (1153); Midway Games West Inc. ("Midway Games West"), a California corporation (8756); Midway Home Studios Inc. ("Midway Home Studios"), a Delaware corporation (8429); and Midway Sales Company, LLC ("Midway Sales"), a Delaware limited liability company.

2. As CFO of the Debtors, I am one of the officers of the Debtors responsible for devising and implementing the Debtors' business plans and strategies and advising and overseeing certain financial, operational and legal affairs of the Debtors. In addition, I have been actively involved in the Debtors' efforts to develop, negotiate and implement various strategic alternatives to preserve and maximize the value of the Debtors' assets, including, but not limited to, managing cash, assisting with and responding to due diligence requests, analyzing potential sale, restructuring and liquidation scenarios, and consulting with the Debtors' other officers, board members, attorneys, and outside professionals with respect to the foregoing.

3. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions (collectively, the "Petitions") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "Bankruptcy Code"), in an effort to preserve and maximize the value of their assets.

4. The Debtors intend to operate their businesses and to manage their properties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

5. I am advised by counsel that this Court has jurisdiction over these chapter 11 cases pursuant to 28 U.S.C. §§ 157 and 1334 and venue is proper in the United States Bankruptcy Court for the District of Delaware pursuant to 28 U.S.C. §§ 1408 and 1409.

A. The Debtors and Debtors in Possession

6. Midway Games is a publicly held Delaware corporation with its corporate headquarters located at 2704 West Roscoe Street, Chicago, Illinois 60618. Midway Games is the ultimate corporate parent of all of the other above-captioned debtors and debtors in possession (the "Subsidiary Debtors", and together with Midway Games, the "Debtors" or "Midway").

7. The Subsidiary Debtors are the United States-based entities within the Midway Games corporate organization. A copy of the Debtors' current organizational chart is attached hereto as *Exhibit "A"*. Midway Games owns, directly or indirectly, the stock of certain non-debtor foreign subsidiaries (the "Foreign Subsidiaries") as well.[2] The Foreign Subsidiaries are not debtors in these cases and are not currently subject to insolvency proceedings in any location, although certain of the Foreign Subsidiaries such as the Australia-based entities and Midway Games Canada Corp. are not operational and/or are in wind down mode. The Foreign Subsidiaries that currently have operations maintain separate bank accounts and continue to operate their businesses in the ordinary course. With the exception of Newcastle, the Foreign Subsidiaries primarily distribute the Debtors' products overseas. Newcastle operates as a studio and a developer of video games, and pursuant to a subcontract agreement with Midway Games Limited (U.K.), which in turn is party to a development agreement with MHE, Newcastle has served as the primary developer of the *Wheelman* game that is now the subject of a publishing agreement with Ubisoft. *Wheelman* currently is scheduled for release in March 2009.

8. As of the Petition Date, the common stock of Midway Games was listed for trading on the New York Stock Exchange ("NYSE"). Midway Games is current with its required filings with the Securities and Exchange Commission (the "SEC").

9. Prior to November 28, 2008, Sumner M. Redstone, individually and through his controlled companies National Amusements, Inc. ("NAI") and Sumco, Inc., was the

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[2] The Foreign Subsidiaries include: Midway Studios - Newcastle Limited (U.K.) ("Newcastle"); Midway Australia Holdings Pty Ltd. (Victoria, Australia); Ratbag Holdings Pty Ltd (South Australia, Australia); Midway Studios - Australia Pty Ltd (South Australia, Australia); Midway Games Canada Corp. (Nova Scotia, Canada); Midway Games Limited (U.K.); K.K. Midway Games (Japan); Midway Games GmbH (Germany); and Midway Games SAS (France).

majority shareholder of Midway Games, being the beneficial owners of 87.2% of the outstanding common stock of Midway Games.

B. Overview of the Debtors' Business

10. The Debtors are a well-known developer and publisher of video games in the interactive entertainment software industry. The Debtors distribute and sell video games primarily in North America, Europe, Asia and Australia for ultimate use on home consoles, handheld devices and personal computers. Customers include mass merchandisers, video rental retailers, software specialty retailers, internet based retailers and entertainment software distributors.

11. The video games marketed and sold by the Debtors are developed either internally by Debtors' employee teams and/or in conjunction with third party developers who enter into contracts with the Debtors for the development of games. The Debtors also enter into agreements wherein the Debtors pay for rights to utilize the property and services of third party inventory manufacturers, video game platform manufacturers and intellectual property owners, and other third party providers in connection with the development, marketing, and sale of the Debtors' products.

12. The video games industry is highly competitive, with competitors varying in size from very small companies with limited resources to very large companies with greater financial, marketing and product development resources than the Debtors. Moreover, in recent years, it has become increasingly expensive to remain competitive and thrive in the more technologically advanced and sophisticated Next-Generation Home Console cycle, with costs related to developing titles for Next-Generation Home Consoles generally ranging from $8 million to $50 million per title.

13. The primary home consoles for which the Debtors have been developing video games in recent years include:

Previous-Generation Home Consoles	**Next-Generation Home Consoles**
**Sony's *PlayStation 2*	**Sony's *PlayStation 3 (PS3)*
**Nintendo's *Gamecube*	**Nintendo's *Wii*
**Microsoft's *Xbox*	**Microsoft's *Xbox 360*

The Debtors currently are developing games for all of the Next-Generation Home Console Platforms, including the PS3, Wii, and Xbox 360. Some of the more well-known and popular games published by the Debtors in recent years include *Mortal Kombat v. DC Universe, Stranglehold, Unreal Tournament 3, Game Party, TNA iMPACT!,* and *Blacksite: Area 51.* Upcoming games scheduled for release in 2009 include *Wheelman* (for *Xbox 360* and *PS3*) and *This Is Vegas* (for *Xbox360* and *PS3*).

14. The Debtors also produce and sell video games in the handheld market for manufacturers such as Sony (the *PlayStation Portable*) and Nintendo (*Nintendo DS*). The Debtors are participants in the personal computer video games market as well.

15. In addition to game sales, the Debtors earn license and royalty revenue from licensing the rights to some of their video games and related intellectual property to third parties.

16. The Debtors on a consolidated basis have experienced annual operating losses since the fiscal year ended June 30, 2000. In an effort to return to profitability, current management has refocused product strategy to leverage the Debtors': (i) proven expertise and franchises in the fighting genre; (ii) historic intellectual property and strength in the casual games space; and (iii) ability to create open world games.

C. Assets and Liabilities

17. On a consolidated basis, as of December 31, 2008, the Debtors and Foreign Subsidiaries had on an unaudited basis total assets of approximately $178.3 million and total liabilities, including, without limitation, liabilities on the convertible Notes (as discussed below) and other long term debt, of approximately $337.3 million.

18. For the twelve months ended December 31, 2008, the Debtors reported approximately $219.6 million in net revenues with a net loss of approximately $191.0 million. Net revenues include gross sales, royalties, other revenue, net of provisions for price protection, returns, discounts, and co-op advertising. Price protection generally refers to credits provided by the Debtors on varying terms to retailers and distributors relating to previously sold products that fall into the category of "slow-moving inventory". Discounts may also be granted to customers, and the Debtors from time to time agree to accept product returns from customers.

19. As of February 11, 2009, the price per share of Midway Games' common stock as reported by the NYSE was $0.25 per share. Midway Games has been notified by the NYSE that it may be subject to delisting with the NYSE because of a number of continued listing standards with which Midway Games may not be in compliance, namely (a) maintenance of aggregate market capitalization of $75 million and shareholder equity of at least $75 million for thirty (30) consecutive days and (b) maintenance of an average per share stock price of at least $1 or more.

20. As of February 11, 2009, the Debtors held approximately $16.5 million in cash, (i) none of which is believed to be due to NAI because it does not represent receipts on accounts receivable invoices purchased by NAI pursuant to the terms and conditions of the

Factoring Agreement described below and (ii) approximately $1.05 million of which is restricted because it secures outstanding letters of credit.

D. Debt Structure

21. On February 29, 2008, Debtors MHE and MAG (as Borrowers) and Debtors Midway Games, Midway Games West, Midway Interactive, Midway Sales, Midway Home Studios, Surreal Software, Midway Austin, and Midway LA (as U.S. Credit Parties) terminated the amended and restated loan and security agreement by and among the Borrowers, the U.S. Credit Parties, the Lenders that were Signatories thereto, and Wells Fargo Foothill, Inc. (as the Arranger and Administrative Agent, and UK Security Trustee) and entered into a loan and security agreement by and among the Borrowers and U.S. Credit Parties on the one hand and NAI on the other hand (the "Secured Facility").

