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9 Attorneys for Defendant

2/28/83

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 THE MAGNAVOX COMPANY, )  
14 a Corporation, and )  
SANDERS ASSOCIATES, INC., )  
15 a Corporation, )  
16 Plaintiffs, )

Civil Action  
C 82 5270 TEH

17 v. )

Hearing: March 14, 1983  
10:00 a.m.

18 ACTIVISION, INC., )  
a Corporation )  
19 Defendant. )

20  
21 AFFIDAVIT OF THOMAS O. HERBERT

22 I, THOMAS O. HERBERT, being duly sworn, depose and say as  
23 follows:

24 1. I am a partner in the firm of Flehr, Hohbach, Test, Albritton &  
25 Herbert (hereinafter the Flehr Firm) and have appeared as attorney for defen-  
26 dant, Activision, Inc., in this suit.

27  
28 Affidavit in Support of  
Memo in Opposition to Motion  
to Disqualify Counsel

1           2. I have been a partner of the Flehr Firm since 1963 and have  
2 knowledge of the matters set forth herein, either personally or by review of the  
3 business records of said Flehr Firm.

4           3. In 1972 the Flehr Firm first represented Atari, Inc. in patent  
5 matters. Subsequently, the representation was expanded to include trademark,  
6 copyright and trade secret matters as well.

7           4. In 1975 I and the Flehr Firm, on behalf of Atari, Inc., filed a  
8 declaratory judgment action in the United States District Court for the Northern  
9 District of California against The Magnavox Company and Sanders Associates,  
10 Inc. seeking a judgment of invalidity and non-infringement of certain patents.  
11 That action was subsequently transferred to the Northern District of Illinois, as  
12 Civil Action No. 75C3933 and consolidated with three patent infringement cases  
13 already in progress, Civil Action No. 74C1030 - Magnavox et al v. Bally Mfg.  
14 Corp. et al; Civil Action No. 74C2510 - Magnavox et al v. Seeburg Ind. Inc., et  
15 al; and Civil Action No. 75C3153 - Magnavox et al v. Sears Roebuck and Co.  
16 (hereinafter the consolidated Chicago cases).

17           5. In the consolidated Chicago cases, the only issue common to all  
18 parties was the validity of certain patents owned and/or under the control of The  
19 Magnavox Company and Sanders Associates, Inc. The issues of patent infringe-  
20 ment varied from case to case although there was some overlap in that some of  
21 the parties acted as distributors or dealers for other parties for certain accused  
22 products.

23           6. I acted as lead counsel on behalf of Atari, Inc. during the entire  
24 course of that litigation.

25           7. With a single exception, the products charged with infringement in  
26 the consolidated Chicago cases were coin operated games of the type found in  
27

1 arcades and the like. The single exception was a home video game known as  
2 "Consumer Pong" which was manufactured and sold by Atari, Inc. and also sold  
3 by Sears, Roebuck and Co.

4 8. None of the products involved in the consolidated Chicago cases  
5 included "television game cartridges for use in combination with  
6 microprocessor-based television game consoles", of which the manufacture, use  
7 and sale by defendant, Activision, Inc., is charged here to be an infringement of  
8 the Re. 28,507 patent in suit. In fact, no game cartridges whatever were  
9 involved in the consolidated Chicago cases.

10 9. During the course of discovery in the concolidated Chicago cases  
11 I, with the full knowledge and encouragement of Atari, Inc., cooperated fully  
12 with counsel for Bally Mfg. Corp. in a joint attempt to establish invalidity of the  
13 patents there in suit, including U. S. Letters Patent Re. 28,507 and 3,728,480  
14 here in suit. Information was received from employees of Atari, Inc. as to  
15 possible prior art and such information was freely exchanged with counsel for  
16 Bally Mfg. Inc. in that both Bally Mfg. Inc. and Atari, Inc. held a common  
17 interest to invalidate the patents in suit.

18 10. In 1976 I caused to be served and filed in the consolidated  
19 Chicago cases a "Notice of Prior Art by Atari, Inc. and Sears, Roebuck and Co."  
20 which Notice included all the prior art which I felt pertinent to the invalidity of  
21 the Re. 28,507 and 3,728,480 patents and of which the Flehr firm was  
22 aware - whether through its own effort, the efforts of other counsel in the  
23 consolidated Chicago cases or the efforts of Atari, Inc. itself. That Notice was  
24 not subject to any protective order or other restriction.

