

# ACTIVISION

**R.L. Smith McKelthen**  
Vice President, General Counsel  
and Secretary

June 6, 1986

Mr. Algy Tamoshunas  
The Magnavox Company  
580 White Plains Road  
Tarrytown, NY 10591

CONFIDENTIAL -- FOR SETTLEMENT PURPOSES ONLY

Dear Algy:

As I mentioned on the phone last month, I think it makes sense to determine if it is possible to settle the litigation. From our past negotiation history I think it makes no sense to redo discussion of license boilerplate or to engage in the usual cat and mouse game of multiple offers and counteroffers.

I think we both know the relevant factors. We expect to vigorously prosecute to completion our Federal Circuit appeal and we believe we have an excellent chance of prevailing. We also think Nintendo has a good chance of winning a favorable judge and/or jury verdict on validity and other issues in New York, perhaps prior to our argument to the Federal Circuit. It now appears that even if you prevail, we won't complete our proceeding until the middle or end of 1987. As you know, we also expect that you would have substantial difficulties on damages issues should it come to that. Of course, all of us are only too aware of the instabilities in the television and computer games industry. (You should now have in your possession our recent sales and returns figures for the 11 cartridges for 1984-86. As you will note, return revenue exceeded proceeds from new sales.)

McKeithen to Tamoshunas  
June 6, 1986  
Page Two

With all the above in mind, I have been authorized to offer now to settle the litigation for \$1.35 million, payable in cash 30 days from acceptance of the offer. Except for updating and some relatively minor changes, all other terms of the previously negotiated Settlement Agreement, Proposed Judgment and Nonexclusive Sublicense Agreement would apply. For your convenience I enclosed a marked up copy of the documentation sent to us under your March 22, 1985 cover letter.

As always seems to be the case with matters of this kind, time is of the essence. We are on an accelerated briefing schedule in the Federal Circuit, and face other important fiscal decisions in the next few weeks. We cannot long leave undetermined a cash commitment of the size contemplated here. Therefore, our offer is open until noon P.S.T. on Thursday, June 19, 1986; we would anticipate a closing by July 1, 1986.

I look forward to your response.

Very truly yours,



R. L. SMITH MCKEITHEN  
Vice President and  
General Counsel

/tg

Attachments

# The Magnavox Company

580 WHITE PLAINS ROAD  
TARRYTOWN, NEW YORK 10591

(914) 332-0222

FEDERAL EXPRESS

March 22, 1985

RECEIVED  
MAR 25 1985

HOWARD, RICE

Mr. Thomas A. Larsen  
Law Offices of  
Howard, Rice Nemerovski  
Canada, Robertson & Falk  
Three Embarcadero Center  
Seventh Floor  
San Francisco, California 94111

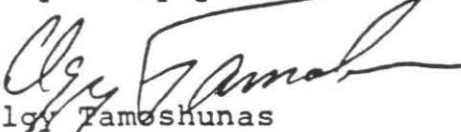
Dear Tom:

Enclosed are the following documents:

- 1) Settlement Agreement with Exhibits A and B; and
- 2) Nonexclusive Sublicense Agreement with Exhibit A.

Assuming that I hear from you today that Activision's board has approved the settlement of the lawsuit, counterparts of the enclosed documents executed on behalf of Magnavox and Sanders will be sent by Federal Express to McCutchen, Doyle, Brown and Enersen on Monday March 25, 1985. We should then be able to arrange for the exchange of the executed counterparts in the manner set forth in Ted's letter to Tom Roach (a copy of which was telefaxed to you) on Tuesday or Wednesday at the latest.

Very truly yours,



Algy Tamoshunas

AT/prb  
Enclosures

cc: Mr. L. Etlinger (w/enc)  
Mr. T. Anderson (w/enc)

SETTLEMENT AGREEMENT

THIS AGREEMENT entered into by and between THE 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 any 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 prior to ~~January 1, 1985~~ 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.

*Insert  
WHEREAS  
relating to  
Dist. Ct.  
decision  
and  
Appeal*

*July 1, 1986*

*\$1,350,000 upon closing.*

NOW, THEREFORE, the parties hereto agree as follows:

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 B.

