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Law Offices Of

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
ROBERTSON  
& FALK

A Professional Corporation

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TELEX & TWX 910-372-7214  
TELECOPY 415-399-3041

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U.S. PHILIPS CORPORATION  
580 White Plains Road  
Tarrytown, New York 10591

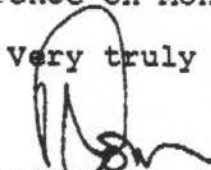
Theodore Anderson, Esq.  
NEUMAN, WILLIAMS, ANDERSON & OLSON  
77 West Washington Street  
Chicago, Illinois 60682

Dear Algy and Ted:

Enclosed please find our revised version of the Settlement Agreement which is red-lined to reflect what I believe to be all of the changes from your original version.

I look forward to receiving your version of the License Agreement on Monday by telecopier, and I hope we can have a preliminary discussion by telephone conference on Monday afternoon.

Very truly yours,



THOMAS A. LARSEN

HENRY W. HOWARD  
DENIS T. RICE  
HOWARD N. NEMEROVSKI  
RICHARD W. CANADY  
A. JAMES ROBERTSON II  
JEROME S. FALK, JR.  
RAYMOND P. HAAS  
ROBERT L. GOODING, JR.  
MARTIN E. CLICK  
LAWRENCE B. RABKIN  
WILLIAM T. HUTTON  
STEVEN L. MAYER  
BARBARA DORDON  
JAMES L. LOPES  
DIRK M. SCHENKMAN  
THOMAS A. LARSEN  
MICHAEL G. EACAN  
STEVEN E. SCHON  
JAY M. SPEARS  
KENNETH C. HAUSMAN  
H. JOSEPH ESCHER III  
ELIZABETH S. SALVESON  
K. MATHEW MOORE  
PETER J. BUSCH  
RONALD M. STAR  
JEFFREY L. SCHAFER

LYNN F. HART  
SARAH E. HOPSTADTER  
MARLA J. MILLER  
MARK D. WHATLEY  
ALAN W. SPARER  
THOMAS M. STEWART  
JOHN H. MACZE  
CHARLES R. ORTMEYER  
ELIA F. GIBBS  
MARTHA E. CUNNINGHAM  
DAVID S. GOODWIN  
MICHAEL J. DANAKER  
JANET A. NIXON  
ANN T. MACLEOD  
JONATHAN H. HULBERT  
ALISON M. NICHOLS  
JAMES C. NOORAN  
LAURENCE B. FULGRAM  
ETHAN F. SCHULMAN  
ROBERT H. MINOOKIN  
ANN BRICK  
BRIAN S. GRAY  
OF COUNSEL  
\*ADMITTED IN NEW YORK STATE

WRITER'S DIRECT DIAL NUMBER:

415-399-3026

March 15, 1985

USPC-IPD-TTN-

18 MAR 85 9:15  
TAL/bg  
Enclosure

SETTLEMENT AGREEMENT

THIS AGREEMENT, having an effective date of \_\_\_\_\_, 1985, and entered into by and between THE <sup>A</sup> MAGNAVOX COMPANY, a corporation of the State of Delaware, having an office at 580 White Plains Road, Tarrytown, New York (hereinafter MAGNAVOX), SANDERS ASSOCIATES, INC., a corporation of the State of Delaware, having an office at Daniel Webster Highway South, Nashua, New Hampshire (hereinafter SANDERS), and ACTIVISION, INC., a corporation of the State of California having an office at Mountain View, California (hereinafter ACTIVISION):

WITNESSETH:

WHEREAS, SANDERS is the owner of United States Letters Patent 3,659,284 which issued on April 25, 1972 and was reissued as United States Letters Patent Re. 28,507 on August 5, 1975 and MAGNAVOX is the exclusive licensee with right to sublicense under said United States Letters Patent 3,659,284 and Re. 28,507;

WHEREAS, ACTIVISION has made and now is engaged in the business of making, having made for it, marketing and selling game programs for use with home video games and home computers marketed under the name ACTIVISION;

WHEREAS, on September 28, 1982, MAGNAVOX and SANDERS filed a civil action in the Northern District of California entitled The Magnavox Company and Sanders Associates, Inc. v. Activision, Inc., No. C 82 5270, for infringement of said United States Letters Patent Re. 28,507, and the defendant filed First, Second and Third Counterclaims including a claim for alleged unfair competition by MAGNAVOX and SANDERS (the "Litigation");

WHEREAS, the above named parties are desirous of resolving the Litigation and all controversies with respect to the patent and patent applications described in Exhibit A hereto;

WHEREAS, MAGNAVOX and ACTIVISION contemporaneously with the execution of this SETTLEMENT AGREEMENT are executing and entering into a NONEXCLUSIVE SUBLICENSE AGREEMENT which agreements, among other things, include (a) provisions for compensating MAGNAVOX for acts of infringement, inducement to infringe, and contributory infringement of United States Letters Patent Re. 28,507

*too broad?*

*really in the suit?*

*What about  
part*

prior to the effective date of this SETTLEMENT AGREEMENT and (b) provisions for granting certain licenses to ACTIVISION to practice the invention of said Letters Patent Re. 28,507 and of certain other patents; it being understood that neither MAGNAVOX nor SANDERS shall assert any of the patents or patent applications described in Exhibit A against ACTIVISION with respect to the ACTIVISION games listed on Exhibit B except for the 13 video games listed in Exhibit B-1; provided, that if any claims covered solely by U.S. Patent No. 3,728,480 or U.S. Patent No. 3,829,095 reissue such claims may be asserted against any game sold after the date of reissue listed in Exhibit B.