22. The Secured Facility provides the Debtors up to $30 million of availability, including a $20 million term loan and a revolving line of credit of up to $10 million. The Secured Facility bears interest at the Debtors' election of either (a) prime rate plus 1.5% per annum or (b) the one, two, three, or six month LIBOR rate plus 3.75% per annum, as provided by Bank of America. At December 31, 2008, the interest rate on the Secured Facility was 5.93%. The Secured Facility is secured by substantially all of the assets of the Debtors, including 65% of the outstanding stock of the Foreign Subsidiaries.

23. On February 29, 2008, Midway Games as Borrower and NAI as Lender also entered into an Unsecured Loan Agreement (the "Unsecured Facility") and a Subordinated Unsecured Loan Agreement (the "Subordinated Facility"), The Unsecured Facility and Subordinated Facility provides for $40 million and $20 million revolving lines of credit, respectively.

24. The Unsecured Facility bears interest at Parent's election of either (a) prime rate plus 2.75% per annum or (b) the one, two, three, or six month LIBOR rate plus 5.0% per annum. As of December 31, 2008, Parent had drawn $40 million on four borrowings under the Unsecured Facility, with interest rates ranging from 7.10% to 7.19%.

25. The Subordinated Facility bears interest at Parent's election of either (a) prime rate plus 5.75% per annum, or (b) the one, two, three, or six month LIBOR rate plus 8.0% per annum. As of December 31, 2008, Parent had three borrowings under the Subordinated Facility, with the interest rates on such borrowings ranging from 9.47% to 10.19%.

26. Prior to the Petition Date, if the total amount of borrowings under the Secured Facility and the Unsecured Facility was greater than $40 million dollars in the aggregate as of the close of business on the business day immediately preceding the last business day of any calendar week, the Unsecured Facility and Subordinated Facility provided that available cash and cash equivalents in excess of $10 million dollars would be swept to repay first any advances under the Subordinated Facility, then to repay any advances under the Unsecured Facility until the outstanding balance under the Unsecured Facility equaled $10,000,000. Available cash and cash equivalents excluded items such as cash in certain foreign accounts (Japan and Australia) as well as cash posted to secure any issued letters of credit and amounts in an account referred to by the Company as the "Suspension Account".

27. As seen from the above, the three facilities provided by NAI provided up to $90 million in total availability. As of December 31, 2008, borrowings outstanding under the Secured Facility term loan and revolving line of credit totaled $20 million and $8,952,831

million, respectively[3], and borrowings outstanding under the Unsecured Facility and Subordinated Facility totaled $40 million and $19,978,746, respectively.

28. Under the Secured Facility, substantially all of the assets of Midway Games and the other Debtors were pledged as collateral and the amounts guaranteed by all of the US Credit Parties. Under the Unsecured and Subordinated Facilities, there were no pledges of collateral or guarantees.

29. On September 15, 2008, Debtors MHE and MAG on the one hand and NAI on the other hand entered into that certain Factoring Agreement (as amended, the "Factoring Agreement") pursuant to which, *inter alia*, NAI agreed to purchase from MHE certain of its accounts receivable invoices, subject to certain eligibility criteria and certain other conditions precedent, up to a maximum of $40 million at any one time (with availability under such commitment being replenished to the extent NAI received collections on purchased accounts receivable invoices).

30. MHE could (but was not required to) sell accounts receivable invoices to NAI under the Factoring Agreement on an as-needed basis for the purpose of generating sufficient working capital to finance inventory purchases and fund operations related to product offerings in the fourth quarter of 2008. Under the Factoring Agreement, MHE submitted accounts receivable invoices to be purchased by NAI, and NAI paid to MHE a purchase price equal to the face amount of such purchased invoices less an amount for dilution, a factoring fee, and an interest component. MAG is the servicing agent under the Factoring Agreement, and

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[3] Outstanding letters of credit totaled approximately $1,047,169 as of December 31, 2008, which reduced the available borrowings under the Secured Facility. As the letter of credit amounts decrease over time, additional room becomes available under the Secured Facility.

receives a servicing fee of 0.15% on the gross invoice amount of each account receivable invoice purchased by NAI.

31. The period during which MHE was able to sell accounts receivable invoices to NAI under the Factoring Agreement expired on December 31, 2008. The Debtors are no longer factoring accounts receivable invoices under the Factoring Agreement, although certain payments received by the Debtors after the Petition Date on factored accounts receivable invoices will remain subject to treatment under the terms of the Factoring Agreement.

32. In addition to amounts owed by the Debtors under the Unsecured Facility and the Subordinated Facility, Parent on the one hand and Wells Fargo Bank, National Association as trustee on the other hand are parties to separate Indentures dated as of (i) September 19, 2005 for Midway Games' 6.0% Convertible Senior Notes due 2025 (the "6.0% Notes") and (ii) May 30, 2006 for Midway Games' 7.125% Convertible Senior Notes due 2026 (the "7.125% Notes" and together with the 6.0% Notes, the "Notes"), respectively, each in the original principal amount of $75 million. The borrowings under each of the Notes issuances were on an unsecured basis at the Parent level. The offering documents with respect to the Notes specifically advised the potential purchasers that the Notes would be structurally subordinate to the debt of any of the subsidiaries of Parent including the Subsidiary Debtors.

33. The Parent has a contractual obligation to the holders of the 6.0% Notes and the holders of the 7.125% Notes such that pursuant to the terms of the Indentures (i) the holders of the 6.0% Notes may require the Parent to repurchase all or a portion of their Notes on April 30, 2009, September 30, 2010, September 30, 2015 and September 30, 2020 and (ii) the holders of the 7.125% Notes may require the Debtors to repurchase all or a portion of their Notes on May 31, 2010, May 31, 2016 and May 31, 2021, each at a repurchase price equal to 100% of

the principal amount of the Notes, plus any accrued or unpaid interest. Based on current market conditions, the Debtors believe it is reasonably likely that all of the holders of the 6.0% Notes will exercise their repurchase rights no later than April 30, 2009, absent other circumstances that will entitle such holders to exercise their repurchase rights on an earlier date.

34. As of December 31, 2008, the Debtors estimate that their unsecured trade debt was approximately $96 million, excluding certain items such as potential contract rejection damage claims.

E. Recent Events

35. In recent months and in recognition of the extremely challenging economic environment facing their business, their industry, and nearly every other industry, the Debtors have taken steps in an attempt to cut costs and stabilize their business operations. For example, in August 2008, the Debtors cancelled a specific game which resulted in a workforce reduction in the Debtors' Austin, Texas studio. In October 2008, the Debtors negotiated settlement agreements with certain licensing partners resulting in the cancellation of future versions of related properties and avoidance of associated development expenditures, with the result of allowing the Debtors to continue refocusing efforts on their core assets.

36. On December 16, 2008, the Debtors implemented an expense reduction program which included (i) a reduction in force of approximately 180 employees at its Chicago, IL; Austin, TX; and San Diego, CA locations; (ii) a closure of their Austin, Texas studio; and (iii) a suspension of several of their non-core prototype games. The reduction in force represented an approximately 25% reduction in the overall work force. Employees affected by the reduction in force at the Chicago location were provided notice under the federal Worker Adjustment and Retraining Notification Act (WARN Act). As a result of the reductions in force,

the Debtors expect to incur a charge of approximately $2.0 million in the fourth quarter of 2008, which charge will include expenses related to severance for terminated employees and other exit-related costs arising from contractual and other obligations. Not including employees who have been terminated or received notices under the WARN Act, the Debtors currently employ approximately 410 employees in the United States.

37. During January 2008, Parent's Board of Directors (the "Board") approved a sale and leaseback transaction for four properties located in Chicago, Illinois. On April 1, 2008, Midway Games completed a sale and leaseback transaction with Williams Electronics Games, Inc. ("WMS") for three of these properties. Two of the properties were sold to WMS and leased back by Midway Games for a lease term through May 31, 2010 at a monthly rental fee of $20,000. The third property is a leasehold property which was leased to Midway Games by a third party. As part of the transaction, WMS assumed the lease from Midway Games and is subleasing the property back to Midway Games for a lease term through January 31, 2010 at a monthly rental fee of $10,000. The lease contains an option to purchase the property from the third party owner until the end of the lease term. The purchase price for the three properties was $6.25 million, less the option price of $1.15 million for the leasehold property.

38. On November 6, 2008, Midway Games completed a sale and leaseback transaction for the fourth property. This property was sold to a third party developer and leased back by Midway Games for a lease term through November 6, 2010 at a monthly rental fee of $20,000. The purchase price of the property was $2.5 million, plus a potential purchase price premium valued at a minimum of $4.86 million. The purchase price premium is expected to be determined on or before August 6, 2009.