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>Payable Upon Execution</u>
200,000	October 1, 1985
275,000	April 1, 1986
275,000	April 1, 1987

Each of said payments due on or subsequent to October 1, 1985 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 and deliverable on October 1, 1985 to MAGNAVOX in a negotiable form. If the foregoing installments are not paid when due, ACTIVISION shall be in default and all appropriate action shall be available to MAGNAVOX and furthermore the delinquent amounts shall bear interest for each month or fraction of a month of delinquency at the prime rate (or reference rate) being charged by the Bank of America on the date the delinquent payment is due plus 1%.

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

032285

*and its subsidiaries  
and their*

July, 1986

infringement of United States Letters Patent Re. 28,507 and those patents listed in Exhibit A by game programs made and sold by ACTIVISION prior to ~~January 1, 1985~~ 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 product not made by or for ACTIVISION. This release shall be effective only upon entry of said FINAL JUDGMENT ON CONSENT.

in which Activision has a controlling interest

IV.

~~NO~~

A. MAGNAVOX hereby grants to ACTIVISION and to wholly owned subsidiaries of 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 sell, anywhere in the world, programs for home computers, it being understood that no licenses or any other rights are granted under said paid-up license to make, use or sell home computers or 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 which comprises a microprocessor or other central processing unit which can be used to write nongame and game original programs and storage means to store such original programs and can address a program (read only Memory) of at least 8K bytes. Without limitation, the Atari 400, Atari 800, Commodore 64, Apple II, and the IBM PCjr., are home computers for purposes of this Agreement.

Add Atari ST, Commodore Amiga and Macintosh

B. The license granted under this paragraph IV of this Settlement Agreement is nonexclusive, nonassignable and nontransferable.

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 the same recited elements as any one of claims 1, 13, 40, 50 or 55, as pending in application Serial No. 810,538 on January 1, 1985 or any one of claims 1, 3, 9, 26 or 30 as pending in application Serial Number 810,542 on January 1, 1985, 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:

conform to recent appellate history



(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 (\$100,000) shall be paid on the first anniversary of the date on which the initial \$100,000 payment referred to in paragraph (a) is due and payable.

(2) In the event that (a) claims 1, 13, 40, 50 and 55 of reissue application Serial Number 810,538 and claims 1, 3, 9, 26 and 30 of application Serial Number 810,542 are all 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 as a reissue patent with claim 54 as pending on January 1, 1985 or a claim having substantially the same recited elements and/or reissue application Serial Number 810,542 issues as a reissue patent with claim 7 or 12 as pending on January 1, 1985 or a claim having substantially the same 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 any and all claims, demands, actions or causes of action of any nature whatsoever (i.e., tort or contract) which it has, or shall or may have, against MAGNAVOX and/or SANDERS arising out of the Litigation.

VI.

This Agreement shall be governed by the laws of the State of New York; provided, that jurisdiction and venue for any dispute with respect to the interpretation or enforcement of this Agreement 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.

VII.

initial Any press release of any party concerning this Settlement Agreement shall be approved by the parties, which approval shall not be unreasonably withheld.

VIII.

It is agreed that counterpart originals of this Agreement will be signed by the respective parties and the effective date of this Agreement shall be the date upon which all of said counterparts are signed. Thereafter said counterparts will be signed by all parties, one to be retained by each of said parties.

THE MAGNAVOX COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

\_\_\_\_\_

SANDERS ASSOCIATES, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

\_\_\_\_\_

ACTIVISION, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

\_\_\_\_\_



ARGENTINA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401D	243,732	08/24/72	201,824	04/24/75
D-2580	243,733	08/24/72	208,872	03/15/77

AUSTRALIA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	52,329	03/21/69	440,524	03/27/74
D-2401A	12,777	03/19/70	440,977	04/11/74
D-2560	51,980	03/17/69	429,985	04/10/73
D-2580	14,365/70	04/27/70	442,967	05/10/74
D-2837	15,257	05/19/70	441,126	03/25/74
D-3120A	68,922/74	05/14/74	478,656	04/15/77

BELGIUM

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	--Withdrawn and refiled as D-2401A			
D-2401A	79,290	09/19/69	739,124	03/19/70
D-2560	71,443	03/18/69	730,002	09/18/69
D-2580	89,546	05/27/70	751,008	11/27/70
D-2837	92,892	08/17/70	754,932	02/17/71
D-3120A	144,829	05/28/74	815,628	09/16/74