*(2)*

I.

The parties hereto shall use their best efforts to obtain disposition of said Civil Action No. C 82 5270 by the entry of a judgment according to the terms of the FINAL JUDGMENT ON CONSENT attached as Exhibit A.

II.

ACTIVISION shall pay to MAGNAVOX the sum of one million one hundred fifty thousand dollars (\$1,150,000) in accordance with the following schedule:

<u>Amount</u>	<u>Due Date</u>
\$400,000	^ <u>Upon Execution</u>
200,000	October 1, 1985
275,000	April 1, 1986
275,000	April 1, 1987

*Interest from  
at 10%  
note*

Each of said payments shall be secured by a duly executed promissory note in the stated amount, payable on the stated date and non-interest bearing prior to the stated date, and the payment of the sum, due on, October 1, 1985, further shall be secured and guaranteed either (i) by a letter of credit in favor of Magnavox to be issued, as of the execution date of this Agreement; or (ii) by the deposit in escrow with the Bank of America, on or before the execution date of this Agreement, of U.S. Treasury bonds or bills in an amount necessary to equal \$200,000 with accrued interest on October 1, 1985. If the foregoing installments are not paid on a timely basis, the delinquent amounts shall bear interest at the prime rate (or reference rate) being charged

*Be L. C. Webster is*

by the Bank of America on the date the delinquent payment is due.

III.

In consideration of the payments made hereunder, MAGNAVOX and SANDERS release and forever discharge ACTIVISION and its officers, directors, shareholders, agents, distributors and customers, and each of them (collectively the "ACTIVISION PARTIES"), from any and all claims, demands, actions or causes of action of any nature whatsoever (i.e. tort or contract) which MAGNAVOX or SANDERS have, shall or may have against the ACTIVISION PARTIES arising out of the Litigation or any act of infringement, inducement to infringe, or contributory infringement of United States Letters Patent Re. 28,507 and those patents listed in Exhibit A by ACTIVISION except as otherwise provided in this Agreement or the Nonexclusive Sublicense Agreement for Home Video Game Devices entered into by the parties contemporaneously herewith. Nothing herein shall be construed as a release of any customer of ACTIVISION, or any officer, employee, or agent of such customer, for any acts of the customer with respect to any apparatus not made by or for ACTIVISION. This release shall be effective only upon entry of said FINAL JUDGMENT ON CONSENT.

*Revised 11/9/88*

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together*

IV.

A. MAGNAVOX hereby grants to ACTIVISION a worldwide, paid-up, nonexclusive license, without the right to sublicense, under the patents and applications for patent set forth in Exhibit A attached hereto and any reissues, divisions, continuations or extensions thereof, to make, use and/or sell, anywhere in the world, programs and related goods for, or in connection with, home computers, it being understood that no licenses or any other rights are granted under said paid-up license with respect to "HOME VIDEO GAMES" and/or "GAME PROGRAMS" for "HOME VIDEO GAMES," as those terms are defined in the Nonexclusive Sublicense Agreement. For purposes of this Agreement, a home computer is a multi-purpose device, comprises a microprocessor or other central processing unit which can address a program (read only memory) of at least 8K bytes. Without limitation, the Atari 400, Atari 800, Commodore 64, Apple II, IBM Pcj.r., Sinclair Spectrum and QL and the MSX home computer are home computers for purposes of this Agreement.

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B. The license granted under this paragraph IV of this Settlement Agreement is nontransferable except as permitted by the Nonexclusive Sublicense Agreement.

C. In consideration of said paid-up nonexclusive license, ACTIVISION agrees to make the following payments to MAGNAVOX:

(1) In the event that presently pending reissue application Serial Number 810,538 or reissue application Serial Number 810,542 issues as a reissue patent with a claim having substantially identical recited elements as any one of claims 1, 13, 40, 50, or 55, now pending in application Serial No. 810,538 or any one of claims 1, 3, 9, 26, or 30, now pending in application Serial Number 810,542, then ACTIVISION shall pay to MAGNAVOX the sum of Two Hundred Thousand U.S. Dollars (\$200,000), which sum shall be paid in the following installments:

(a) One Hundred Thousand U.S. Dollars (\$100,000) shall be paid within two months of issuance of said reissue patent or April 1, 1987, whichever is later, and (b) One Hundred Thousand U.S. Dollars (\$100,00) shall be paid on the first anniversary of the date on which the initial \$100,00 payment referred to in paragraph (a) is due and payable.

(2) In the event that (a) all of the claims 1, 13, 40, 50, and 55, of reissue application Serial Number 810,538, are finally rejected by a decree or judgment which is not further reviewable by a superior tribunal, and (b) reissue application Serial Number 810,538 issues on a reissue patent with claim 54 or a claim having identically recited elements and/or reissue application Serial Number 810,542 issues as a reissue patent with claim 7 or 12 or a claim having identically recited elements, then in lieu of the payment specified in paragraph (1), ACTIVISION shall pay to MAGNAVOX the sum of One Hundred Thousand U.S. Dollars (\$100,000) within two months of issuance of said reissue patent or April 1, 1988, whichever is later.