39. In October 2008, the Board appointed Matthew Booty as President and Chief Executive Officer of Midway Games. Mr. Booty had served as interim President and CEO since March 2008, and has worked for the Debtors in various capacities since 1991. Mr. Booty is the sole director of the other corporate Debtors.

40. In October 2008, the Board appointed me as Chief Financial Officer and Treasurer of Midway Games. I had served as the interim Chief Financial Officer and Treasurer since February of 2008, and have held a variety of positions with the Debtors including Vice President of Finance, Controller and Assistant Treasurer since joining Midway in early 2007 as Chief Internal Auditor.

41. On or about October 29, 2008, a special committee of independent directors was formed to consider any attempts to restructure or refinance the outstanding debt of Midway Games or to consider other strategic alternatives, including a sale of all or substantially all of the assets or the possible filing of a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code. The law firm of Dewey & LeBoeuf LLP provided legal advice to the special committee. With the recent resignations of directors Robert J. Steele and Shari E. Redstone, Dewey & LeBoeuf is now providing legal advice to the Board.

42. In November 2008, following the resignation of Shari Redstone as a director and as Chair of the Board, Mr. Peter C. Brown was appointed to serve as Chairman of the Board. Mr. Brown had served on the Board since 2005. On December 1, 2008, director Robert J. Steele resigned from the Board effective immediately.

43. On November 20, 2008, the special committee of the Board retained Lazard Freres & Co. LLC ("Lazard") as investment banker to assist it in the solicitation and/or evaluation of available options relating to a restructuring or refinancing of some or all of the

Debtors' outstanding indebtedness and/or the sale(s) of some or substantially all of the Debtors' assets. Lazard has worked closely with management of the Debtors since November 20 in connection therewith.

44. As discussed below, the Fundamental Change of Parent on November 28, 2008 triggered repurchase rights of the holders of the Notes that would mature on January 16, 2009. This event substantially shortened the time within which the Debtors could seek alternatives. Lazard and management prepared an executive summary of the Debtors and its business to assist with the marketing of the Debtors and their assets. Potential strategic and financial buyers were contacted. Many of these potential buyers have executed confidentiality agreements in order to receive more information about the Debtors and have engaged in due diligence, including site visits. Due diligence on the part of certain potential buyers is ongoing. No firm offers for the purchase of any of the Debtors' assets have been received as of the date hereof but the Company has received expressions of interest with respect to some of its assets.

45. In addition to exploration of opportunities to sell some or all of the Debtors' assets, the Debtors and their professionals also have explored other options, including whether any of the holders of debt would be willing to swap such debt for equity in connection with a reorganization of the Debtors' and their business. Such discussions have been held on a preliminary basis and have not resulted in any preliminary or final agreements being reached.

46. As of January 29, 2009, Mr. Brown resigned as a director and as Chairman of the Board. As of that date, the Board appointed Mr. Booty as director and as new Chairman of the Board. The Board currently has four directors.

F. Events Leading to Bankruptcy

47. Based upon a filed Schedule 13D dated December 5, 2008, the Debtors understand that on or about November 28, 2008, Acquisition Holdings Subsidiary I LLC ("Acquisition Holdings"), MT Acquisition Holdings, LLC ("MT Acquisition"), and individual Mark Thomas (collectively, the "Thomas Purchasers")[4] entered into a Stock Purchase Agreement (the "Stock Purchase") for the purchase of all of the Midway Games common stock owned by NAI, Sumco, Inc., and Sumner Redstone (collectively, the "Redstone Sellers"). Upon information and belief, Acquisition Holdings also entered into a certain Participation Agreement pursuant to which Acquisition Holdings acquired from NAI an undivided 100% participation interest in the $30 million Secured Facility and $40 million Unsecured Facility, all on the terms and conditions set forth in such Participation Agreement. Collectively, the Stock Purchase and the Participation Agreement and the transactions thereunder shall be referred to hereinafter as the "NAI/Thomas Transaction".

48. Upon information and belief, the total consideration paid by the Thomas Purchasers in connection with the NAI/Thomas Transaction was $100,000.

49. The NAI/Thomas Transaction constituted a Fundamental Change (the "Subject Fundamental Change") under each Indenture that triggered an accelerated repurchase schedule with respect to the 6.0% Notes and the 7.125% Notes, respectively. Within 20 days of occurrence of the Subject Fundamental Change, Midway Games was required to (and in fact, did, on December 18, 2008) send to holders of the Notes a notice regarding the occurrence of the Subject Fundamental Change. In such notice, Midway Games was required to specify a date (the

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[4] Upon information and belief, MT Acquisition is the sole member of Acquisition Holdings and Mr. Thomas is the sole member of MT Acquisition. Upon information and belief, the Thomas Purchasers are represented by the law firm of Kramer Levin Naftalis & Frankel LLP.

"Repurchase Date"), not later than 30 days from delivery of the notice, on which holders of the Notes would have the option to require Midway Games to repurchase their Notes at a price, payable in cash, equal to 100% of the principal amount of the Notes plus any accrued and unpaid interest. The Repurchase Date, absent an agreement to the contrary, was January 16, 2009.

50. Based on current market conditions, Midway Games expected that all holders of the Notes would elect to require Midway Games to repurchase their Notes on the Repurchase Date. Midway Games did not have, based on its liquidity position, an ability to satisfy any obligation to repurchase all or substantially all of the Notes on the Repurchase Date.

51. A failure by Midway Games to satisfy an obligation to repurchase the Notes as described above could have had consequences under the NAI Facility. Specifically, NAI (and possibly Acquisition Holdings, at least as to the Secured Facility and the Unsecured Facility) would have had the right, under the terms of the applicable credit documents, to declare all amounts outstanding under the credit facilities (approximately $90 million) immediately due and payable. Midway Games did not have, based on its liquidity position as of January 16, 2009, an ability to satisfy any obligation to immediately repay the three NAI credit facilities.

52. An interest payment on the 7.125% Notes was due on November 30, 2008 in the approximate amount of $2.6 million. A failure by Midway Games to make such interest payment within the applicable cure period ending on December 30, 2008 would have constituted an Event of Default under the applicable Indenture. A failure to make such interest payment also would have triggered an Event of Default under the Secured Facility, the Unsecured Facility, the Subordinated Facility, the Factoring Agreement, and the 6.0% Notes.

53. By Waiver and Forbearance Agreement dated as of December 30, 2008 (the "December 30 Waiver and Forbearance Agreement"), Midway Games and the Holders of

the 7.125% Notes agreed that in exchange for Midway Games' agreement to make the above-described December 30 interest payment, subject to the satisfaction of certain conditions, the Holders of the 7.125% Notes waived and agreed to forbear, through and including February 19, 2009, from taking any action under the Indenture or otherwise exercising any of their rights as a result of the Subject Fundamental Change, including without limitation the right to require Midway Games to repurchase the 7.125% Notes on January 16, 2009. Provided the conditions were met by January 14, 2009, the new date by which the Holders of the 7.125% Notes must exercise their rights to require Midway Games to repurchase their Notes was established as February 19, 2009, absent further agreement or absent occurrence of another event that gave those Holders other rights. Midway Games also agreed to obtain a waiver and forbearance agreement from the holders of the 6.0% Notes such that the Repurchase Date for such holders also would be extended to February 19, 2009. Obtaining a waiver and forbearance agreement from the holders of the 6.0% Notes by January 14, 2009 was a condition to be satisfied for the December 30 Waiver and Forbearance Agreement to be effective.

54. By the December 30 Waiver and Forbearance Agreement and a related fee letter, Midway Games also agreed, among other things, to (i) pay the reasonable legal fees and expenses of the law firm of Milbank Tweed Hadley & McCloy LLP ("Milbank"), as attorneys for certain individual holders of the 6.0% and 7.125% Notes and (ii) pay certain fees to FTI Consulting Inc., as financial advisors to Milbank and certain holders of the 6.0% and 7.125% Notes.

55. Negotiations with holders of the 6.0% Notes and follow-up negotiations with holders of the 7.125% Notes promptly ensued. These negotiations were conducted on a parallel track with the negotiations being conducted with NAI and the Thomas Purchasers. All

of these negotiations led to the following agreements being reached as of January 14, 2009: (a) a Waiver and Forbearance Agreement between Parent and certain holders of the 6.0% Notes (the "January 14 Agreement with 6.0% Noteholders"); (b) a First Amended and Restated Waiver and Forbearance Agreement between Parent and certain holders of the 7.125% Notes (the "January 14 Agreement with 7.125% Noteholders"); and (c) a Consent and Forbearance Agreement between the Debtors, NAI, and Acquisition Holdings (the "January 14 NAI/Thomas Agreement").

