

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
 :
 THQ INC., *et al.*, : Case No. 12-13398 (MFW)
 :
 Debtors.¹ : Jointly Administered
 :
 : RE: Docket Nos. 19, 152, 155, 167, 179, 181, 186, 187, 189,
 : 190, 193, 195, 196, 197, 198, 201, 204, 205 & 207
 :
 : Hearing Date: January 23, 2013 at 9:30 a.m. (ET)
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 : Reply Deadline: January 21, 2013 at 9:00 a.m. (ET)

OMNIBUS REPLY BY DEBTORS TO OBJECTIONS TO MOTION OF DEBTORS FOR ENTRY OF (I) AN ORDER (A) AUTHORIZING AND APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING AND APPROVING STALKING HORSE PROTECTIONS, (C) AUTHORIZING AND APPROVING PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE, (D) SCHEDULING AUCTION AND SALE APPROVAL HEARING, (E) APPROVING THE FORM AND MANNER OF THE NOTICE OF THE SALE HEARING, AND (F) GRANTING CERTAIN RELATED RELIEF, AND (II) AN ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE, AND (C) GRANTING CERTAIN RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby file this omnibus reply to the following objections and other responses related to the *Motion of Debtors for Entry of (I) an Order Authorizing and Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Authorizing and Approving Stalking Horse Protections, (C) Authorizing and Approving Procedures Related to the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Sale, (D) Scheduling Auction and Sale Approval Hearing, (E) Approving the Form and*

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.



Manner of the Notice of the Sale Hearing, and (F) Granting Certain Related Relief, and (II) an Order (A) Approving the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale, and (C) Granting Certain Related Relief [Docket No. 19] (the “**Sale Motion**”):

- i. *Los Angeles County Treasurer and Tax Collector's Objection to Debtors' Motion for Entry of (I) and Order (A) Authorizing and Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Authorizing and Approving Stalking Horse Protections, (C) Authorizing and Approving Procedures Related to the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Sale, (D) Scheduling Auction and Sale Approval Hearing, (E) Approving the Form and Manner of the Notice of the Sale Hearing, and (F) Granting Certain Related Relief, and (II) an Order (A) Approving the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale, and (C) Granting Related Relief* [Docket No. 179] (the “**County Tax Objection**”);
- ii. *Limited Objection of 505 Games S.r.l. to Motion of Debtors for Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale, and (C) Granting Related Relief* [Docket No. 181] (the “**505 Games Objection**”);
- iii. *Objection of the U.S. TelePacific Corp. to Debtors' Motion for Entry of an Order (I) Authorizing and Approving the Sale of the Debtors' Operating Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 186] (the “**TelePacific Objection**”);
- iv. *Objection of Machinima, Inc. to Contract Notice; Declaration of Peter Bartles* [Docket No. 187] (the “**Machinima Objection**”);
- v. *Limited Objection and Reservation of Rights of the Official Committee of Unsecured Creditors with Respect to Debtors' Motion for Order Authorizing the Sale of Assets and Seeking Related Relief* [Docket No. 189] (the “**Committee Objection**”);