V.

ACTIVISION hereby releases and forever discharges MAGNAVOX and SANDERS, and each of them and their respective officers, directors, shareholders, agents and distributors, from all claims, demands, actions or causes of action of any nature whatsoever which it has, or shall or may have, against MAGNAVOX and/or SANDERS by reason of any act, cause, matter or thing claimed or alleged by any of them in any of the pleadings, records or other papers on file in the litigation.

*Books - see case log on page III*

VI.

Each party shall either destroy or return to the originating party all discovery documents produced by the originating party, all copies thereof and all notes and memoranda related thereto within thirty days after the end of the life of the last to expire of the patents licensed to ACTIVISION under the nonexclusive Sublicense Agreement. In the interim, ACTIVISION shall delivery all such documents in its possession to Howard, Rice, Nemerovski, Canady, Robertson & Falk, A Professional Corporation, which shall hold the documents in confidence except and until required by be disclosed by any law, regulation or court order or until such documents become relevant in connection with any dispute between the parties.

*Partners left out?*

*Subsidiary?*

*WJ*

VII.

This Agreement shall be governed by federal law and the laws of the State of New York; provided, that jurisdiction and venue for any dispute shall be in the United States District Court for the Northern District of California and the laws of California shall apply with respect to the choice of jurisdiction and venue.

NONEXCLUSIVE SUBLICICENSE AGREEMENT  
FOR  
HOME VIDEO GAME DEVICES

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*quality new game / support*

AGREEMENT, having an effective date of January 1, 1985, by and between THE MACNAVOX COMPANY (hereinafter called MAGNAVOX), a corporation of the State of Delaware, U.S.A., having a place of business at 580 White Plains Road, Tarrytown, New York 10591 and ACTIVISION, INC. (hereinafter called ACTIVISION), a corporation of the State of CALIFORNIA having a principal place of business at Mountain View, California 94042.

W I T N E S S E T H

WHEREAS, MAGNAVOX is the exclusive licensee under a plurality of patents and patent applications, the titles of which reside in Sanders Associates, Inc. (hereinafter called SANDERS), a corporation of the State of Delaware, U.S.A., having an office at Daniel Webster Highway South, Nashua, New Hampshire 03061;

WHEREAS, MAGNAVOX has the exclusive right under an agreement dated January 27, 1972, as amended by a supplemental agreement effective January 1, 1976, between itself and SANDERS (hereinafter referred to as OTHER LICENSE AGREEMENT) to grant licenses under such plurality of patents and applications;

*Julie* *100 hours*  
cartridge or similar memory device (hereinafter GAME PROGRAM) which when connected to the control unit allows the consumer to play the game loaded into the cartridge or memory device. Examples of HOME VIDEO GAME include the Atari 2600 and 5200, Odyssey 2, Intellivision and Colecovision.

(c) LICENSED VIDEO GAME shall mean any HOME VIDEO GAME covered by or employing a method covered by one or more of the LICENSED PATENTS, with such coverage being determined by and to the extent of that provided by the law of the country of LICENSED PATENT issuance.

(d) LICENSED GAME PROGRAM shall mean a GAME PROGRAM which when connected to a CONTROL UNIT for operation, comprises, in combination, a system covered by or employing a method covered by one or more of the LICENSED PATENTS, with such coverage being determined by and to the extent of that provided by the law of the country of LICENSED PATENT issuance.

(e) LICENSED PRODUCT shall mean a LICENSED VIDEO GAME and/or LICENSED GAME PROGRAM.

(f) NET SELLING PRICE shall mean the invoice price of each LICENSED PRODUCT sold by ACTIVISION to any third party in arms-length trade. All invoice prices hereunder shall be determined after deduction of normal trade and quantity discounts but before deducting any other item and shall be understood not to include taxes, duties, insurance premiums for transportation, transportation costs and special packaging costs charged for separately, if any.

(g) DOLLARS shall mean United States of America Dollars.



02 Nothing herein shall be construed as preventing or restricting either party from manufacturing, using, or selling any product in any country or territory, it being understood, however, that no licenses under patents expressed or implied, are hereby granted except under LICENSED PATENTS as defined in Paragraph 1.01 (a) of Article I, and to the extent set forth in Paragraph 2.01 of this Article II.

2.03 MAGNAVOX hereby warrants that it has the right to grant the license herein granted to ACTIVISION.

ARTICLE III

CONSIDERATION

3.01 In consideration of the nonexclusive licenses herein granted by MAGNAVOX to ACTIVISION, ACTIVISION agrees:

(a) to pay to MAGNAVOX a royalty of Four and One-Half Percent (4-1/2%) of the NET SELLING PRICE of the LICENSED VIDEO GAME for each LICENSED VIDEO GAME: (i) made by or for Activision in the United States of America and sold, used, leased or otherwise disposed of (except as scrap) in any country of the world on and after the effective date of this Agreement; or (ii) made by or for ACTIVISION in Taiwan, South Korea, Philippines or a country where no LICENSED PATENTS exist and sold, used, leased or otherwise disposed of (except as scrap) on or after the effective date of this agreement in the United States of America

or another country where any LICENSED PATENT exists. In the event that a CONTROL UNIT used, sold, leased or otherwise disposed of (except as scrap) by ACTIVISION does not have at least one LICENSED GAME PROGRAM residing or incorporated therein such that a combination exists comprising a LICENSED VIDEO GAME, then one unincorporated such LICENSED GAME PROGRAM, whether or not sold together with a CONTROL UNIT, shall be considered in combination with such a CONTROL UNIT as comprising a LICENSED VIDEO GAME for determining royalty payments under this paragraph 3.01(a).