CANADA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	045,885	03/17/69	934,056	09/18/73
D-2401A	069,111	12/05/69	948,400	06/04/74
D-2560	045,884	03/17/69	895,028	03/07/72
D-2580	075,965	02/26/70	920,160	01/30/73
D-2580re	236,739	09/30/75	993,001	07/13/76
D-2837	080,392	04/17/70	911,484	10/03/72
D-2837A	141,190	05/03/72	927,864	06/05/73
D-2837re	236,711	09/30/75	999,888	11/16/76
D-2401re	286,872	09/16/77	1,148,250	06/14/83
D-3120A	201,026	05/28/77	1,010,464	05/17/77
D-3439	275,161	03/30/77	1,111,546	10/27/81

FRANCE

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	69.07714	03/18/69	69.07714	03/14/74
D-2560	69.07715	03/18/69	69.07715	03/17/71
D-2580	70/19,368	05/27/70	70.19368	07/12/76
D-2837	70/29,530	08/11/70	70.29530	05/17/76
D-3120A	74/18,382	05/28/74	74.18382	12/18/78

GREAT BRITAIN

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	13,242	03/13/69	1,268,821	07/26/72
D-2401A	43,036	09/08/70	1,268,822	07/26/72
D-2560	13,243/69	03/13/69	1,255,224	03/29/72
D-2580	25,007	05/22/70	1,318,051	09/19/73
D-2580A	6324/73	05/22/70	1,319,410	10/03/73
D-2837	38,506	08/10/70	1,328,223	12/27/73
D-3120A	23712/74	05/29/74	1,472,480	08/31/77
D-3439	16153/77	04/19/77	1,566,337	07/02/80

GREECE

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401D	44	08/19/72	45,937	10/31/72
D-2580	45	08/19/72	46,582	08/19/72
D-2580re	4943	08/01/74	51,156	01/17/75
D-2401DR	57881	12/22/78	57,881	

HOLLAND

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	69/04775	03/14/69	153,404	09/17/77
D-2560	69/03946	03/27/69	154,894	02/18/78
D-2580	70/07591	05/26/70	152,422	06/16/77
D-2401A	77/06407	06/10/77	171,953	05/04/83
D-3120A	74/06530	05/15/74		

HONG KONG

<u>Docket No.</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	75/1976	02/12/76	75/1976	02/12/76
D-2580A	76/1976	02/12/76	76/1976	02/12/76
D-2837	77/1976	02/12/76	77/1976	02/12/76
D-2401A	483/1977	09/22/77	483/1977	09/22/77
D-2580	484/1977	09/22/77	484/1977	09/22/77
D-3120A			578/1977	11/17/77
D-3439			506/1980	09/11/80

INDIA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401D	1531/72	09/28/72	136.499	09/28/72

ISRAEL

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	31,836	03/18/69	31,836	07/28/72
D-2401A	38,735	02/10/72	38,735	05/29/73
D-2560	31,826	03/17/69	31,826	03/30/72
D-2580	33,915	02/02/70	33,915	05/29/73
D-2580A	41,011	12/06/72	41,011	05/29/73
D-3120A	44,575	04/04/74	44,575	01/05/77

ITALY

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2560	14,194A/69	03/17/69	961,012	12/10/73
D-2401A	24,773A/70	05/18/70	897,269	11/15/71
D-2580	24,954A/70	05/22/70	893,433	10/01/71
D-2837	28,773A/70	08/19/70	901,545	01/03/72
D-3120A	23,194A/74	05/27/74	1,019,625	11/30/77
D-3439	49,030A/77	04/20/77		

JAPAN

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	27,171/69	04/08/69	1,143,533	04/26/83
D-2401A	46,828/70	05/30/70	765,636	07/11/74
D-2560	21,204/69	03/18/69	768,992	11/08/74
D-2580	44,908/70	05/27/70	778,416	08/12/74
D-2580A	119828/74	10/16/74	852,060	11/12/76
D-2837	71,143/70	08/12/70	811,493	09/12/75
D-3120A	61,424/74	05/29/74		
D-3439	47,280/77	04/22/77		

KOREA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-3439	955/77	04/20/77		

MEXICO

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401C	136,581	06/28/72	141,144	02/13/80
D-2580	136,584	06/28/72	140,468	10/30/79
D-2837	136,583	06/28/72	141,091	01/29/80

PHILIPPINES

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-3439	19601	03/30/77		

SINGAPORE

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2580A	380/1975	10/17/75	380/1975	02/13/76
D-2837	381/1975	10/17/75	381/1975	02/13/76
D-3439	354/1980	08/14/80	354/1980	09/03/80