25 11. On June 8, 1976, Atari, Inc. settled its differences with  
26 Magnavox and Sanders by way of the Settlement Agreement attached to the Paul  
27 affidavit and, as set forth in Paragraph III of that Settlement Agreement, a  
28 license agreement attached hereto as Exhibit A.

1           12. As seen from the license agreement, Exhibit A, paragraphs  
2 1.01(a), 2.01 and 4.01, Atari, Inc. not only acquired a license under the patents  
3 here in suit but also a covenant not to be sued by Magnavox under any other  
4 Magnavox and Sanders' video game patents issued by June 8, 1976 or which issue  
5 on applications which were pending on June 8, 1976.

6           13. After conclusion of the litigation between Atari, Inc. and  
7 Magnavox, the Flehr Firm removed its files related to the matter to dead  
8 storage. Such files included all prior art, drafts, memoranda, copies of exhibits,  
9 pleadings and other papers related to that litigation.

10           14. In 1977, the Flehr Firm was advised by Atari, Inc. that Atari was  
11 transferring all matters then handled by the Flehr Firm to the firm of Townsend  
12 & Townsend. In practice the transfer was to be effected as soon as possible with  
13 specific matters being transferred at appropriate stages in their development.  
14 One patent matter having nothing whatsoever to do with the subject of this  
15 litigation was not transferred due to a conflict of interest on the part of the  
16 Townsend & Townsend firm. That matter was almost immediately resolved. In  
17 1978 Atari, Inc. requested that the transfer be completed by July 15, 1978.  
18 Again there were minor exceptions including the bookkeeping and clerical  
19 function of actually making payment of annual taxes on certain foreign patents;  
20 and the prosecution of a reissue patent application in a foreign country  
21 (concluded in April of 1979) neither of which is in any way related to the subject  
22 matter of this litigation. Another minor exception to the 1978 conclusion of the  
23 transfer was the awaiting of a decision from the Patent Office Solicitor on a  
24 matter which had already been submitted -- this matter was concluded in May  
25 1982 by forwarding the decision and all relevant papers to the Townsend &  
26 Townsend firm.

1           15. By letter of February 8, 1983 to Charles S. Paul, I (a) advised  
2 that the Flehr Firm would no longer undertake the ministerial matter of paying  
3 taxes on the foreign patents; (b) forwarded to Atari our files on such matters; (c)  
4 copies of our instruction to foreign agents to correspond further with Atari or its  
5 designee; and (c) a list of tax due dates. The letter also pointed out that the  
6 Flehr Firm was thereafter doing no work whatsoever for Atari, legal or  
7 otherwise.

8           16. By letter of January 6, 1981 from Charles S. Paul of Atari, Inc., I  
9 was requested to forward to Mr. Warren P. Kujawa of the Townsend & Townsend  
10 firm all materials still in possession of the Flehr firm relating to the lawsuit  
11 between Atari and Magnavox. I caused that material (set forth in Paragraph 13  
12 above) to be retrieved from dead storage and delivered as requested.

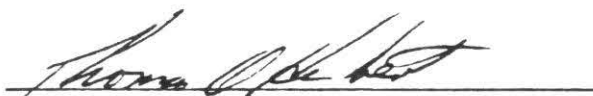
13           17. During the summer of 1982, and well prior to the filing of the  
14 Complaint herein, the files relating to the lawsuit between Atari and Magnavox  
15 which I had caused to be delivered to Warren P. Kujawa of the Townsend &  
16 Townsend firm were returned by Mr. Kujawa and microfilmed. During the  
17 several telephone conversations between myself and Mr. Kujawa - the only  
18 person (other than Mr. Kujawa's secretary) on behalf of Atari, Inc. I or anyone  
19 from the Flehr Firm discussed the matter, there was no mention of any  
20 restriction on our use of the files. It was clear from my telephone conversations  
21 with Mr. Kujawa that he knew the files were being forwarded to me pursuant to  
22 a settlement of litigation between Atari, Inc. and Activision, Inc. and that the  
23 files were being returned at the behest of Activision, Inc.

24           18. On September 24, 1982, four days prior to filing the Complaint  
25 herein, Mr. Ron E. Grubman from the Patent Department of Atari, Inc.,  
26 telephoned me requesting that I immediately return the Atari-Magnavox litigation  
27 files. As requested, the files were delivered to Mr. Grubman at Atari, Inc.  
28 on September 24, 1982.