(b) to pay to MAGNAVOX a royalty for each LICENSED GAME PROGRAM: (i) made by or for Activision in the United States of America and sold, used, leased or otherwise disposed of (except as scrap) in any country of the world on and after the effective date of this Agreement; or (ii) made by or for ACTIVISION in Taiwan, South Korea, Philippines or a country where no LICENSED PATENTS exist and sold, used, leased or otherwise disposed of (except as scrap) on or after the effective date of this agreement in the United States of America or another country where any LICENSED PATENT exists, as follows:

- (1) Four and One-Half Percent (4-1/2%) of the NET SELLING PRICE of the LICENSED GAME PROGRAM if the NET SELLING PRICE thereof is over Ten (10) Dollars;

- 2) Two and One-Half Percent (2-1/2%) of the NET SELLING PRICE of the LICENSED GAME PROGRAM if the NET SELLING PRICE thereof is between Ten (10) Dollars and Five (5) Dollars, inclusive; and
- (3) One Percent (1%) for the LICENSED GAME PROGRAM if the NET SELLING PRICE thereof is less than Five (5) Dollars.

No royalties shall be due under this paragraph 3.01(b) on any LICENSED GAME PROGRAM residing or incorporated in a LICENSED VIDEO GAME on which royalties were paid pursuant to paragraph 3.01(a) or on any LICENSED PROGRAM, which in combination with a CONTROL UNIT, was considered as a LICENSED VIDEO GAME on which royalties were paid pursuant to paragraph 3.01(a).

3.02 In the event that a LICENSED PRODUCT is made by or for ACTIVISION outside the United States of America in a country where any LICENSED PATENT exists (other than Taiwan, South Korea and the Philippines) and sold, used, leased or otherwise disposed of (except as scrap): (i) in the United States of America, (ii) in another country where any LICENSED PATENTS exists and which is not the country when such LICENSED PRODUCT is made, then ACTIVISION shall pay for each such LICENSED PRODUCT an additional royalty of One Percent (1%) of the NET SELLING PRICE of such LICENSED PRODUCT in addition to and above the applicable royalty rates set forth in paragraphs 3.01(a) and 3.01(b)(1), (b)(2) and (b)(3). The provisions of the paragraphs 3.02,

however, shall not apply to those LICENSED PRODUCTS which are both made and sold, leased or otherwise disposed of within the European Economic Community.

*WJF*

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3.03 A LICENSED PRODUCT shall be deemed sold when invoiced, or if not invoiced, when shipped or otherwise delivered to a purchaser or user of such product, provided, however, that in the event that ACTIVISION is unable to collect payment for LICENSED PRODUCTS shipped to a customer who subsequently goes into bankruptcy or sues a customer to collect payment for LICENSED PRODUCTS shipped to said customer, then in either of such event, royalties on such LICENSED PRODUCTS shall be deemed due when ACTIVISION actually collects payment for such LICENSED PRODUCTS and any royalties that have been paid by ACTIVISION thereon shall be credited against further royalties until such time that ACTIVISION collects payment for such LICENSED PRODUCTS.

*only to  
make  
clear  
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3.04 No royalty shall be due on LICENSED PRODUCTS which have been returned or rejected by the customer and when royalties have been paid on such LICENSED PRODUCTS, then such royalties shall be credited against future royalties to be paid hereunder.

3.05 Anything herein to the contrary notwithstanding, no royalty payments shall be due on those LICENSED GAME PROGRAMS:

(i) which were made by ACTIVISION prior to the effective date of this Agreement and sold thereafter outside the United States of America, and

*another patent?*

(ii) which are covered solely by or employ a method covered solely by the foreign counterparts of either U.S. Patent No. 3,728,480 or U.S. Patent No. 3,829,095 and no other LICENSED PATENT. It is understood that royalties on such LICENSED GAME PROGRAMS made and sold after the effective date of this Agreement shall be paid in accordance with the provisions of Paragraphs 3.01(b) and 3.02.

3.06 Anything herein to the contrary notwithstanding, no royalty payments shall be due on any HOME VIDEO GAMES and/or GAME PROGRAMS made and sold in the United States and covered solely by or employing methods covered solely by U.S. Patent No. 3,728,480 or U.S. Patent No. 3,829,095 until such time as either reissue application Serial No. 810,538 or reissue application Serial No. 810,542 issues as a reissue patent with a claim covering such HOME VIDEO GAME or GAME PROGRAM, whereupon royalties shall be due and payable in accordance with the provisions of Paragraphs 3.01 and 3.02 on any such HOME VIDEO GAMES and/or GAME PROGRAMS covered by such reissue patent and made, used, sold, leased or otherwise disposed of (except as scrap) subsequent to the date of issuance of such reissue patent.