SWEDEN

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2560	3521/70	03/13/69	368,467	10/10/74
D-2580	6931	05/20/70	364,186	05/30/74
D-2837	11,255/70	08/18/70	7011255-2	11/13/75
D-2837A	15697-7	12/13/74	7,415,697-7	09/20/79
D-3120A	74/070,442	05/28/74	7,407,044-2	05/18/77
D-2401-1	7800417-3	01/13/78	7800417-3	01/22/81
D-2401-1	7800418-1	01/13/78	7800418-1	01/22/81
D-2401-3	7800419-9	01/13/78	7800419-9	01/22/81

SWITZERLAND

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2560	4101	03/17/69	512.864	09/15/71
D-2401A	4689/70	03/28/70	512.865	09/15/71
D-2580	7,777/70	05/25/70	529.491	10/15/72
D-2837	012,306/70	08/13/70	534.989	03/15/73
D-3120A	7340/74	05/28/74	600,718	12/15/77

TAIWAN

<u>Docket No.</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-3439	66/1054B	03/25/77	11669	09/10/79

UNITED STATES

<u>Docket No.</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2432	713,862	03/18/68	3,497,829	02/24/70
D-2560	713,818	05/24/68	3,599,221	08/10/71
D-2580	828,154	05/27/69	3,659,284	04/25/72
D-2837	851,865	08/21/69	3,659,285	04/25/72
D-2401C	096,033	12/08/70	3,737,566	06/05/73
D-2401D	126,966	03/22/71	3,728,480	04/17/73
D-2580B	154,162	06/17/71	3,778,058	12/11/73
D-2401B	062,691	08/10/70	3,829,095	08/13/74
D-2580Re	464,256	04/25/74	Re 28,507	08/05/75
D-2837Re	464,023	04/25/74	Re 28,598	10/28/75
D-3120A	445,027	02/22/74	3,921,161	11/18/75
D-3248	574,113	05/25/75	4,034,990	07/12/77
D-2401B-Re	810,542	06/27/77		
D-2401D-Re	810,538	06/27/77		
D-3439A	922,451	07/13/78	4,194,198	03/18/80

VENEZUELA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401D	1572-72	08/18/72	30.146	10/26/73
D-2580	1571-72	08/18/72	30.171	10/29/73
D-2580A	2581-74	12/19/74	33,789	06/10/76
D-2401DR	2119-77	11/04/77	39,070	

WEST GERMANY

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	P1917437.9	04/03/69		
D-2560	P1913722.5	03/18/69	1,913,722	03/10/78
D-2580	P2017312.0	04/10/70	2,017,312	01/10/74
D-2837	P2030959.5	06/23/70	2,030,959	12/20/73
D-3120A	P2426249.5	05/29/74	2,426,249	06/13/80
D-3439	P2714670.9	04/01/77	2,714,670	01/08/79

WEST MALAYSIA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2580A	260/75	12/09/75	260/75	12/09/75
D-2837	261/75	12/09/75	261/75	12/09/75
D-3439			210/81	07/23/81

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE MAGNAVOX COMPANY, a	)	
Corporation and	)	
SANDERS ASSOCIATES, INC., a	)	
Corporation,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	C 85 5270
	)	
ACTIVISION, INC.	)	
	)	
Defendants.	)	

FINAL JUDGMENT ON CONSENT

On consent of the parties The Magnavox Company, Sanders Associates, Inc., and Activision, Inc. it is ORDERED, ADJUDGED AND DECREED as between these parties that:

1. The Court has jurisdiction of those parties and the cause of action.
2. Sanders Associates, Inc. is the owner of the entire right, title and interest in and to United States Letters Patent Re. 28,507 entitled "Television Gaming Apparatus" and its original patent 3,659,284 asserted against Activision, Inc. in this action.



3. The Magnavox Company is the exclusive licensee with the right to grant sublicenses under the said United States Letters Patent Re. 28,507 and its original patent 3,659,284.

4. With respect to those parties, United States Letters Patent Re. 28,507 and its original patent 3,659,284 are good and valid in law.

5. With respect to those parties, Activision, Inc. has infringed, contributorily infringed, and induced the infringement of United States Letters Patent Re. 28,507 through the manufacture and sale of their game programs for television apparatus known by various names.