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19. In about January of 1980 Activision came into being and the Flehr Firm began representing Activision from its inception. Such representation was, and continues to be, in the fields of patents, trademarks, and copyrights. To date, the Flehr Firm is the only firm representing Activision in these fields.

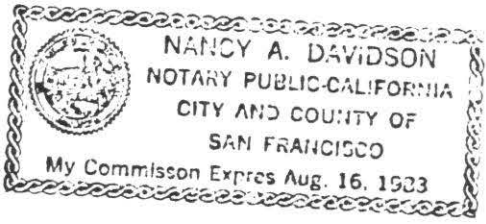
19. The only issue in the instant case which was also in the previous litigation the Flehr Firm handled for Atari, Inc. is the invalidity of the patents in suit. The Atari equipment which was the subject of the Atari-Magnavox litigation is not here involved.

  
Thomas O. Herbert

STATE OF CALIFORNIA        )  
  )  
COUNTY OF SAN FRANCISCO )

Subscribed and sworn to before me  
this 28th day of February 1983.

  
Notary Public



NON-EXCLUSIVE CROSS LICENSE FOR VIDEO GAMES



THIS AGREEMENT, having an effective date of June 8, 1976 and entered into by and between THE MAGNAVOX COMPANY, a corporation of the State of Delaware, with executive offices in New York, New York and corporate offices at 1700 Magnavox Way, Fort Wayne, Indiana (hereinafter referred to as MAGNAVOX) and ATARI, INC., a corporation of the State of California, with offices at Winchester Boulevard, Los Gatos, California (hereinafter referred to as ATARI):

WITNESSETH THAT:

WHEREAS, MAGNAVOX warrants it is the exclusive licensee under a plurality of patents and patent applications, the title to which resides in SANDERS ASSOCIATES, INC., a corporation of the State of Delaware, having an office at Daniel Webster Highway South, Nashua, New Hampshire (hereinafter referred to as SANDERS);

WHEREAS, MAGNAVOX warrants it has the right under an agreement dated January 27, 1972 (hereinafter referred to as the OTHER LICENSE AGREEMENT, a copy of which is attached hereto as Exhibit A) to grant licenses under such plurality of patents and applications;

WHEREAS, ATARI desires a non-exclusive sublicense under certain patents of such OTHER LICENSE AGREEMENT;

WHEREAS, ATARI warrants it has the entire right, title and interest in patent applications as of the date of this Agreement in the United States and foreign countries, and certain technology;

WHEREAS, MAGNAVOX desires a non-exclusive license under the ATARI patents and patent applications and the right to use the technology relating thereto;

NOW, THEREFORE, for and in consideration of the mutual understandings and obligations herein set forth, the parties hereto agree as follows:

I DEFINITIONS

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

(a) MAGNAVOX PRINCIPAL PATENTS shall mean the following patents:

<u>U.S. PATENT NO.</u>	<u>ISSUE DATE</u>
3,659,284	April 25, 1972
3,659,285	April 25, 1972
3,728,480	April 17, 1973
Re. 28,507	August 5, 1975
Re. 28,598	October 28, 1975

and any and all reissues, divisions, continuations and extensions of any such Patents in the United States:



(b) MAGNAVOX FOREIGN PATENTS shall mean all patents and patent applications in countries foreign to the United States corresponding to said MAGNAVOX PRINCIPAL PATENTS.

(c) MAGNAVOX PATENTS shall mean both MAGNAVOX PRINCIPAL PATENTS and MAGNAVOX FOREIGN PATENTS.

(d) ATARI PATENTS shall mean all presently pending patent applications (other than design applications) owned or controlled by ATARI, INC., including but not limited to:

<u>SERIAL NO.</u>	<u>FILING DATE</u>	<u>TITLE</u>
613,050	September 15, 1975	Video Image Positioning Control System
626,664	October 29, 1975	Animated Video Display System & Method
626,665	October 29, 1975	Multiple Image Positioning Control System & Method

and an application prepared but not yet filed on an invention of Steven T. Mayer and Ronald E. Milner entitled "Method of Generating A Plurality of Moving Objects on a Video Display Screen", and any and all patents, reissues, divisions, continuations and extensions of any such patents, applications and any and all foreign patents corresponding thereto, together with all foreign patents corresponding to U.S. Patent No. 3,793,483 issued February 19, 1974 for Video Image Control System For Amusement Devices.