3.07 Of the GAME PROGRAMS that have been marketed by ACTIVISION prior to the effective date of this agreement, ACTIVISION agrees to pay royalties in accordance with the provisions of Paragraphs 3.01(b) and 3.02 on the following: Tennis, Boxing, Dolphin Decathlon, Grand prix, Sky Jinks, Pressure Cooker, Ice Hockey, Fishing Derby, Keystone Kapers, Stampede, Barnstorming and Enduro, it being understood that

payment of royalties on any new GAME PROGRAMS or HOME VIDEO GAMES shall be determined in accordance with the provisions of Paragraphs 1.01(c), 1.01(d), 3.05 and 3.06.

3.08 Except as provided for in Paragraphs 3.05 and 3.06, no royalties shall be due for the following GAME PROGRAMS: [list of all ACTIVISION games other than the 13 listed in 3.07].

3.09 No royalties shall be due hereunder with respect to the manufacture, use or sale by ACTIVISION or its SUBSIDIARIES of any program for home computers as defined in the SETTLEMENT AGREEMENT.

3.10 Notwithstanding the royalty reporting provisions of ARTICLE VI, it is hereby agreed that for the first quarter of the calendar year of 1984, ACTIVISION shall provide to MAGNAVOX a letter by an officer of ACTIVISION confirming its estimate that sales of the GAME PROGRAMS referred to in Paragraph 3.07 would not result in a royalty obligation under Paragraph 3.01 in excess of Two Thousand Dollars (\$2,000) if accounted for in the manner specified in Paragraph 6.01 and ACTIVISION shall pay a royalty of \$2,000 for said first quarter. If the letter estimates that sales during said first quarter would result in a royalty in excess of \$2,000, then ACTIVISION shall pay the greater amount.

ARTICLE IV

MAXIMUM AND MINIMUM ROYALTY SCHEDULES

4.01 Should any computed royalty payable by ACTIVISION to MAGNAVOX under the provisions of Paragraph 3.01 (a) hereof for any LICENSED VIDEO GAME be less than ONE DOLLAR (\$1.00), then ACTIVISION shall make payment of a minimum royalty of ONE DOLLAR (\$1.00) for each such LICENSED VIDEO GAME in lieu of said computed royalty.

4.02 Should any computed royalty payable by ACTIVISION to MAGNAVOX under the provisions of Paragraph 3.01 (a) hereof for any LICENSED VIDEO GAME be more than Two DOLLARS (\$2.00) per LICENSED VIDEO GAME, then ACTIVISION shall make payment of a maximum royalty of Two DOLLARS (\$2.00) for each such LICENSED VIDEO GAME in lieu of said computed royalty.

4.03 In the first month of each calendar year, the minimum and maximum royalty amounts specified in Paragraphs 4.01 and 4.02, respectively, for that calendar year shall be adjusted to change in accordance with the change for the All Urban Consumers Price Index as published by the U.S. Department of Labor. Said adjustment shall be made by multiplying the minimum and maximum royalty amounts specified in Paragraphs 4.01 and 4.02, respectively, by a fraction, the denominator of which is said Consumer Price Index figure for December 1982 and the numerator of which is said Consumer Price Index figure for December of the year preceding said calendar year for which said adjustment is being made.

ARTICLE V

PAYMENTS

5.01 All payments made by ACTIVISION to MAGNAVOX are to be in DOLLARS, or any other currency acceptable to MAGNAVOX, at their offices in Tarrytown, State of New York, United States of America.

5.02 ACTIVISION shall make timely withholding and payments to appropriate authorities for the account of MAGNAVOX of any applicable withholding taxes or any other appropriate governmental taxes due from payments remitted by ACTIVISION to MAGNAVOX. ACTIVISION shall comply with applicable regulations so that MAGNAVOX is given full credit with the appropriate government authorities for having paid such taxes and shall send to MAGNAVOX appropriate documentation evidencing such payments.

ARTICLE VI

REPORTING OF ROYALTIES

6.01 Within forty-five (45) days after and as of the end of each calendar quarter of each year during the term of this Agreement, ACTIVISION shall furnish to MAGNAVOX a royalty report specifying:

(a) the total number of LICENSED PRODUCTS which have been made, had made, used, sold, or otherwise disposed of by ACTIVISION during the preceding calendar quarter:

(b) in separate listings, the number and types (by catalogue number or the like) of LICENSED VIDEO GAMES and LICENSED GAME PROGRAMS used and/or sold during the preceding calendar quarter and the prices thereof upon which royalties are based;



c) the amount of credit due pursuant to Paragraphs 3.02 or 3.03;  
(d) the amount or amounts due to MAGNAVOX; and  
(e) the taxes of any government withheld and paid on behalf of  
MAGNAVOX pursuant to Paragraph 5.02 above.

6.02 ACTIVISION shall make a written report to MAGNAVOX within ninety (90) days after the date of termination of this Agreement, howsoever arising, stating in such report the number and NET SELLING PRICES of all LICENSED PRODUCTS sold or otherwise disposed of and the number of LICENSED PRODUCTS manufactured but not sold or otherwise disposed of, and upon which royalty not previously reported to MAGNAVOX is payable in consequence of such LICENSED PATENTS.