6. Activision, Inc., its officers, employees, agents, servants, and attorneys, and those in active concert with it, are hereby permanently enjoined and restrained from infringing, inducing others to infringe, or contributing to the infringement of United States Letters Patent Re. 28,507. Activision, Inc. may practice the invention of United States Letters Patent Re. 28,507 pursuant to license from The Magnavox Company entered into either prior to or subsequent to the entry of this Final Judgment on Consent.

7. Activision, Inc. having compromised its differences with plaintiffs, no award of damages or accounting is ordered.

8. No costs or counsel fees are assessed or taxed against any party in connection with this FINAL JUDGMENT ON CONSENT.

\_\_\_\_\_  
United States District Judge

Dated: \_\_\_\_\_

Entry of the above Final Judgment or Consent is consented and agreed to on behalf of the parties thereto.

\_\_\_\_\_  
Martin R. Glick, Esq.  
Attorney for Activision, Inc.

Howard, Rice, Nemerovski, Canady,  
Robertson & Falk  
A Professional Corporation  
Three Embarcadero Center  
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(415) 434-1600

\_\_\_\_\_  
Theodore W. Anderson, Esq.  
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Attorneys for The Magnavox Co.  
and Sanders Associates, Inc.

Neuman, Williams, Anderson  
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77 W. Washington St.  
Chicago, Illinois 60602  
(312) 346-1200

NONEXCLUSIVE SUBLICENSE AGREEMENT  
FOR  
HOME VIDEO GAME DEVICES

*1975*  
*July 1, 1986*

AGREEMENT, having an effective date of ~~January 1, 1985~~, by and between THE MAGNAVOX 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;

WHEREAS, MAGNAVOX, SANDERS and ACTIVISION are contemporaneously herewith entering into an agreement for settling a civil action in the United States District Court for the Northern District of California entitled, The Magnavox Company et al v. Activision, Inc., No. C82-5270 CAL (hereinafter the SETTLEMENT AGREEMENT); and

WHEREAS, as part of said settlement of said civil action, MAGNAVOX and ACTIVISION agreed to enter into a nonexclusive sublicense agreement under certain patents of such OTHER LICENSE AGREEMENT;

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations herein set forth, which the parties agree to perform in good faith, the parties hereto agree as follows:

#### ARTICLE I

#### DEFINITIONS

1.01 As used herein, the following terms shall have the following meanings:

(a) LICENSED PATENTS shall mean the patents and applications for patents set forth in Exhibit A attached hereto, any patents issuing on said applications and any and all reissues, divisions, continuations and extensions of any such patents and/or applications.

(b) HOME VIDEO GAME shall mean any consumer video game product designed primarily for playing video games in the home on a home television receiver or monitor. Such home video game includes a control unit (hereinafter CONTROL UNIT), which may be a microprocessor based unit and may include a keyboard; a means for connecting the CONTROL UNIT to the television receiver or monitor; and may include a

cartridge or 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, Colecovision and Nintendo Advanced Video System (AVS).

(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 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.

(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 commercially reasonable 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.

(h) SUBSIDIARY shall mean any corporation (including any legal entity similar thereto) or other kind of business organization in which MAGNAVOX or ACTIVISION, as the case may be, now or hereafter during the term of this Agreement has a "controlling interest". The term SUBSIDIARY also includes any other corporation or other kind of business organization in which such a corporation or business organization controlled by MAGNAVOX or ACTIVISION, now or hereafter during the term of this Agreement has a "controlling interest". "Controlling interest" in the case of a corporation or business organization shall mean direct or indirect ownership or control by MAGNAVOX or ACTIVISION of that number of the shares of said corporation, entity, or organization which represents the right to elect a majority of the directors of the corporation, or persons performing similar functions; and in the case of any other kind of business organization, it means that direct or indirect ownership or control of the capital thereof, or other interest therein, by or through which MAGNAVOX or ACTIVISION exercises or has the power to exercise in any manner, directly or indirectly, control or direction thereof.

## ARTICLE II

### LICENSES AND RIGHTS

2.01 MAGNAVOX hereby grants to ACTIVISION, subject to the reservations and conditions set forth herein, a nonexclusive, worldwide license under LICENSED PATENTS, without the right to sublicense, to make, have made, use, sell, lease or otherwise dispose of LICENSED PRODUCTS.