(a) By the January 14 Agreement with 6.0% Noteholders, it was agreed, among other things, that in exchange for the satisfaction of certain conditions, the signing holders of the 6.0% Notes agreed to waive any right they had to require Parent to repurchase their Notes on January 16, 2009 as a consequence of the Subject Fundamental Change. It was further agreed that the Repurchase Date with respect to the Subject Fundamental Change would be extended to February 12, 2009 as to the signing 6.0% Noteholders. Under the January 14 Agreement with 6.0% Noteholders, one of the conditions to be satisfied was that NAI and Acquisition Holdings would enter into an agreement with Parent stating that they would defer until and including February 12, 2009 (i) from exercising any right to receive prepayments under Section 6.19 of the Unsecured Facility and Section 6.19 of the Subordinated Facility and (ii) from exercising any right or remedy which may arise out of or relate to the failure of Parent to pay the Fundamental Change Repurchase Price (as used therein) to any Tendering Holder (as used therein).

(b) By the January 14 Agreement with 7.125% Noteholders, it was agreed, among other things, that in exchange for the satisfaction of certain conditions, the signing holders of the 7.125% Notes agreed that the Repurchase Date with respect to the Subject

Fundamental Change would be changed from February 19, 2009 to February 12, 2009 as to the signing 7.125% Noteholders. Under the January 14 Agreement with 7.125% Noteholders, one of the conditions to be satisfied was the same condition relating to NAI and Acquisition Holdings described above in subparagraph (a).

(c) By the January 14 NAI/Thomas Agreement, NAI and Acquisition Holdings agreed, among other things, that (i) absent occurrence of an Event of Default (as that term is used therein), the Debtors would be relieved of any cash sweep obligations arising during the period January 14, 2009 through February 12, 2009, (ii) they would forbear from exercising any rights arising from the failure of Parent to pay the Fundamental Change Repurchase Price (as that term is used therein) on any of the Convertible Securities (as that term is used therein) so long as forbearance by the Consenting Holders (as that term is used therein) under the Forbearance Agreements (ie. the January 14 Agreement with 6.0% Noteholders and the January 14 Agreement with 7.125% Noteholders) remain in full force and effect as to the Consenting Holders.

In exchange for the agreements from NAI and Acquisition Holdings, among other things and subject to the satisfaction of certain terms and provisions, (i) the Debtors agreed to pay the interest due on February 16, 2009 under the Secured Facility and Parent agreed to pay the interest due on February 16, 2009 under the Unsecured Facility; (ii) the Debtors consented to the assignment by NAI to Acquisition Holdings of all of NAI's rights and obligations under the Secured Facility and Unsecured Facility; and (iii) the Debtors agreed to pay the reasonable legal fees and expenses of outside counsel for NAI and outside counsel for Acquisition Holdings incurred in connection with the January 14 NAI/Thomas Agreement.

56. The NAI/Thomas Transaction also may have affected adversely the availability of Midway Game's net operating loss carryforwards (NOLs) in amounts not yet determined with finality.

G. Summary of First Day Pleadings

57. As a result of my first-hand experience and thorough review of various materials and information, as well as discussions with other of the Debtors' management and employees and with the Debtors' advisors, I have formed opinions as to (a) the desirability and necessity of obtaining the relief sought by the Debtors in their "first-day" applications and motions identified on *Exhibit "B"* annexed hereto (collectively, the "First Day Papers"),[5] (b) the need for the Debtors to continue to operate their businesses effectively while in bankruptcy with a minimum of disruption and loss of productivity, (c) the deleterious effects upon the Debtors of not obtaining such relief, and (d) the immediate and irreparable harm to which the Debtors and their stakeholders will be exposed immediately following the Petition Date unless the relief requested in the First Day Papers is granted without delay. A brief description of the relief requested and the facts supporting each of the First Day Papers is set forth below.

58. I (or persons under my supervision) assisted in the preparation of and have reviewed each of the First Day Papers (including the exhibits and schedules attached thereto) and I therefore believe that the facts set forth therein are true and correct. Such representation is based upon current information and my review of various materials and information, as well as my experience and knowledge of the Debtors' operations and financial condition. If I were called upon to testify, I could and would, based on the foregoing, testify competently to the facts set forth herein and in the First Day Papers.

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[5] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the applicable First Day Papers.

SUMMARY OF FIRST DAY PLEADINGS

A. Motion of the Debtors for an Order Directing Joint Administration of their Chapter 11 Cases

59. The Debtors request the joint administration of their chapter 11 cases. As discussed above, Midway Games is the ultimate parent of each of the other Debtors. I am informed by counsel that the Debtors are "affiliates" as defined under section 101(2) of the Bankruptcy Code, and accordingly, this Court is authorized to consolidate these chapter 11 cases for procedural purposes.

60. Joint administration of these cases will remove the need to prepare, replicate, file and serve duplicative notices, applications and orders, thereby saving the Debtors and their estates substantial time and expense. Joint administration will also relieve this Court of the need to enter duplicative orders and maintain duplicative files and dockets. Similarly, the Office of the United States Trustee (the "OUST") and other parties in interest will benefit from the joint administration of these chapter 11 cases as they, too, will be spared the time and effort of reviewing duplicative pleadings and papers

B. Application of the Debtors for Entry of an Order Authorizing the Debtors to Employ Epiq Bankruptcy Solutions, LLC as Claims, Noticing, and Balloting Agent Pursuant to 28 U.S.C. § 156(c), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure and Local Rule 2002-1(f)

61. The Debtors request, pursuant to section 156(c) of title 28 of the United States Code (the "Judicial Code"), Bankruptcy Local Rule 2002 and Rule 2002-1(f), authorization to employ Epiq Bankruptcy Solutions LLC ("Epiq") as claims, noticing, and balloting agent.

62. The number of potential creditors in the Debtors' chapter 11 cases is more than 5,000 and I expect many of these potential creditors to file proofs of claim. The Debtors

submit that the noticing, receiving, docketing and maintaining of proofs of claim in this volume and noticing the large number of interested parties in these cases would be unduly time-consuming and burdensome for the Clerk's Office. Additionally, the Debtors will need assistance with balloting in connection with any proposed chapter 11 plan.

63. In my opinion, the retention of Epiq is in the best interests of all parties in interest. Epiq is a nationally recognized specialist in chapter 11 administration and has vast experience in noticing and claims administration in chapter 11 cases, including in cases filed in this Court. The Debtors selected Epiq after a competitive process and believe that Epiq's compensation rates are reasonable and appropriate for services of this nature and comparable to those charged by other providers of similar services. Epiq has represented to the Debtors that it will not represent any entities or individuals other than the Debtors in these chapter 11 cases or in connection with any matters that would be adverse to the interests of the Debtors.

C. Motion of the Debtors for Entry of an Order Authorizing Debtors to: (I) File (A) Consolidated List of Creditors and (B) Consolidated List of Debtors' Thirty Largest Unsecured Creditors; and (II) Provide Notices, Including Notices of Commencement of Cases and Section 341 Meeting

64. The Debtors seek entry of an order: (i) authorizing the Debtors to file (a) a consolidated list of creditors and (b) a consolidated list of the Debtors' thirty (30) largest unsecured creditors and (ii) authorizing the Debtors (or their agents) to complete all mailings of notices, including notices of the commencement of these cases and of the meeting of creditors pursuant to section 341 of the Bankruptcy Code.

65. The Debtors have identified thousands of persons or entities to which notice of certain proceedings in these chapter 11 cases must be provided. Counsel has informed me that Del. Bankr. LR 1007-2 provides that in a voluntary chapter 11 case, the debtor must file "a list containing the name and complete address of each creditor in such format as directed by

the Clerk's Office Procedures." The Debtors presently maintain various computerized lists of the names and addresses of their respective creditors that are entitled to receive certain notices and other documents in these cases. I believe that the information, as maintained in computer files (or those of their agents), may be consolidated and utilized efficiently to provide interested parties with notices and other similar documents, as contemplated by Del. Bankr. LR 1007-2. Accordingly, the Debtors seek authority to file the lists on a consolidated basis, identifying their creditors and equity security holders in the format or formats currently maintained in the ordinary course of the Debtors' businesses.