(e) ATARI TECHNOLOGY shall mean all technical know-how and assistance including drawings and descriptions relating to all actual video game products of ATARI and its SUBSIDIARIES including microprocessors, which are on the market as of the date of this agreement as well as of all items under consideration either now or hereafter as video game products planned for manufacture, release and/or sale by ATARI up to June 1, 1977. Such ATARI TECHNOLOGY shall include, but not be limited to, technical information for producing ATARI products known as Consumer Pong, Pong 4 Player, Consumer Superpong, Superpong 4 Player, Hockey Pong, TANK-8 (including its system for interfacing a microprocessor with video game control and display systems) and MILL (a prototype magnetic card reader currently under evaluation).

(f) HOME VIDEO GAMES shall mean video games intended for use with broadcast television receivers.

(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 ATARI, as the case may be, now or hereafter 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 said MAGNAVOX or ATARI, now or hereafter 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 ATARI 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 ATARI exercises or has the power to exercise in any manner, directly or indirectly, control or direction thereof.

(i) TERRITORY shall mean the United States.

(j) LICENSED PRODUCT shall mean any complete video game product covered by one or more of the MAGNAVOX PATENTS. LICENSED PRODUCT does not include chips or integrated circuits usable in such video game products.

(k) NET SELLING PRICE as used in this Agreement means invoice price F.O.B. factory, less discounts

and allowances that are customarily given in the trade and actually taken, cost of freight, special packing, insurance, and excise taxes or duty where separately stated, but before deduction of any other items including but not limited to agents' commissions.

## II LICENSE OF THE MAGNAVOX PATENTS

2.01 MAGNAVOX hereby grants to ATARI, subject to the reservations and conditions set forth herein, a fully paid non-exclusive license under MAGNAVOX PRINCIPAL PATENTS, without the right to sublicense, to make, have made, use, sell and lease LICENSED PRODUCTS covered by said MAGNAVOX PRINCIPAL PATENTS in and for the TERRITORY, and a fully paid non-exclusive license under MAGNAVOX FOREIGN PATENTS to use, sell, and lease LICENSED PRODUCTS made or had made by ATARI hereunder in the TERRITORY.

## III CONSIDERATION FOR THE LICENSE OF THE MAGNAVOX PATENTS

3.01 In addition to the license under the ATARI PATENTS as set forth in Article V below and the right to use the ATARI TECHNOLOGY as set forth in Article VI below, ATARI agrees to pay as consideration for the license set forth in Article II above and for the other covenants

set forth herein, the following amounts on the dates indicated:

\$150,000.00	Within 10 days of execution of this agreement
\$150,000.00	January 31, 1977
\$200,000.00	January 31, 1978
\$200,000.00	January 31, 1979
\$200,000.00	January 31, 1980
\$200,000.00	January 31, 1981
\$200,000.00	January 31, 1982
\$200,000.00	January 31, 1983

#### IV OTHER COVENANTS

- 4.01 MAGNAVOX covenants not to sue ATARI or its customers for infringement of any patents presently issued or issued on presently pending applications owned or controlled by MAGNAVOX or SANDERS, in the field of video games, during the term of this license.
- 4.02 MAGNAVOX agrees to prosecute such suits for infringement of the MAGNAVOX PRINCIPAL PATENTS as may be reasonably necessary to protect against unlicensed competition materially interfering with the business of ATARI hereunder. However, MAGNAVOX shall not be obligated to bring more than one such suit at a time.

#### V LICENSE OF THE ATARI PATENTS

- 5.01 ATARI hereby grants to MAGNAVOX and SANDERS, subject to the reservations set forth herein, a fully paid non-exclusive license to make, have made, use, sell

and lease LICENSED PRODUCTS under the ATARI PATENTS, without the right to sublicense. ATARI further grants to MAGNAVOX and to SANDERS an option to grant non-exclusive sublicenses in foreign countries outside the United States under ATARI PATENTS provided that a payment is made to ATARI of 1% of the Net Selling Price of the sub-licensed products.

5.02 ATARI hereby warrants that it has the right to grant the license herein granted to MAGNAVOX.

VI RIGHT TO USE ATARI TECHNOLOGY, TRANSFER  
THEREOF AND TECHNICAL ASSISTANCE

6.01 ATARI hereby grants to MAGNAVOX and to SANDERS, subject to the conditions set forth herein, the right to use the ATARI TECHNOLOGY.