- vi. *Reservation of Rights by MS MCC Highland LLC with respect to Notice of (I) Entry of Stalking Horse Agreement and (II) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in connection with the Sale of the Debtors' Assets* [Docket No. 190] (the “**MS MCC Reservation**”);
- vii. *Objection of Games Workshop Limited to Motion of Debtors to Motion of Debtors for Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale, and (C) Granting Related Relief* [Docket No. 193] (the “**Games Workshop Objection**”);
- viii. *Objection and Reservation of Rights of Pipeworks Software and ImaginEngine to Proposed Cure Amount* [Docket No. 195] (the “**Pipeworks Objection**”);
- ix. *Objection and Reservation of Rights of Yuke's Co., Ltd. to Potential Assumption and Assignment* [Docket No. 196] (the “**Yuke's Objection**”);
- x. *Objection and Request for Adequate Assurance of Microsoft to the Debtors' Notice of (I) Entry into Stalking Horse Agreement and (II) Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in connection with the Sale of the Debtors' Assets* [Docket No. 197] (the “**Microsoft Objection**”);
- xi. *Objection of Sony Pictures Consumer Products Inc. to Proposed Sale and Proposed Assumption and Assignment of Certain Executory Contracts and Proposed Cure Amount in Connection Therewith* [Docket No. 198] (the “**SPCP Objection**”);
- xii. *Reservation of Rights by Wells Fargo Capital Finance LLC to Motion of Debtors for Entry of Order Approving the Sale of Substantially All of the Debtors' Assets* [Docket No. 201] (the “**WFCF Reservation**”);
- xiii. *Limited Objection of Technicolor Home Entertainment Services, Inc., et al., to the (A) Sale Motion (B) Contract Notice (C) Supplement to Potential Assignment Schedule and (D) Requests for Relief* [Docket No. 204] (the “**Technicolor Objection**”);
- xiv. *Limited Objection of Sony Computer Entertainment America LLC with respect to Debtors' Notice of Stalking Horse Agreement and Executory Contracts and Unexpired Leases in connection with the Sale of the Debtors' Assets* [Docket No. 205] (the “**SCEA Objection**”); and
- xv. *Objection of Crytek GmbH to Proposed Sale and Proposed Assumption and Assignment of Certain Executory Contracts and Proposed Cure*

Amounts in Connection Therewith [Docket No. 207] (the “**Crytek Objection**”).²

REPLY

1. The Objections received by the Debtor fall into four categories: (1) the appropriate cure amount if a contract is assumed and assigned; (2) adequate assurance of future performance regarding a contract that is assumed and assigned; (3) the contract allegedly cannot be assumed or assigned without the licensor’s consent; and (4) other objections.³

2. The Debtors will continue to work toward a consensual resolution of most of these Objections prior to the hearing to approve the Sale scheduled for January 23, 2013 (the “**Sale Hearing**”). However, if the Debtors are unable to reach consensual terms of assumption and assignment prior to the Sale Hearing, the following provides the Debtors’ reply to each of the Objections. The Debtors reserve all rights to respond to the Objections in light of what results from the auction process on January 22, 2013.

A. Objections to Proposed Cure Amounts For the Assumption and Assignment of Contracts.

3. On January 14, 2013, the Debtors filed a notice of filing [Docket No. 155] of the *Notice of (I) Entry Into Stalking Horse Agreement and (II) Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale of the Debtors’ Assets* (the “**Contract Notice**”) that was served on January 13, 2013 in accordance with the *Corrected Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of the Operating Assets of the Debtors, (B) Stalking Horse Bid Protections, (C)*

² The Debtors response to the *Preliminary Objection and Reservation of Rights of South Park Digital Studios LLC to Debtors’ Proposed Asset Sale and Assumption and Assignment of Contract between THQ Inc. and South Park Digital Studios LLC* [Docket No. 191] is being concurrently filed solely by Debtors’ counsel Young Conaway Stargatt & Taylor LLP (the “**South Park Reply**”), because the waiver that Gibson Dunn & Crutcher has from Viacom precludes Gibson Dunn & Crutcher from litigating issues with Viacom or its affiliates, including South Park Digital Studios.

³ Copies of certain relevant agreements are attached hereto as Exhibit A.

Form and Manner of Notice of the Sale Hearing and (d) Related Relief [Docket No. 152] (the “**Bidding Procedures Order**”) Bidding Procedures Order.

4. On January 15, 2013, the Debtors filed a notice of filing [Docket No. 167] of the *Notice of Filing Supplement to Potential Assignment Schedule* (the “**Supplemental Contract Notice**”) that was served on January 15, 2013. The Contract Notice and the Supplemental Contract Notice includes all assignable contracts because until the auction sale the Debtors could not be certain which contracts individual bidders might seek to acquire. Based on the bids actually received the Debtors anticipate that they will not actually seek authority to assume and assign all of the contracts listed in the Contract Notice and the Supplemental Contract Notice.