66. Counsel has informed me that, pursuant to Fed. R. Bankr. P. 1007(d), a chapter 11 debtor must file with its voluntary petition a list setting forth the names, addresses, and claim amounts of the creditors, excluding insiders, that hold the twenty (20) largest unsecured claims in the debtor's case (a "Top 20 List"). Counsel has further informed me that this Top 20 List is primarily used by the Office of the United States Trustee to evaluate the types and amounts of unsecured claims against the debtor and thus identify potential candidates to serve on an official committee of unsecured creditors appointed in the debtor's case pursuant to section 1102 of the Bankruptcy Code. The submission of a single consolidated list of the Debtors' combined thirty (30) largest unsecured creditors in these cases would be more reflective of the body of unsecured creditors that have the greatest stake in these cases. Therefore, the Debtors request authorization to file a single consolidated list of their thirty (30) largest unsecured creditors.

67. In lieu of effecting service through the Office of the Clerk of this Court, the Debtors also request that they (or their agent) be approved and authorized to complete all mailings to creditors and equity holders in these cases, including notice of the commencement of

these cases and notice of the meeting of creditors pursuant to section 341 of the Bankruptcy Code. Counsel has informed me that Del. Bankr. LR 2002-1(f) requires the Debtors to file a motion to retain a claims and noticing agent because the Debtors have more than 200 creditors. Allowing the Debtors (or their agent) to complete their own mailings will save significant time, cost and expense.

D. Motion of the Debtors for Entry of Interim and Final Orders Pursuant to Sections 105(a) and 366 of the Bankruptcy Code (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Providers Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance of Payment

68. The Debtors seek entry of an interim order (i) prohibiting utility companies or their brokers (collectively, the "Utility Providers") from altering, refusing, or discontinuing services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors' proposed adequate assurance pending entry of a final order; (ii) approving the Debtors' proposed adequate assurance and procedures for requesting such adequate assurance; and (iii) scheduling a hearing to consider the relief requested on a final basis; and a final order: (i) approving the Debtors' proposed adequate assurance; (ii) resolving any objections by Utility Providers that the proposed adequate assurance is not adequate; and (iii) prohibiting the Utility Providers from altering, refusing, or discontinuing service to, or discriminating against, the Debtors solely on the basis of the commencement of chapter 11 cases or a debt that is owed by the Debtors for services rendered before the Petition Date.

69. The Debtors intend to timely pay all postpetition obligations owed to Utility Providers. The Debtors expect that available cash will be more than sufficient to pay all postpetition obligations for utility services. To provide adequate assurance of such payment to the Utility Providers, the Debtors propose to establish a separate, dedicated account with funds

on deposit equal to approximately 50% of the Debtors' estimated average monthly cost of anticipated utility services.

70. Accordingly, I believe that the relief requested in this motion is consistent with the practice established in this Court, provides Utility Providers with sufficient adequate assurance of payment, and establishes a fair and orderly procedure for determining requests for additional or different adequate assurance of payment. The requested relief also will avoid disruption of the Debtors' operations, as the impact on the Debtors' business and revenues from such a disruption would be significant. In my opinion, absent these procedures, the Debtors could be forced to address numerous requests by Utility Providers in a disorganized manner at a critical period in these chapter 11 cases and during a time when the Debtors' efforts could be focused more productively on the continuation of their operations for the benefit of all parties in interest.

E. Motion of the Debtors for Entry of an Order (I) for Authority to Pay Prepetition Sales, Use and Trust Fund Taxes and (II) to Direct the Debtors' Banks to Honor Prepetition Checks for Payment of Such Amounts

71. The Debtors seek entry of an order authorizing, but not directing, them to pay prepetition sales, use and other trust fund taxes (collectively, the "Trust Fund Taxes) to various federal, state and local taxing authorities (each a "Taxing Authority," and collectively, the "Taxing Authorities") in the ordinary course of the Debtors' businesses, regardless of whether the debts were incurred prior to or following the Petition Date.

72. Counsel has informed me that "trust fund" taxes or fees are taxes or fees that are collected from third parties and held in trust for payment to the taxing or regulatory authorities or other trust beneficiaries and that such "trust fund" taxes are not property of the Debtors' estates under section 541(d) of the Bankruptcy Code.

73. Moreover, counsel has informed me that certain taxes are afforded priority status under section 507(a)(8) of the Bankruptcy Code and must be paid in full before any general unsecured obligations of the Debtors may be satisfied. Such taxes include the Trust Fund Taxes. I believe the Debtors have sufficient assets to pay all prepetition Trust Fund Taxes in full, in the ordinary course of business. Consequently, the requested relief merely affects the timing of the Debtors' payment of Trust Fund Taxes, not the amount paid in respect thereof.

74. Even if some of the Trust Fund Taxes would not ordinarily be considered "trust fund" taxes in a particular jurisdiction, payment of such taxes should nevertheless be authorized because some Taxing Authorities may audit the Debtors if such taxes are not timely paid. Such audits would needlessly divert the Debtors' attention from their reorganization efforts. In addition, like unpaid property taxes, some Taxing Authorities may also seek to impose liens on the Debtors' assets on account of unpaid "trust fund" taxes, which liens would require time, effort and expense for the Debtors to challenge and remove. An improper lien or the failure to pay Trust Fund Taxes might also affect the Debtors' good standing in a particular state, potentially affecting the Debtors' ability to continue operating in the ordinary course. Timely payment of the Trust Fund Taxes is necessary to avoid such distractions and is thus in the best interests of the Debtors and their estates.

75. In my opinion, failure to pay Trust Fund Taxes in the first 20 days of these cases may result in Taxing Authorities taking action against the Debtors and cause possible administrative and legal difficulties for the Debtors. Further, failure to pay "trust fund taxes" in the first 20 days of these cases may result in the officers and directors of the Debtors being held personally liable in certain circumstances. The threat of a lawsuit or criminal prosecution, and any ensuing liability, would distract the Debtors and their personnel from important tasks, to the

detriment of all parties in interest. The dedicated and active participation of all of the Debtors' employees, especially their directors and officers, is integral to the Debtors' continued operations and essential to the orderly administration of these chapter 11 cases. The possible administrative and legal action, and claims against the officers and directors of the Debtors would divert critical resources of the Debtors away from the administration of the estates and cause immediate and irreparable harm to the Debtors and their estates.

76. For all of these reasons, I believe the relief requested is in the best interests of the Debtors' estates.

F. Motion of the Debtors for Entry of an Order (A) Authorizing (I) Payment of Prepetition Wages, Compensation, Employee Benefits, Expense Reimbursement and Related Items, and (II) the Continuation of Certain Employment Policies and Benefits, and (B) Authorizing and Directing Applicable Banks to Honor Payment Requests with Respect Thereto

77. The Debtors request, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, that the Court (a) authorize, but not require, the Debtors to (i) pay, in their sole discretion, wage, salary and commission obligations, payroll taxes, garnishments, expense reimbursements, employee benefits, certain severance obligations, and retirement plan and benefit obligations (each as defined below, and collectively, the "Employee Obligations"), and costs incident to the foregoing, and (ii) maintain and continue to honor their practices, programs, and policies for their employees (the "Employee Benefits") as they were in effect on the Petition Date, and as such may be modified, amended, or supplemented from time to time in the ordinary course of business, and (b) authorize the Debtors' banks and financial institutions to receive, honor, process, and pay any and all checks or wire transfers drawn on the Debtors' accounts in satisfaction of Employee Obligations and Employee Benefits.

78. As of the Petition Date, the Debtors employ approximately 410 people, of which approximately 336 are full-time employees and 74 are part-time employees. Any delay or failure to pay their wages, salaries, expense reimbursements, benefits, and other similar items could irreparably impair the employees' morale, dedication, confidence, and cooperation, and could adversely impact the Debtors' relationship with their employees at a time when the employees' support is critical to the success of the Debtors' chapter 11 cases. Consequently, it is critical that the Debtors be authorized to satisfy their Employee Obligations and continue their ordinary course Employee Benefits in effect as of the Petition Date.

79. Moreover, if the checks issued and fund transfers requested in payment of the Employee Obligations are dishonored, or if such Employee Obligations are not timely paid during the postpetition period, the Debtors' employees could suffer extreme personal hardship, including, in some instances, being unable to pay their daily and monthly living expenses. It would also be inequitable to require the Debtors' employees to bear personally the cost of any business expenses they in good faith incurred during the prepetition period for the benefit of the Debtors with the understanding that they would be reimbursed.