6.02 ATARI agrees to disclose to MAGNAVOX and SANDERS from time to time during the period from the effective date of this Agreement through December 31, 1977, for the use of MAGNAVOX and of SANDERS, all the technical know how and information included in ATARI TECHNOLOGY, but only to the extent that such know-how and information is owned by ATARI on the date of this Agreement or acquired by ATARI and its SUBSIDIARIES on or before June 1, 1977, and further only to the extent that ATARI can permit MAGNAVOX and SANDERS to use such know how and information without incurring breach of contract by reason of the transfer thereof.

6.03 ATARI agrees that it will give MAGNAVOX and SANDERS the benefit of the knowledge and experience which ATARI or its officers and engineers may have to enable MAGNAVOX or SANDERS to make video game products of ATARI and its SUBSIDIARIES, in accordance with ATARI TECHNOLOGY to the extent that the same can be done, transmit the same to MAGNAVOX and to SANDERS by written or printed instructions with drawings or prints of developments ATARI may have made, and to continue transmitting the latest information to and for the benefit of MAGNAVOX and SANDERS through December 31, 1977.

6.04 ATARI agrees to provide MAGNAVOX and SANDERS, to the extent that ATARI has possession thereof, with complete sets of detail and assembly drawings, physical, electrical and metallurgical specifications of its parts and complete engineering and manufacturing data for the size and sizes of video game products which ATARI has manufactured and proposes to manufacture and/or sell prior to June 1, 1977. The technological assistance and know-how shall include but not be limited to the right of MAGNAVOX and SANDERS to use the masks and plates involved with the licensed know-how of ATARI, to the extent to which they exist. ATARI further agrees to receive at its plants representatives of MAGNAVOX or

SANDERS and to supply such representatives with any manufacturing assistance required by MAGNAVOX and/or SANDERS.

- 6.05 Upon request of MAGNAVOX and/or SANDERS, ATARI agrees to render at mutually convenient times engineering assistance to MAGNAVOX and/or SANDERS in connection with the use of ATARI TECHNOLOGY, by furnishing for reasonable periods of time the services of one or more of its competent engineers, skilled in the various phases of construction and operation of video game products covered by ATARI TECHNOLOGY, at MAGNAVOX or SANDERS' premises. For this service MAGNAVOX and/or SANDERS, as the case may be, agrees to pay to ATARI (a) reasonable and necessary travel expenses from and to ATARI's place of business, (b) reasonable and necessary living expenses away from ATARI's place of business, and (c) a consulting fee for the time devoted in rendering service to MAGNAVOX or SANDERS and time necessarily spent in travel from and to ATARI's place of business. The consulting fee shall be computed at the rate of two hundred dollars (\$200.00) per day per person.
- 6.06 During the period between execution of this Agreement and December 31, 1977, ATARI will permit no more than four representatives of MAGNAVOX and SANDERS at one time



to visit ATARI's plants, for a period of training, which shall not exceed four (4) weeks in the aggregate, in the manufacture of video game products included in ATARI TECHNOLOGY. ATARI agrees to train, at its plants and at the parties mutual convenience, not more than four MAGNAVOX and SANDERS personnel in the manufacture of video game products included in ATARI TECHNOLOGY.

- 6.07 It is understood that ATARI does not assume responsibility and shall not be liable, for any injury which may occur to any such trainee during any training period or otherwise. MAGNAVOX and/or SANDERS agrees to pay all expenses of such trainees.

#### VII JUDICIAL DETERMINATION OF MAGNAVOX PATENTS

- 7.01 If, in any proceedings before a court of competent jurisdiction in which the validity or infringement of any claim or claims of the MAGNAVOX PATENTS is in issue, a judgment or decree is entered which is adverse to such claim or claims finding it invalid and/or unenforceable and which becomes not further reviewable through exhaustion of all permissible applications for rehearing or review by a superior tribunal, or through the expiration of time permitted for such

applications (hereinafter referred to as a "final judgment"), the construction placed upon any such claim or claims by such final judgment shall be thereafter followed with respect to acts occurring thereafter; and, if such final judgment holds invalid or unenforceable, all claims of the MAGNAVOX PATENTS which cover any product of ATARI or all claims of the MAGNAVOX PATENTS which cover any product of ATARI would be held invalid or unenforceable upon the same grounds as applied by said court to any one or more of the claims of the MAGNAVOX PATENTS, ATARI shall be relieved thereafter from its obligation to make payments under Article III above with the exception that no holding of patent invalidity or unenforceability shall abrogate the payments referred to in Article III as occurring within 10 days of the execution of this Agreement and on January 31, 1977.