5. The following table summarizes those Objections to the cure amounts listed in the Contract Notice and Supplemental Contract Notice and the Debtors’ reply:

DOCKET NO.	PARTY	OBJECTIONS RE: CURE AMOUNT	DEBTORS' REPLY
186	U.S. TelePacific Corp. ("TelePacific")	TelePacific objects to (1) the proposed cure amount of \$1,725.00. It asserts that the current amount due to it is \$1,776.67 (as set forth in its proof of claim) plus post-petition administrative fees in the amount of \$2,972.39 (due 1/31/13). Thus, the Cure Amount should be the sum of the amount asserted in the POC plus all post-petition administrative charges. (TelePacific Objection ¶¶ 2-4.)	<p>The difference between the proposed cure amount is \$50 plus an administrative expense of \$2,972.39 due 1/31/13.</p> <p>The Debtors' goal is to resolve this objection consensually between now and the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.</p>
187	Machinima, Inc. ("Machinima")	Machinima objects to the cure amounts listed for two contracts, the Illfonic Agreement (approximately \$111,000) and the Heroes Agreement (\$52,000 plus \$17,500 due 1/31/2013).	<p>The Debtors did not identify a cure amount for these two contracts in the Contract Notice or Supplemental Contract Notice.</p> <p>The Debtors do not currently intend to assume and assign these contracts if the Stalking Horse Bid is the Successful Bid. If no bidder bids on these contracts the Debtors will not seek to assume and assign them at this time.</p> <p>If any bidder seeks to acquire these contracts the Debtors will seek to resolve this objection consensually prior to the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.</p>
193	Games Workshop Limited ("Games Workshop")	Games Workshop argues that the Debtors must cure all existing Defaults under the License if it is determined that the License can be assumed and assigned, and reserves its rights to investigate non-monetary defaults. (Games Workshop ¶¶ 20-21.) Games Workshop does not assert that a specific cure amount is due if the License is assumed and assigned.	<p>If the Games Workshop license is assumed and assigned, the Debtors agree that all cure amounts must be paid, but the Debtors have estimated the cure amount at \$0.00.</p> <p>The Debtors' goal is to resolve this objection consensually between now and the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.</p>

DOCKET NO.	PARTY	OBJECTIONS RE: CURE AMOUNT	DEBTORS' REPLY
195	Pipeworks Software and ImaginEngine (collectively, "Pipeworks and ImaginEngine")	Pipeworks and ImaginEngine reserve their rights to assert the cure amount due under three agreements (uDraw Paint Agreement; uDraw Studio Agreement; Monster High Agreement) and assert that a cure amount of \$228,000 is due for the Wheel/Jeopardy Agreement if such agreement is assumed and assigned. (Pipeworks Objection ¶ 3(a)-(d).)	<p>The Debtors listed the estimated cure amount due to Pipeworks at \$30,000 in the Contract Notice.</p> <p>The Debtors do not currently intend to assume and assign these contracts if the Stalking Horse Bid is the Successful Bid. If no bidder bids on these contracts the Debtors will not seek to assume and assign them at this time.</p> <p>If any bidder seeks to acquire these contracts the Debtors will seek to resolve this objection consensually prior to the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.</p>
196	Yuke's Co., Ltd. ("Yuke's")	Yuke's objects to the notice of cure amount of \$15,637. Yuke's contends that the cure amount under the Master Development Agreement is not less than \$15,270,789. (Yuke's Objection ¶ 11.)	<p>The Debtors estimated the cure amount for the Yuke's contracts at \$15,637.</p> <p>The Debtors do not currently intend to assume and assign any of Yuke's contracts if the Stalking Horse Bid is the Successful Bid. The Debtors believe it is highly unlikely any bidder will seek to acquire the Yuke's contracts.</p> <p>In the unlikely event that any bidder seeks to acquire these contracts the Debtors will seek to resolve this objection consensually prior to the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.</p>
197	Microsoft Licensing GP, Microsoft Corporation, and its affiliates (collectively, "Microsoft")	Microsoft asserts that the cure amounts identified by the Debtors will likely change by the time the Microsoft agreements are assumed and assigned. Microsoft asserts that the Debtors must cure all defaults and will cooperate to identify the exact amount of cure obligations. (Microsoft Objection p. 3-4.)	<p>The Debtors identify the following aggregate cure amounts for various Microsoft:</p> <p><u>\$75,218 (Microsoft Corporation):</u></p> <p><i>Corporate IT contracts:</i></p> <p>(1) Master #01E70509</p> <p><i>Publishing Agreement:</i></p> <p>(2) Publishing Agreement for RARE DS Products;</p> <p><i>License Agreements:</i></p> <p>(3) Xbox 360 Accessory License Agreement;</p> <p>(4) Amend #4 to Development and Publishing Agreement (Zoo Tycoon 2);</p> <p>(5) Amend #5 to Development and Publishing Agreement (Age of Empires III)</p> <p><i>License – Platform contracts:</i></p> <p>(9) Master Promotion Agreement 09-16-11</p> <p>(10) Xbox 360 Development Kit (Peripherals) License</p>