80. Accordingly, I believe that payment of all Employee Obligations is consistent with the Debtors' prepetition business practices and will enable the Debtors to continue to operate their business in an economic and efficient manner without disruption. With the amount of cash on hand as of the Petition Date, I believe the Debtors have sufficient cash to direct all applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn or electronic funds transferred to pay Employee Obligations and to continue to pay such amounts as they become due in the ordinary course of the Debtors' business.

G. Motion of the Debtors Pursuant to 11 U.S.C. §§ 105, 362 and 541 for an Interim Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of the Debtors' Equity Securities

81. The Debtors request, pursuant to sections 105(a) and 362 of the Bankruptcy Code, entry of an order authorizing the Debtors to establish procedures to protect the potential value of the Debtors' consolidated net operating loss carryforwards ("NOLs") and certain other tax attributes, including their "built-in" losses (collectively with the NOLs, the "Tax Attributes"). The proposed procedures (the "Procedures") are applicable to the common stock of Midway Games and any options or similar interests to acquire such stock. The Procedures set out certain restrictions and notification requirements, to be effective nunc pro tunc to the date of filing of the Motion. Parties will be notified of the Procedures through (i) a form of notice, which shall describe the restrictions and notification requirements described in the motion and the date of the hearing to determine whether these procedures will be approved and (ii) a form of order containing the notice of the procedures actually approved by the Court.

82. The Tax Attributes are a significant asset of the Debtors. As of December 31, 2008 (i) the Debtors believe they had accumulated an estimated $660 million of NOLs for federal income tax purposes and (ii) the aggregate tax basis of the Debtors' assets substantially exceeds the value of such assets, resulting in a substantial net "built-in" loss. As a result of the NAI/Thomas Transaction, the amount of benefit the Debtors may be able to realize in connection with the NOLs may have been adversely affected in a significant manner.

83. I am informed that occurrence of an "ownership change" of Midway Games within the meaning of section 382 of title 26 of the United States Code (the "Internal Revenue Code") could significantly reduce the Debtors' ability to use the Tax Attributes.

84. Accordingly, I believe it is in the best interests of the Debtors and their creditors to restrict stock trading and other types of dispositions that could result in an ownership change under section 382 of the Tax Code during the pendency of the bankruptcy cases. The Procedures are necessary because the Debtors' ability to meet the requirements of the tax laws to preserve the Tax Attributes may be seriously jeopardized unless restrictions are established immediately to ensure that trading in Midway Games stock (and, in certain instances, the claiming of a worthlessness deduction) is either curtailed or closely monitored.

85. Furthermore, the requested Procedures are narrowly tailored to permit certain stock trading to continue, subject to applicable securities, corporate, and other laws. The Debtors are seeking only to enforce the provisions of the automatic stay in connection with certain types of stock trading or dispositions (including, in certain instances, the claiming of a worthlessness deduction) that pose a serious risk under the ownership change tests and to monitor other types of trading that potentially pose a serious risk. The Debtors wish to avoid any damage to the Tax Attributes, over and above what may have been sustained as a result of the NAI/Thomas Transaction.

H. Motion of the Debtors for Entry of an Order Authorizing, but Not Directing, the Payment of Prepetition Claims of Logistics Services Provider and Other Shippers

86. The Debtors request entry of an order authorizing the Debtors, in their discretion, to pay certain prepetition claims of their logistics service provider and other shippers in the ordinary course of business.

87. In connection with their businesses, the Debtors primarily utilize Technicolor Video Services ("Technicolor") to provide replication and assembly, distribution, order processing and return processing services to the Debtors to facilitate the delivery of the Debtors' video games and related products to their customers.

88. Certain of the Debtors' video games may remain stored at the Technicolor warehouse for weeks or even months. The Debtors' business operations depend in large part on the efficient and timely delivery of their video games to their customers. It is critical to the Debtors' operations and efforts to maximize the value of their estates that they maintain a reliable and efficient transport system, which will require the continued and uninterrupted services of disk manufacturers, Technicolor and other shippers utilized in the process (the "Shippers").

89. Counsel has informed me that under some applicable non-bankruptcy laws, Technicolor or other Shippers may have a lien on the goods in their possession, which lien secures the charges or expenses incurred in connection with the transportation of the goods and, as in the case of Technicolor, in connection with services related to the storage, replication and packaging of the goods as well. Accordingly, Technicolor or other Shippers could assert that they are entitled to possessory liens for transportation, storage, replication, packaging, shipment and delivery of the goods in their possession and may refuse to deliver or release such goods before their claims and liens have been satisfied.

90. As of the Petition Date, the total outstanding amount owed to Technicolor and the Shippers for products being replicated, packaged, stored or shipped to be approximately $800,000.00 in the aggregate. If the Debtors do not honor these obligations, the Debtors face the real possibility that Technicolor and/or other Shippers may refuse to continue providing their respective services for the Debtors – services critical to the Debtors' ability to move product and operate as a going concern.

91. Payment of the prepetition claims of Technicolor and the Shippers is essential to the continued supply of goods and services necessary to maintain the Debtors'

operations. Failure to satisfy such claims in the first 20 days of these cases could lead to the disruption of the Debtors' operations. Put very simply, maintaining timely delivery of the Debtors' products is necessary in order for the Debtors' businesses to survive in the preliminary stages of these cases and to avoid immediate and irreparable harm.

92. For the foregoing reasons, the Debtors should be authorized, at their discretion, to immediately pay the Technicolor Claims and the Shipping Claims.

I. Motion of the Debtors for Entry of an Order Authorizing Debtors to Honor Certain Prepetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business

93. The Debtors request, pursuant to sections 105(a), 363(b), and 503(b)(1) of the Bankruptcy Code, authorization to continue their Customer Programs (as defined below) in the ordinary course of business and to perform and honor, in the Debtors' sole discretion, their prepetition obligations thereunder.

94. Prior to the Petition Date, in the ordinary course of business and as customary in the video game industry, the Debtors instituted and engaged in certain activities to develop and sustain a positive reputation and relationship with their customers. To that end, the Debtors implemented various customer practices, programs and policies (collectively, the "Customer Programs") designed to ensure customer satisfaction, drive sales, meet competitive pressures, develop and sustain customer relationships and loyalty, improve profitability, and generate goodwill for the Debtors and their products.

95. The Debtors grant price protection or discounts, and sometimes allow product returns from their customers under certain conditions. If consumer demand for a product falls below expectations, the Debtors may choose to grant customers price protection or discounts to spur further sales. Price protection refers to credits relating to retail price

markdowns on the Debtors' games previously sold by the Debtors to their customers. Also, the Debtors sometimes accept product returns from their customers.

96. Further, the Debtors utilize a Market Development Funds ("MDF") program that provides for the advertising of the Debtors' products through co-operative marketing arrangements with their customers. The objective is to maximize advertising dollars through retailer participation in the advertisement of the Debtors' products. MDF programs are conducted by the retailer in exchange for account credits against amounts owed to the Debtors.

97. The Debtors typically are not required to affirmatively make payments to their customers in connection with the Customer Programs. Rather, the above described allowances generally are taken by customers as credits against future purchases or against amounts owed by the customers to the Debtors.

98. The Customer Programs are standard practice in the video games industry. Customers have come to expect these types of programs to be offered in the ordinary course of business by all industry participants, including the Debtors.

99. I believe the Debtors' inability to fully honor their obligations under the Customer Programs would place them at a severe disadvantage relative to their competitors, and current customers may refuse to continue doing business with the Debtors. At this critical juncture, it is my opinion that the Debtors cannot risk any loss of customer support, confidence, or business development as a result of the Debtors' failure to honor prepetition obligations under the Customer Programs or postpetition discontinuance of same.

100. Maintaining the Debtors' ability to attract continuing business from their customers and thereby generate revenue will be absolutely crucial to the Debtors' ability to maintain the value of their assets for the benefit of all of the Debtors' constituencies.

101. The commencement of these chapter 11 cases will no doubt create apprehension on the part of customers of the Debtors or potential customers regarding their willingness to continue or commence doing business with the Debtors. I believe that without the requested relief, the stability of the Debtors' businesses will be significantly undermined and otherwise loyal customers may explore alternative sources for the Debtors' products. The damage that would result if the Debtors fail to honor their prepetition obligations with respect to the Customer Programs significantly outweighs any arguable harm to the Debtors' estate.

102. To preserve the value of the Debtors' business, the Debtors must be permitted, in their sole discretion, to continue honoring all Customer Programs without interruption or modification. In addition, to provide necessary assurances to customers on a going-forward basis, the Debtors require the authority to continue honoring all obligations to customers that arise in the ordinary course of the Debtors' business from and after the Petition Date.