6.03 Each report submitted under the terms of this Article VI shall be accompanied by the payments due to MAGNAVOX.

6.04 ACTIVISION shall retain, for a period of six (6) years after making a royalty report, the records, files and books of account prepared in the normal course of business, which contain data reasonably required for the computation and verification of the amounts to be paid and the information to be given in such report. ACTIVISION shall permit the reasonable inspection, upon reasonable notice and at reasonable times during normal business hours, of such records, files and books of account by a certified public accountant appointed by MAGNAVOX. Said accountant shall be permitted to inspect said records, files, and books and ACTIVISION shall give said

accountant such other information as may be reasonably necessary and proper to enable the amounts of payments payable hereunder to be accurately ascertained. Neither MAGNAVOX nor said accountant shall disclose to anyone, directly or indirectly, any of the information which they obtain as a result of any such inspection, and such accountant shall disclose to MAGNAVOX only such information as ACTIVISION is required to report to MAGNAVOX under this ARTICLE VI, including the amount of royalty due and payable.

6.05 ACTIVISION shall pay interest at the rate of One and One-Half Percent (1-1/2%) per month on any sums due from ACTIVISION to MAGNAVOX and not paid by their due date unless said interest rate of 1-1/2% is higher than the maximum interest rate permitted by applicable law, in which event ACTIVISION shall pay such maximum interest rate in lieu of said 1-1/2%.

6.06 In order to insure to MAGNAVOX the full royalty payments contemplated hereunder, ACTIVISION agrees that, in the event any LICENSED PRODUCTS shall be sold: (1) to a corporation, firm, or association which, or individual who shall own a controlling interest in ACTIVISION by stock ownership or otherwise, or (2) to a corporation firm or association in which ACTIVISION or stockholders of the ACTIVISION, or any subsidiary company of the ACTIVISION shall own, directly or indirectly, a controlling interest by stock ownership or otherwise, or (3) to a corporation, firm, or association with which, or individual with whom ACTIVISION or its stockholders or subsidiary

*only a controlling interest?*  
*substantiated letter and?*  
-14-

companies shall have any agreement, understanding, or arrangement (such as, among other things, an option to purchase stock, or an arrangement involving a division of profits or special rebates or allowances) without which agreement, understanding, or arrangement, prices paid by such corporation, firm, association, or individual for LICENSED PRODUCTS would be higher than the NET SELLING PRICE reported by the ACTIVISION, or if such agreement, understanding, or arrangement results in extending to such corporation, firm, association, or individual lower prices for LICENSED PRODUCTS than those charged to outside concerns buying similar merchandise in similar amounts and under similar conditions, then, and in any of such events, the royalties to be paid hereunder in respect of such LICENSED PRODUCTS shall be based upon the NET SELLING PRICE at which the purchaser of LICENSED PRODUCTS so sold resells such PRODUCTS rather than upon the NET SELLING PRICE of the ACTIVISION; but in no event shall the NET SELLING PRICE be more than charged to outside concerns buying similar products in similar amounts and similar conditions.

## ARTICLE VII

### TERM AND TERMINATION

7.01 The word "termination" and cognate words such as "term" and "terminate" used in this Article VII are to be read, except where the contrary is specifically indicated, as omitting from their effect the following rights and obligations, all of which shall survive any termination to the degree necessary to permit their complete fulfillment or discharge:

(a) ACTIVISION's obligation to supply a terminal report as specified in Paragraph 6.02 of Article VI;

(b) MAGNAVOX' right to receive or recover and ACTIVISION's obligation to pay royalties accrued or accruable for payment at the time of any termination;

(c) ACTIVISION's obligation to maintain records and MAGNAVOX' right to conduct a final audit as provided in Paragraph 6.04 of Article VI;

(d) Licenses under LICENSED PATENTS running in favor of customers or transferees of ACTIVISION in respect to LICENSED PRODUCTS sold or transferred by ACTIVISION prior to any termination of this Agreement, subject to payment by ACTIVISION of any royalties payable with respect to such LICENSED PRODUCTS; and

(e) any cause of action or claim of either party, accrued or to accrue, because of any breach or default by the other party.

7.02 Unless terminated as provided in Paragraphs 7.03 or 7.04 of this Article VII, this Agreement shall run to the end of the life of the last to expire of the LICENSED PATENTS and shall thereupon terminate.

7.03 Unless otherwise specified herein, if either MAGNAVOX or ACTIVISION shall default in the performance of any of the terms and provisions of this Agreement to be performed by it, and such default shall not be cured within sixty (60) days after written notice of such default is given by the nondefaulting party to the defaulting party, then at any time after the expiration of such sixty (60) days, the

nondefaulting party may give written notice to the defaulting party of its election to terminate this Agreement. Thereupon, this Agreement shall terminate on the date specified in such notice, which shall not be less than thirty (30) days following the receipt of such last mentioned notice. Such right of termination shall not be exclusive of any other remedies or means of redress to which the nondefaulting party may be lawfully entitled, it being intended that all such remedies be cumulative.

7.04 If either MAGNAVOX or ACTIVISION should be dissolved, or should file a voluntary petition in bankruptcy, or an order should be entered pursuant to any law relating to bankruptcy or insolvency appointing a receiver or trustee for said party, then MAGNAVOX or ACTIVISION, as the case may be, within sixty (60) days thereafter may give written notice to the party filing such petition in bankruptcy or subject to such order of its desire to terminate this Agreement. Thereupon, this Agreement shall terminate on the date specified in such notice, which shall not be less than thirty (30) days following the filing of such notice.