DOCKET NO.	PARTY	OBJECTIONS RE: CURE AMOUNT	DEBTORS' REPLY
			<p>(11) Xbox 360 Debut Unit Agreement (Xbox)</p> <p>(12) Games for Windows Trademark License Agreement</p> <p>(13) Microsoft Corporation Live for Windows Software Development Corporation</p> <p>(14) Xbox 360 Accessory License Agreement</p> <p>(15) Microsoft Software License Terms – Microsoft Tag SDK</p> <p>(16) Xenon Xbox Development Kit License</p> <p>(17) Durango Development Kit License</p> <p>(18) Publisher License Agreement for Xbox Live for Windows Phone</p> <p><u>\$2,899,060 (Microsoft Licensing, GP):</u> <i>Corporate IT contracts:</i></p> <p>(1) Microsoft – Volume Licensing – Enterprise 6 Enrollment [combined];</p> <p>(2) Publisher Credit Line Agreement North America</p> <p>(3) Games for Windows – Live Online Service Agreement</p> <p>(4) Master Services Agreement</p> <p><u>\$-- (Microsoft Licensing, GP; Microsoft Corporation):</u> <i>Distribution contracts:</i></p> <p>(1) Xbox 360 Software Distribution Services Agreements and Addenda</p> <p>(2) Xbox 360 Bundle License Agreement (Darksiders II)</p> <p><i>License – Platform contracts:</i></p> <p>(3) Xbox 360 Publisher License Agreement 10/31/05 and Addenda</p> <p>The Debtors' goal is to resolve this objection consensually prior to the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.</p>

DOCKET NO.	PARTY	OBJECTIONS RE: CURE AMOUNT	DEBTORS' REPLY
198	Sony Pictures Consumer Products Inc. ("SPCP")	"Based upon SPCP's records, the amount of \$54,072 is owed under License Agreement #040121 ('WOF Agreement'), pertaining to the television series Wheel of Fortune." (SPCP Objection ¶ 13.) SPCP also asserts that the cure amount related to its two Agreements includes legal fees related to its Objection and must be reimbursed, which it will provide at the Sale Hearing if necessary. (<i>Id.</i> ¶ 14.)	<p>The Debtors identified no cure amounts for the two SPCP contracts listed in the Contract Notice:</p> <p>(1) License Agreement#301311 (Jeopardy DS, Wii); and</p> <p>(2) License Agreement #301212 (Wheel of Fortune DS, Wii).</p> <p>The Debtors' goal is to resolve this objection consensually prior to the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.</p>
204	Technicolor Home Entertainment Services, Inc., Technicolor Videocassette of Michigan, Inc., and Technicolor Disc Services International Limited (collectively, "Technicolor")	Technicolor asserts that the Debtors owe Technicolor \$422,976.64, and objects to the extent the Cure Amount less than all past due amounts as of the date of assumption and assignment. (Technicolor Objection ¶¶ 12-13.)	<p>The Debtors did not identify a cure amount in the Contract Notice.</p> <p>The Debtors' goal is to resolve this objection prior to the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.</p>
205	Sony Computer Entertainment America LLC ("SCEA")	SCEA objects to the cure amount of \$18,250 listed in the cure notice [Docket No. 155] because it was unclear what specific agreement the cure amount related to. (SCEA Objection.)	<p>The Debtors filed the Supplemental Contract Notice, which listed three License-Platform contracts for which the \$18,250 cure amount related to:</p> <p>(1) Global PS3 Licensed Publish Agr. (U.S./Canada) 3/5/07;</p> <p>(2) PlayStation 3 Tool Loan Agreement; and</p> <p>(3) PSP Licensed Publisher Agreement (U.S./Canada) 9/15/04.</p> <p>The Debtors' goal is to resolve this objection consensually prior to the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.</p>