103. Failure to satisfy the Customer Programs in the ordinary course of business during the first 20 days of the chapter 11 cases would cause irreparable damage to the Debtors' relationships with their customers, and, by extension, the Debtors' ability to maximize value for its creditors.

104. Accordingly, I believe the Debtors should be granted authorization to continue, renew, replace, implement, modify, and/or terminate the Customer Programs as they deem appropriate, and to honor their undisputed prepetition obligations in respect thereof, in the ordinary course of business, without interruption. This relief will avoid immediate and irreparable harm to the Debtors' business operations and maintain goodwill with their customers at this critical time.

J. Motion of the Debtors for an Order Authorizing the Payment of Prepetition Claims of Certain Critical Vendors

105. The Debtors seek entry of an order (i) authorizing the Debtors to pay, in their discretion, certain prepetition claims of critical vendors in an aggregate amount not to exceed $1.55 million (the "Critical Vendor Cap") and (ii) authorizing banks and other financial institutions to receive, process, honor, and pay any checks and transfer requests evidencing amounts paid by the Debtors under an order granting the relief requested in the motion.

106. In the course of designing, developing, producing, manufacturing, selling and supporting their video games, the Debtors rely upon certain vendors (the "Critical Vendors") that are vital to the Debtors' ongoing businesses. The Critical Vendors generally provide the following categories of goods and services: (a) game developers (including music and other media providers for use in games) and game programmers; (b) software and technology providers (includes platform and other licensors); (c) disk replicators (both platform manufacturers and replicators) and assemblers; and (d) external sales representatives that manage accounts with customers, each of which is described in further detail in the motion.

107. Critical Vendors have claims for providing (i) essential goods to the Debtors that were received by the Debtors before the Petition Date and/or (ii) essential services that were rendered to, or on behalf of the Debtors before the Petition Date (collectively, the "Critical Vendor Claims"). Given the paramount importance of the goods and services provided by the Critical Vendors, and in order to ensure the Debtors continue to receive such goods and services, I believe that it is imperative that the Debtors be authorized to pay the Critical Vendor Claims on an emergency basis.

108. I believe that payment of the Critical Vendor Claims is vital to the Debtors' ongoing business operations because, in several instances, the Critical Vendors are the

only source from which the Debtors can procure certain goods and services within a timeframe and at a price that will permit the Debtors to continue to operate their businesses. A failure to pay the Critical Vendor Claims would likely result in many of the Critical Vendors refusing to provide goods and services to the Debtors postpetition, and may force the Debtors to obtain such goods and services elsewhere at a higher price or not of the quantity or quality required by the Debtors or within the time frame necessary.

109. The Debtors consulted with appropriate members of their management team to identify those vendors that are most essential to the Debtors' operations using the following criteria: (a) whether the vendor or service provider in question is a "sole-source" provider, (b) whether, even if the vendor or service provider in question is not a "sole-source" provider, quality requirements, other specifications, familiarity, or knowledge would prevent the Debtors from obtaining a vendor's products or services from alternative sources cost effectively and within a reasonable timeframe, and (c) whether a vendor meeting the standards of (a) and (b) is likely to refuse to continue providing goods or services to the Debtors postpetition if its prepetition outstanding balances are not paid.

110. After carefully assessing the universe of vendors against the foregoing criteria, the Debtors estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtors following the Petition Date in calculating the Critical Vendor Cap.

111. If the motion is not granted, I believe the Debtors' access to trade credit on a postpetition basis will be severely limited and that many of the Critical Vendors will stop providing goods and services to the Debtors altogether. Such results would cause immediate and irreparable damage to the Debtors and their estates.

112. The continued availability of trade credit in amounts and on terms consistent with the Debtors' prepetition trade terms is advantageous to the Debtors because it allows the Debtors to preserve working capital while maintaining optimal production levels. The retention or reinstatement of Customary Trade Terms will therefore enable the Debtors to maximize the value of their businesses as a going concern. Conversely, a deterioration of postpetition trade credit available to the Debtors and a disruption or cancellation of deliveries of goods or the provision of services – many of which are not readily replaceable, if at all – would cripple the Debtors' business operations, increase the amount of funding needed by the Debtors postpetition, and ultimately impede the Debtors' ability to service their customers, thereby placing their customer base, as well as their successful reorganization at risk.

113. The Debtors have conducted an extensive analysis and review of the Debtors' immediate trade needs and supplier base and have concluded that there is a significant risk that the Critical Vendors will cease doing business with the Debtors unless their Critical Vendor Claims are paid. Should any Critical Vendor stop supplying goods or services to the Debtors, or choose to significantly downgrade the Debtors' trade terms, their businesses would be adversely affected as a result of, among other things, an adverse impact on the Debtors' ability to timely complete their current and future projects. This, in turn, could result in lost sales and revenue. As such, the Debtors submit that the amount of the Critical Vendor Cap pales in comparison to the likely damage to the Debtors' businesses and estates should the relief requested herein not be granted. Accordingly, not only will the Debtors' other creditors not be impaired by payment of the Critical Vendor Claims, such creditors will in fact benefit by this Court's empowering the Debtors to negotiate payment to Critical Vendors to achieve a smooth transition into bankruptcy with minimal disruption to its operations.

114. For the reasons set forth above, satisfying the Critical Vendor Claims in the first twenty days of these chapter 11 cases is essential to avoid immediate and irreparable harm. Without satisfaction of the Critical Vendor Claims, I believe that the Critical Vendors will significantly downgrade trade terms and may stop supplying the Debtors with critical goods and services necessary in their operations, thereby hampering the Debtors' ability to achieve a successful result in these chapter 11 cases and causing immediate and irreparable harm.

K. Motion of the Debtors for Entry of an Order: (A) Approving Continued Use of Existing Cash Management System; (B) Authorizing Use of Prepetition Bank Accounts and Check Stock; (C) Waiving the Requirements of 11 U.S.C. § 345(b) on an Interim Basis; and (D) Granting Administrative Expense Status to Postpetition Intercompany Transactions

115. By this motion, the Debtors seek entry of an order, among other things (i) authorizing them to (a) continue their existing cash management system and (b) maintain existing bank accounts and business forms and (ii) granting an extension of time to comply with section 345(b) of the Bankruptcy Code. Without the requested relief, I believe the Debtors would be unable to effectively and efficiently maintain their financial operations. Such a result would cause significant harm to the Debtors' business and their estates.

116. In the ordinary course of business, the Debtors use a cash management system, similar to those used by other large companies, to efficiently collect, transfer, and disburse funds generated by the Debtors' business operations. The Debtors' cash management system has three main components: (i) cash collection, including the collection of payments made to the Debtors by customers and licensees, (ii) cash concentration, and (iii) cash disbursements to fund the Debtors' operations, primarily consisting of payments made to or on behalf of vendors, service providers, taxing authorities, licensors, independent contractors such as artists and developers, and employees.

117. The Debtors' cash management system constitutes an essential business practice that provides the Debtors with, among other things, the ability to (i) control corporate funds, (ii) ensure the maximum availability of funds when and where necessary, and (iii) reduce administrative expenses by facilitating the movement of funds and the development of more timely and accurate account balance information. I believe that maintenance of the existing cash management system is therefore in the best interests of the Debtors and their estates.

118. Similarly, the Debtors would be harmed if they were required to undergo the confusion, delay and cost that would result from immediately having to close their existing bank accounts and stop using their current business forms and, instead, open new bank accounts and print new checks and business forms in order to comply with OUST's "Operating Guidelines and Financial Reporting Requirements Required in All Cases Under Chapter 11."
By this motion, to the extent necessary, the Debtors also are seeking a sixty (60) day extension of the time to comply with section 345(b) of the Bankruptcy Code. During the extension period, the Debtors propose to discuss with OUST whether any modifications to their current investment program would be necessary under the circumstances. The Debtors believe that the benefits of the requested extension far outweigh any harm from initial non-compliance because the funds held in the Debtors' current bank accounts are safe, even when in an amount in excess of the amounts insured by the Federal Deposit Insurance Corporation. Moreover, the cost of obtaining bonds on short notice to secure those funds, as may be required by section 345(b) of the Bankruptcy Code, is unnecessary and would be detrimental to the Debtors' estates and creditors.