Moreover, if there are two or more conflicting final judgments with respect to the same claims, the decision of the higher tribunal shall be followed thereafter, but if the tribunals be of equal dignity, then the later decision shall be followed. ATARI may make all payments due under this Agreement during the interim period between the date of entry of any such adverse

judgment or decree and the date on which such judgment or decree becomes a final judgment as defined herein into an interest bearing escrow account established with The First National Bank of Chicago, Chicago, Illinois, the interest and principal in such account to be payable to ATARI if and when such judgment or decree becomes a final judgment and the interest and principal in such account to be payable to MAGNAVOX if and when such judgment or decree is reversed or vacated or the action resulting in such judgment or decree is remanded for a new trial on the issue of validity. The rights of ATARI under this Article shall not be impaired because of the Consent Judgment of validity and infringement.

7.02 ATARI hereby specifically waives any right it might otherwise have to recover from MAGNAVOX any payments it has made to MAGNAVOX under Article III above prior to any abrogation of payment under Paragraph 7.01 above.

VIII      POSSIBILITY OF ATARI LEAVING  
            HOME VIDEO GAME MARKET

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8.01 If ATARI should leave the market of HOME VIDEO GAMES, ATARI shall be relieved of its obligation to make payments under Article III above, with

the exception that no such contingency shall abrogate the payments referred to in Article III as occurring within 10 days of the execution of this Agreement and on January 31, 1977.

- 8.02 If ATARI's obligation to make payment is abrogated in accordance with Paragraph 8.01 above, and ATARI subsequently reenters the market of HOME VIDEO GAMES, the obligation of ATARI to make the payments referred to in Article III above shall be reinstated. Any payments not made under the provisions of Paragraph 8.01 above shall become immediately due upon reentry of ATARI into the HOME VIDEO GAMES market, provided, however, that such payment immediately due shall be reduced by the amount of any royalties paid under Paragraph 8.03 below.
- 8.03 In the event that the obligation of ATARI to make payments is abrogated under Paragraph 8.01 above, MAGNAVOX hereby grants ATARI a sublicense under the MAGNAVOX PATENTS in the field of coin-operated video games. ATARI agrees to pay a royalty for the license granted under this paragraph as follows: 4% of the NET SELLING PRICE of the first 20,000 units sold by ATARI under the provisions of this Paragraph 8.03 and 3% of the NET SELLING PRICE

for all units thereafter. No royalties shall be due or paid under this Paragraph 8.03 until and unless the obligations to make payments is abrogated in accordance with the provisions of Paragraph 8.01. In the event of a sublicense under this Paragraph 8.03 becoming effective, the maximum total payment to MAGNAVOX (including payments under Article III and under this Paragraph 8.03) shall not exceed \$1,500,000.00 and the maximum payment under this Paragraph 8.03 shall not exceed \$200,000 in any one year.

8.04 ATARI hereby specifically waives any right it might otherwise have to recover from MAGNAVOX any payments it has made to MAGNAVOX under Article III above prior to any abrogation of payments under Paragraph 8.01 above.

#### IX CONTINUANCE OF MAGNAVOX'S RIGHTS

9.01 Despite any abrogation of payments to MAGNAVOX under Articles VII or VIII above, the rights granted herein to MAGNAVOX and to SANDERS under Articles V and VI shall continue.

#### X TERM AND TERMINATION

10.01 The term of this Agreement shall be for the life of the last to expire of the patents licensed hereunder.

10.02 If either MAGNAVOX or ATARI 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 forty-five (45) days after written notice of such default is given by the non-defaulting party to the defaulting party, then at any time after the expiration of such forty-five (45) days, the non-defaulting 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 non-defaulting party may be lawfully entitled, it being intended that all such remedies be cumulative.

XI NO LEGAL REPRESENTATION

11.01 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 any party or any of its SUBSIDIARIES, or any other name or mark, or any contraction, abbreviation, or simulation thereof.

XII SUBSIDIARIES

12.01 This Agreement shall be binding upon and inure to the benefit of the SUBSIDIARIES, successors and assigns of each party hereto.

XIII MARKING

13.01 ATARI agrees to exercise due diligence to mark all products sold by it under the license herein granted with the word "Patents" or "Patent" and the numbers or number of the patents or patent applicable thereto.