2.02 Except for U.S. patent Re. 28,507 and its foreign counterparts, the foreign counterparts of U.S. patents Nos. 3,728,480 and 3,829,095 and any patents issuing on pending reissue applications Serial Nos. 810,538 and 810,542, MAGNAVOX agrees not to assert any other LICENSED PATENTS against GAME PROGRAMS disclosed to MAGNAVOX prior to the effective date of this Agreement, it being understood that this Paragraph 2.02 shall not apply to any new GAME PROGRAMS or any new HOME VIDEO GAMES made by or for, or introduced by ACTIVISION subsequent to the effective date of this Agreement.

2.03 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.

2.04 MAGNAVOX hereby warrants that it has the right to grant the licenses 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 GAME 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 or (ii) in another country where any LICENSED PATENT exists and which is not the country where 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 this paragraph 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.

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 ACTIVISION 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 future royalties to be paid hereunder until such time that ACTIVISION collects payment for such LICENSED PRODUCTS. Upon termination of this Agreement, any such credits which have not been credited against future royalties or royalties due under Paragraph 6.02 shall be refunded to ACTIVISION.

*add credit for price protection given to dealers*

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. Upon termination of this Agreement, any such credits which have not been credited against future royalties or royalties due under Paragraph 6.02 shall be refunded to ACTIVISION.

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 (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.

*Conform to 480 and 095 status*

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~~, Decathalon, Grand Prix, Sky Jinks, Pressure Cooker, Ice Hockey, Fishing Derby, ~~Keystone~~ ~~Kapers~~, Stampede, Barnstorming and Enduro, it being understood that whether royalties are due 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.

*Add Keystone  
Kapers,  
Dolphin and  
other  
titles*  
3.08 Except as provided for in Paragraphs 3.05 and 3.06, no royalties shall be due for the following GAME PROGRAMS: Kaboom!, Freeway, Oink, Dragster, Pitfall, Bridge, Checkers, Skiing, Seaquest, Laser Blast, Chopper Command, Starmaster, River Raid, Megamania, Spider Fighter, Robot Tank, Plaque Attack, Crackpots, Frostbite and Space Shuttle.

3.09 No royalties shall be due hereunder with respect to the manufacture, use or sale by ACTIVISION or its SUBSIDIARIES on 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 1985, 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 Paragraphs 3.01 and 3.02 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 Paragraphs 3.01 (a) and 3.02 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) and 3.02 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 use reasonable efforts to 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

*60 days*  
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 3.03 or 3.04;

(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.

*and net previously reported under 6.01*  
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. For purposes of determining the royalties due on any LICENSED PRODUCTS manufactured prior to and remaining in stock at the time of termination of this Agreement, the NET SELLING PRICE of any such LICENSED PRODUCTS shall be deemed to be

the average NET SELLING PRICE of similar LICENSED PRODUCTS sold to third party customers during the three month period preceding said termination.

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 four (4) 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, but not more than once in each calendar year, 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 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) 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, 7.04 or 7.05 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 or 810,542 by giving written notice thereof to MAGNAVOX, whereupon MAGNAVOX shall have the right to terminate any license granted hereunder under such patent whose validity and/or coverage is challenged by giving written notice of such termination to ACTIVISION.

#### 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 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.

11.02 ACTIVISION shall be responsible for, and hereby assumes full liability in respect of all royalty reports and payment of royalties 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 in a reasonable manner 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 Certified 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 jurisdiction and venue for any dispute with respect to this Agreement shall be the United States District Court for the Northern District of California and the laws of California shall apply with respect to jurisdiction and choice of venue.

#### 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 Neither party hereto shall assign or otherwise transfer this Agreement to any third party without prior written consent of the other party. Except as otherwise provided herein, ACTIVISION shall not sublicense, sublet, or encumber its interest in this Agreement or rights granted herein in any manner without the written consent of MAGNAVOX.

18.02 Anything herein to the contrary notwithstanding, MAGNAVOX shall have the right to assign this agreement to North American Philips Corporation, U.S. Philips Corporation, N.V. Philips' Gloeilampenfabrieken, or to any of their respective subsidiaries.

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 United States of America, 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 in writing 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.

ARTICLE XXI  
COUNTERPARTS

It is agreed that counterparts of this agreement will be signed by the respective parties, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement. Thereafter, said counterparts will be signed by all parties, one to be retained by each of said parties.

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

Attest:

\_\_\_\_\_

THE MAGNAVOX COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

\_\_\_\_\_

ACTIVISION, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_