L. Motion of the Debtors Pursuant to 11 U.S.C. §§ 361 and 363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure for Entry of Interim and Final Orders: (A) Authorizing the Debtors to Use Cash Collateral; (B) Determining Adequate Protection Pending Final Hearing; (C) Scheduling Final Hearing; and (D) Granting Related Relief

119. Pursuant to sections 105, 361, 362, 363, 364, and 507 of title 11 of the Bankruptcy Code and Bankruptcy Rules 4001 and 9014, the Debtors request entry of proposed interim and final orders (collectively, the "Cash Collateral Orders") (I) authorizing the Debtors to use the cash collateral of Acquisition Holdings, (II) granting superpriority claims and replacement liens to Acquisition Holdings, (III) authorizing the granting of adequate protection to Acquisition Holdings, and (IV) prescribing the form and manner of notice and setting the time for a final hearing on the Cash Collateral Motion (the "Final Hearing"). Pending the Final Hearing, the Debtors will use cash collateral on an interim basis pursuant to the terms of the proposed interim order and budget attached thereto.

120. In order to provide the Debtors with the funding necessary to fulfill their administrative and operational obligations throughout the duration of their chapter 11 cases, the Debtors require use of cash collateral. I understand that obtaining debtor in possession financing in today's environment is extremely difficult, even in exchange for increased interest, fees, and other payments. In addition, obtaining such financing is further complicated by the fact that substantially all of the Debtors' assets have been pledged to secure the obligations owed to Acquisition Holdings. Approval of debtor in possession financing from a third party would require the consent of Acquisition Holdings or a priming fight, which could lead to an extended, expensive, contested hearing on whether the requirements of section 364(d) of the Bankruptcy Code had been satisfied. Accordingly, I believe that the relief requested in this motion is in the

best interests of the Debtors and their estates and will enable the Debtors to continue to operate and reorganize their business during these chapter 11 cases without disruption.

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M. Conclusion

121. In conclusion, for the reasons stated herein and in each of the First Day Papers filed concurrently or in connection with the commencement of these cases, I respectfully request that the First Day Papers be granted in their entirety, together with such other and further relief as this Court deems just and proper.

I certify under penalty of perjury that, based upon my knowledge, information and belief as set forth in this Declaration, the foregoing is true and correct to the best of my knowledge.

Dated: February 12, 2009

RYAN G. O'DESKY
CHIEF FINANCIAL OFFICER AND
TREASURER

EXHIBIT A

Corporate Organization Chart

Midway Games Inc.
Organizational Chart

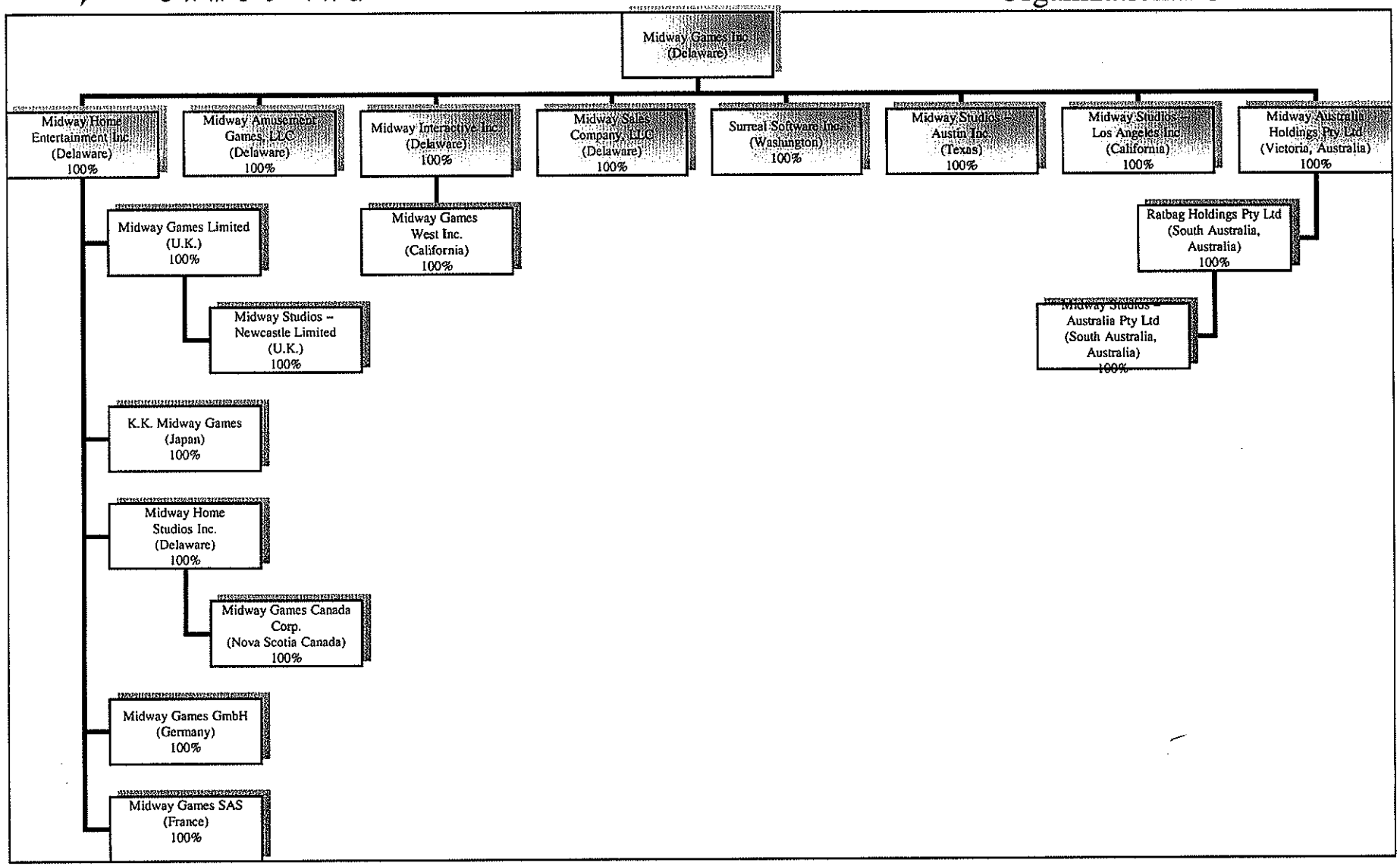

EXHIBIT B

Schedule of First Day Pleadings

1. **Motion of the Debtors for an Order Directing Joint Administration of their Related Chapter 11 Cases**

2. **Application of the Debtors for Entry of an Order Authorizing the Debtors to Employ Epiq Bankruptcy Solutions, LLC as Claims, Noticing, and Balloting Agent Pursuant to 28 U.S.C. § 156(c), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure and Local Rule 2002-1(f)**

3. **Motion of the Debtors for Entry of an Order Authorizing Debtors to: (I) File (A) Consolidated List of Creditors and (B) Consolidated List of Debtors' Thirty Largest Unsecured Creditors; and (II) Provide Notices, Including Notices of Commencement of Cases and Section 341 Meeting**

4. **Motion of the Debtors for Entry of Interim and Final Orders Pursuant to Sections 105(a) and 366 of the Bankruptcy Code (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Providers Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance of Payment**

5. **Motion of the Debtors for Entry of an Order (I) for Authority to Pay Prepetition Sales, Use and Trust Fund Taxes and (II) to Direct the Debtors' Banks to Honor Prepetition Checks for Payment of Such Amounts**

6. **Motion of the Debtors for Entry of an Order (A) Authorizing (I) Payment of Prepetition Wages, Compensation, Employee Benefits, Expense Reimbursement and Related Items, and (II) the Continuation of Certain Employment Policies and Benefits, and (B) Authorizing and Directing Applicable Banks to Honor Payment Requests with Respect Thereto**

7. **Motion of the Debtors Pursuant to 11 U.S.C. §§ 105, 362 and 541 for an Interim Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of the Debtors' Equity Securities**

8. **Motion of the Debtors for Entry of an Order Authorizing, but Not Directing, the Payment of Prepetition Claims of Logistics Services Provider and Other Shippers**

9. **Motion of the Debtors for Entry of an Order Authorizing Debtors to Honor Certain Prepetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business**

10. **Motion of the Debtors for an Order Authorizing the Payment of Prepetition Claims of Certain Critical Vendors**

11. **Motion of the Debtors for Entry of an Order: (A) Approving Continued Use of Existing Cash Management System; (B) Authorizing Use of Prepetition Bank Accounts and Check Stock; (C) Waiving the Requirements of 11 U.S.C. § 345(b) on an Interim Basis; and (D) Granting Administrative Expense Status to Postpetition Intercompany Transactions**

12. **Motion of the Debtors Pursuant to 11 U.S.C. §§ 361 and 363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure for Entry of Interim and Final Orders: (A) Authorizing the Debtors to Use Cash Collateral; (B) Determining Adequate Protection Pending Final Hearing; (C) Scheduling Final Hearing; and (D) Granting Related Relief**