7.05 ACTIVISION shall have the right to challenge the validity of and/or the alleged coverage of a given product by any reissue patent issuing on reissue application Serial Nos. 810,538 and 810,542, in which event MAGNAVOX shall have the right to terminate any license granted hereunder under such patent whose validity and/or coverage is challenged by ACTIVISION.

*Magnavox free to litigate*

ARTICLE VIII

NO LEGAL REPRESENTATION

8.01 Nothing contained in this Agreement shall be construed as conferring any license or right with respect to any trademark, trade, or brand name, the corporate name of either party or any of its subsidiaries, or any other name or mark, or any contraction, abbreviation, or simulation thereof.

ARTICLE IX

DISCLAIMER OF WARRANTIES-SAVE HARMLESS

9.01 To the best of MAGNAVOX' knowledge, all LICENSED PATENTS are valid, but MAGNAVOX does not guarantee the validity thereof. MAGNAVOX further does not warrant that the manufacture, use, installation, or sale by ACTIVISION of the LICENSED PRODUCTS does not or shall not infringe the patents or other rights of persons not a party hereto. MAGNAVOX shall not be obliged to defend or hold ACTIVISION harmless against any suit, claim, demand, or action based on actual or alleged infringement of any patents or other rights belonging to persons not a party to this Agreement. Any such infringement by ACTIVISION shall not relieve it from performance of its obligations hereunder.

9.02 MAGNAVOX hereby disclaims any and all liability or responsibility whatsoever for any loss or damage arising out of the production, design, sale, installation, or use of LICENSED PRODUCTS manufactured or sold by ACTIVISION under this Agreement. MAGNAVOX does not warrant that such LICENSED PRODUCTS are or will be of merchantable quality or fit for any particular purpose for which they may be bought or used.

ARTICLE X

INFRINGEMENT BY THIRD PARTIES

10.01 ACTIVISION shall promptly inform MAGNAVOX upon learning of any infringement of LICENSED PATENTS.

10.02 MAGNAVOX agrees to bring and prosecute such suits for infringement of the LICENSED PATENTS as may reasonably be necessary to protect unlicensed competition from materially interfering with the business of ACTIVISION hereunder. However, MAGNAVOX shall not be obligated to bring more than one such suit at a time, or against more than one type of infringing device at a time.

ARTICLE XI

SUBSIDIARIES

11.01 This Agreement shall be binding upon and inure to the benefit of the SUBSIDIARIES of each party hereto. It shall not be otherwise assignable by either of the parties hereto, in whole or in part, to any third party whatsoever, nor shall the rights hereof of either of the parties hereto otherwise be or become in any way, directly or indirectly, transferable or available to, or divisible or capable of being shared with, or inure to the benefit of any third party without the prior written consent of the other party hereto.

11.02 ACTIVISION shall be responsible for, and hereby assumes full liability in respect of all royalty reports and payments for all LICENSED PRODUCTS made, made for, used, sold, or otherwise disposed of by its SUBSIDIARIES during the term of this Agreement.

ARTICLE XII

MARKING

12.01 ACTIVISION agrees to mark all LICENSED PRODUCTS sold by it under the license herein granted with the word "Patents" or "Patent", respectively, and the numbers or number of the applicable patents or patent of the country of sale. MAGNAVOX shall give ACTIVISION timely notice of any additional patents issuing pertaining to LICENSED PRODUCTS.

ARTICLE XIII

CONVERSION OF LICENSOR LICENSE  
WITH SANDERS TO A NONEXCLUSIVE LICENSE

13.01 In the event that MAGNAVOX converts its license from SANDERS to a nonexclusive license, then ACTIVISION shall from the date of notice of such conversion to a nonexclusive license, consider SANDERS the licensor in this Agreement and shall make all payments and be responsible for all obligations under this Agreement to SANDERS.

ARTICLE XIV

NOTICES

14.01 Any notice or request required or permitted to be given under or in connection with this Agreement or the subject matter hereof shall be deemed to have been sufficiently given when, if given to ACTIVISION, it shall be addressed to:

Activision, Inc.  
2350 Bay Shore Frontage Road  
Mountain View, California 94039



and when, if given to MAGNAVOX, it shall be addressed to:

Director of Licensing  
The Magnavox Company  
580 White Plains Road  
Tarrytown, New York 10591

and in each case sent by Registered Mail, postage prepaid. Unless otherwise stated herein, the date on which a notice or request is mailed shall be deemed to be the date on which such notice or request has been given. Either party may give written notice of a change of address; and after notice of such change has been received, any notice or request shall thereafter be given to such party as above provided at such changed address.

#### ARTICLE XV

##### WAIVER--SEVERABILITY

15.01 The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver by such party of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power, or privilege that it has or may have hereunder operate as a waiver of any such right, power or privilege by such party.

15.02 If any term, clause or provision of this Agreement shall be judged to be invalid, the validity of any other term, clause, or provision shall not be affected; and such invalid term, clause, or provision shall be deemed deleted from the contract.

ARTICLE XVI  
GOVERNING LAW

16.01 This Agreement shall be governed by and construed, and any claim or controversy arising with respect thereto shall be determined, in accordance with the laws of the State of New York, except that venue for any dispute shall be the United States District of California for the Northern District of California and venue shall be determined in accordance with the laws of the State of California.