DOCKET NO.	PARTY	OBJECTIONS RE: CURE AMOUNT	DEBTORS' REPLY
207	Crytek GmbH ("Crytek")	Crytek asserts that the amount listed as a proposed cure amount for the Developer Agreement is incorrect and believes at least \$1,000,000 is owed under the Development Agreement, with additional significant amounts due and owing in the near future. (Crytek Objection ¶ 21.)	The Debtors listed two contracts with Crytek in the Contract Notice with aggregate cure amount of \$1,800,000: (1) Developer Agreement (Homefront 2); and (2) Master Cyengine 3 License Agreement. The Debtors' goal is to resolve this objection consensually prior to the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.

B. Objections Based on a Lack of Adequate Assurance of Future Performance.

6. As a general matter, the Debtors have been provided limited financial information from parties contemplating submitting a Bid, which information demonstrates that the bidders will have adequate financial resources to perform if they bid. The Debtors have requested evidence from each bidder that it can provide adequate assurance of future performance and will provide to each objecting party and the Court such evidence received from any Successful Bidder that seeks assumption and assignment of any of the contracts. The Debtors believe that by providing such evidence once the Successful Bidder(s) are known, the Debtors will be able to resolve these objections consensually prior to the Sale Hearing.

7. The following parties raise objections based on a request for adequate assurance of future performance from the Successful Bidder and the Debtors' reply: TelePacific; Games Workshop; Yuke's; Microsoft; SPCP; Technicolor; SCEA; and Crytek. This objection may be rendered moot as to individual contracts that the Debtors remove from the list and do not seek to assume at this time

8. The Debtors' goal is to resolve these objections consensually between now and the Sale Hearing and will provide an appropriate evidentiary record at the Sale Hearing to determine that the adequate assurance requirements of section 365 have been satisfied.

C. Objections Based on the Licensor's Non-Consent to an Assignment of Contract.

9. Certain parties to contracts with the Debtors filed Objections contending that their respective contracts cannot be assumed and assigned without their consent. The Debtors provide a reply to each of these Objections.

10. The Debtors will file a motion to file the applicable contracts under seal due to the confidential nature of the contracts. Due to the confidential nature of these contracts, the Debtors have redacted certain portions of the argument in its publicly filed Reply.

11. The following provides a more detailed response to these Objections and the Debtors' position that any of the contracts listed above that are exclusive license agreements can be assumed and assigned without the consent of the licensor. The Debtors endeavor to consensually resolve these objections prior to the Sale Hearing by obtaining the consent of each contracting party that has lodged such an objection once the party knows who the Successful Bidder is, but the Debtors will be prepared to address objections to the assignment of specific contracts to a Winner Bidder at the Sale Hearing.

1) Exclusive intellectual property license agreements do not require the consent of the licensor for a debtor to assume and assign such agreements.

12. The Debtors incorporate by reference the legal analysis in the South Park Reply concurrently filed herewith regarding the assumption and assignment of intellectual property executory contracts, and specifically copyright licenses, pursuant to section 365 of the Bankruptcy Code. (South Park Reply ¶¶ 7-10.)

13. In addition, courts apply federal trademark law to determine the assignability of a trademark license. While not all bankruptcy court decisions are uniform, bankruptcy courts within the Third Circuit have consistently held that exclusive trademark licenses may be assigned without the licensor's consent. *See In re Rooster, Inc.*, 100 B.R. 228,

232-35 (Bankr. E.D. Pa. 1989) (finding exclusive use of a trademark was assignable because it was not a personal services contract); *Regal Ware Inc. v. Global Home Products, LLC (In re Global Home Products LLC)*, 369 B.R. 770, 772 (D. Del. 2007) (although appeal was moot, bankruptcy court had concluded that an exclusive trademark agreement “could be freely assigned without [the licensor’s] consent pursuant to Section 365(c) of the Bankruptcy Code.”)