13.02 Upon the issuance of any United States patent upon the application designated herein as the ATARI PATENTS, MAGNAVOX agrees to exercise due diligence to mark all products sold by it under the license herein granted with the words "Patents" or "Patent" and the numbers or number of the patent or patents applicable thereto.

XIV TERMINATION OR CONVERSION OF THE  
OTHER LICENSE AGREEMENT TO A  
NON-EXCLUSIVE LICENSE

14.01 In the event that MAGNAVOX converts its license with SANDERS in the United States of America to a non-exclusive license or terminates such license, then ATARI shall from the date of notice of such conversion to a non-exclusive license or from the date of notice of termination, consider SANDERS as substituted for MAGNAVOX in this Agreement and shall make all payments

and be responsible for all obligations under this Agreement to SANDERS.

XV NOTICES

15.01 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 ATARI, it shall be addressed to

Atari, Inc.  
14600 Winchester Boulevard  
Los Gatos, California 95030

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

Corporate Patent Counsel  
The Magnavox Company  
1700 Magnavox Way  
Fort Wayne, Indiana 46804

and in each case sent by certified or registered mail, return receipt requested, postage prepaid. The date of receipt shall be deemed to be the date on which such notice or request has been received as indicated upon the return receipt. 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.



XVI WAIVER AND SEVERABILITY

16.01 (a) Waiver - 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.

(b) Severability - If any term, clause or provisions 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.

XVII LAW GOVERNING

17.01 This Agreement shall be construed interpreted, and applied according to the laws of the State of Indiana.

XVIII ASSIGNMENT

18.01 Except in connection with the sale or assignment of its entire business in video games, coin-operated

video games or HOME VIDEO GAMES, neither party shall assign, transfer, sublicense, sublet, or encumber its interest in this agreement or rights granted herein in any manner without the written consent of the other party, but such consent shall not be unreasonably withheld. Either party shall give the other notice of any such assignment within thirty (30) days after the effective date thereof.

#### XIX    OPTIONS

19.01 MAGNAVOX hereby extends an option to ATARI for the life of this Agreement to obtain a non-exclusive license to make, use and sell a particular type of coin-operated video amusement game manufactured from a kit made in the United States and sold by ATARI in countries other than the United States in which SANDERS has any patent covering coin-operated video amusement games, each license to extend to ATARI and to a particular purchaser of such kits manufactured by ATARI, such kits comprising parts intended for use in the manufacture of coin-operated video amusement games and actually used for the manufacture of coin-operated video amusement games outside of the United States. The royalty for each such license obtained under this option is to be paid by ATARI and is to be computed at four percent (4%) of the NET SELLING PRICE of the manufacturer (not ATARI) of the complete video game which

incorporates ATARI's kit for the first twenty thousand (20,000) LICENSED PRODUCTS and at three percent (3%) of such NET SELLING PRICE of said complete video game after the first twenty thousand (20,000) LICENSED PRODUCTS on which royalty has been paid. Royalties paid under this paragraph shall not be subject to any royalty provision paragraphs 3.01 and 8.03.


XX ROYALTY PAYMENTS AND REPORT

20.01 To the extent that any payments are required to be made by the parties on the basis of NET SELLING PRICE, reports and payments shall be made on a calendar quarter basis with such reports and payments due within sixty (60) days after the end of such quarter. The reports shall include the number of units sold, the NET SELLING PRICE and the royalties payable. The parties shall have the right to have an audit performed of such party by a recognized public accounting firm at reasonable hours and only to the extent to confirm that proper royalties have been paid.

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

THE MAGNAVOX COMPANY

Attest:



By Thomas A. Bruce  
Title Corporate Patent C.  
Date June 8, 1976

ATARI, INC.

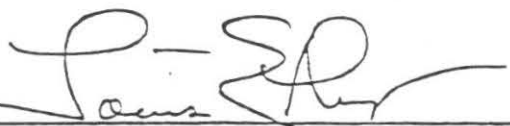
By Stephen O. Korula  
Title Vice President of Eng.  
Date June 8, 1976

Attest:



SANDERS hereby ratifies and assents to the terms of the foregoing agreement and agrees to assume the obligations of MAGNAVOX under said agreement in the event that MAGNAVOX converts its license with SANDERS to a non-exclusive license in the United States, or that that license is terminated.

SANDERS ASSOCIATES, INC.

By   
Title Director, SALES AND MARKETING  
Date June 8, 1976