ARTICLE XVII  
COMPLIANCE WITH LAWS  
OF PERTINENT GOVERNMENTS

17.01 Each party shall at all times comply, at its own expense, with all applicable laws, regulations, and orders of any government and all departments, instrumentalities, or political subdivisions thereof, relating to or in any way affecting this Agreement and the performance of its obligations hereunder. ACTIVISION shall, at its own expense, negotiate and obtain any approval, license, or permit it may need in the performance of its obligations; shall declare, record, or take such other steps as required to render this Agreement binding; and shall make all payments required of it under this Agreement.

ARTICLE XVIII  
ASSIGNMENT

18.01 Except as otherwise provided herein, ACTIVISION shall not assign, transfer, sublicense, sublet, or encumber its interest in this Agreement or rights granted herein in any manner without the written consent of MAGNAVOX.

ARTICLE XIX

MORE FAVORABLE TERMS

19.01 In case MAGNAVOX shall hereinafter grant a license under any LICENSED PATENTS under which a license is granted hereunder to any third party manufacturer of consumer or home type amusement games in the TERRITORY, other than a company in which MAGNAVOX has a substantial interest, direct or indirect, such as N.V. Philips' Gloeilampenfabrieken, or any of its subsidiaries, of the same scope as the license herein granted at rates of royalty lower than that provided for in this Agreement (excepting settlements of past damages) made pursuant to a settlement of a dispute or a court decision and licenses the consideration for which consists in whole or in part of patent rights or other rights of such substantial value as in the opinion of MAGNAVOX are sufficient to warrant a reduction in royalty rates below the rates provided for herein, or the acceptance of such rights in lieu of royalties), MAGNAVOX shall notify ACTIVISION of the grant of such license and ACTIVISION shall, at its election exercisable at any time within thirty (30) days after receipt of such notice, be entitled to such lower royalty rate from the date such license agreement was entered into with said third party until the date of termination of such third party license agreement, at which time the terms of this License Agreement will again take effect, provided that ACTIVISION at the same time also accepts any less favorable terms and conditions in such third party license agreement.

ARTICLE XX  
INTEGRATION

20.01 This instrument and the SETTLEMENT AGREEMENT contain the entire and only agreement between the parties and supersede all pre-existing agreements between them respecting its subject matter. No modification, renewal, extension, waiver, and (except as provided in Article VII hereof) no termination of this Agreement or any of its provisions shall be binding upon the party against whom enforcement of such modification, renewal, extension, waiver, or termination is sought, unless made in writing and signed on behalf of such party by one of its executive officers, or in the case of MAGNAVOX, by a duly authorized officer or the Director of Licensing. As used in this Article XX the word "termination" includes any and all means of bringing to an end prior to its expiration by its own terms this Agreement, or any provision thereof, whether by release, discharge, abandonment, or otherwise.

IN WITNESS WHEREOF, the parties hereto cause their corporate names to be affixed by their respective duly authorized officers or representatives.

Attest:

\_\_\_\_\_

Attest:

\_\_\_\_\_

THE MAGNAVOX COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

ACTIVISION, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

MAGNAVOX V. ACTIVISION

RESOLUTION OF REMAINING DIFFERENCES

March 14, 1985

1. Issue - Does the right to terminate remain in the license agreement?

Resolution - Yes. Preamble to the agreement will recite that both parties shall act in good faith.

2. Issue - Will the condition subsequent for payments remain applicable to the release of Activision in the Settlement Agreement?

Resolution - No -- Magnavox must sue on the notes.

3. Issue - What triggers payment for the home computer license and when payable?

Resolution - For \$200,000 issue of any of claims 1, 13, 40, 50 or 55 in '480 or 1, 3, 9, 26, or 30 in '095.

For \$100,000<sup>\$100,000</sup> payable in 1988.

*Issue of 54 of 480 or claim 7 or 12 of 095.*

4. Issue: Venue and Law Resolution - Venue and Law on venue California. All other law, New York.

5. Issue: non-assertion by Magnavox

Resolution: Magnavox will not assert any patents in Exhibit A against any Activision games disclosed to Magnavox and prior to January 1, 1985 except the Rusch patent with to 13 games or the two Baer reissues.

6. Issue: Right to manufacture abroad.

Resolution: Manufacture in any country where there is a patent will bear the <sup>premium above</sup> 1% royalty above the domestic royalty schedule ~~premium~~. There are no such patents in Taiwan, South Korea, the Phillipines or ~~Mainland China~~.



How is the Consumer Price Index applied?  
 As set forth in the original draft agreements  
 and no other.

8. Issue: What triggers <sup>most</sup> favored <sup>national</sup> ~~motion~~ clause.  
 Resolution: Only a lower subsequent running royalty for future sales.

9. Issue: What if customers don't pay.  
 Resolution: Activision will receive a credit only if (a) customer goes into bankruptcy or (2) Activision sues to collect.

10. Issue: Who pays for audit?  
 Resolution: The party who orders it.

The foregoing represents the understanding of the parties on the above key points, but does not constitute a binding agreement as this agreement <sup>which</sup> once fully written must be presented to principals. <sup>the</sup>

The Magnavox Co.

Sanders Associates

Activision Inc.