2) **Here, the Debtors have authority to assume and assign their exclusive intellectual property license agreements.**

14. The Debtors’ goal is to consensually resolve each of the four objections discussed below between now and the Sale Hearing and will address each of the objections at the Sale Hearing to the extent the objection is not resolved. If the Debtors do not reach a consensual resolution, the Debtors respond in more detail as follows.

a) **Games Workshop Objection.**

15. On or about January 1, 2007, Games Workshop and THQ Inc. (“**THQI**”) entered into that certain Intellectual Property License (as amended, the “**Games Workshop License**”). Games Workshop objects to the Sale Motion to the extent it purports to assume and assign the License to either Space Investors or any successful bidder at the Auction because the License cannot be assumed or assigned without Games Workshop’s consent. (Games Workshop ¶¶ 15-19.)

16. However, contrary to Games Workshop’s characterization of this license as a “limited and non-exclusive right to utilize certain of Games’ Licensed Trademarks and Licensed Copyrights,” (Games Workshop Obj. ¶ 3), the Games Workshop License unequivocally granted to THQI an exclusive license in the “Products” and “Associated Products” defined in the license. The Games Workshop License provides:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. Games Workshop relies on Sections 2.5, 14.1 and 14.3 to argue that this license is “personal” and cannot be assigned. However, these provisions do not change the exclusive nature of the license. The Court in *In re Golden Books Family Entm’t, Inc.*, 269 B.R. 311, 314 (Bankr. D. Del. 2001) analyzed a contract that granted exclusivity to a licensee with similar restrictions on assignment and held, “[g]iven the many provisions in the Agreement that indicate that this license was indeed meant to be exclusive, the court declines to accept this argument.” *In re Golden Books*, 269 B.R. at 316. Furthermore, “the non-assignment clause [in a license agreement] is exactly the type of boilerplate restriction of assignment that section 365(f) states should have no bearing on this matter.” *Id.*

18. Accordingly, the Court should overrule Games Workshop’s objection that the Games Workshop License cannot be assumed and assigned without its consent because the Games Workshop License applicable copyright and trademark law does not prohibit the assignment of an exclusive license. *See In re Golden Books*, 269 B.R. at 316 (holding exclusive copyright licenses are assignable irrespective of the licensor’s consent); *In re Rooster, Inc.*, 100

B.R. at 232-35; *see also In re Global Home Products*, 369 B.R. at 772.

b) Microsoft Objection.

19. Microsoft objects to the assumption and assignment of all of the agreements between Microsoft and the Debtors based on its argument that Microsoft consent is required because its agreements incorporate intellectual property licenses that are not assignable under the terms of such agreements and applicable law. (Microsoft Objection, pp. 1-3.) Microsoft notes that it might consent to assignment if a proposed assignee meets certain requirements.

20. The Debtors continue to evaluate Microsoft's objection that the agreements between Microsoft and the Debtors cannot be assumed and assigned without Microsoft's consent, and reserve all rights.

c) SPCP Objection.

21. On about July 2, 2009, SPCP and THQI entered into two license agreements, (i) Licensing Agreement #301311 [Jeopardy DS & Wii] (as amended, the "**Jeopardy License**"), and (ii) License Agreement #301212 [Wheel of Fortune DS & Wii] (as amended, the "**WOF License**" and together with the Jeopardy License, the "**SPCP Licenses**").

22. The SPCP Licenses are each expressly an "exclusive license." (Section 7 of the SPCP Licenses.) The SPCP Licenses each provide that [REDACTED]
[REDACTED]
[REDACTED] (Section 18 of the SPCP Licenses.)

23. The SPCP Objection acknowledges that "SPCP is able to use the Proprietary Subject Matter outside the specific rights granted to THQ," (SPCP Obj.¶ 2), which is

consistent with an exclusive license for a specified term and territory. Accordingly, as the *Golden Book* court held, “[the licensor’s] position that the license is necessarily nonexclusive because it only grants exclusive rights to a set of rights that are limited in temporal and geographical scope is incorrect as a matter of law.” *In re Golden Books*, 269 B.R. at 316.

24. Indeed, while SPCP argues that under applicable trademark law the general rule is that trademark licenses are not freely assignable, the cases it cites in support do not focus on the critical distinction between an exclusive and nonexclusive license. In *N.C.P. Marketing Group, Inc. v. Blanks (In re N.C.P. Marketing Group)*, 337 B.R. 230, 236 (D. Nev. 2005), the court follow Ninth Circuit precedent but cites in support the holding of *In re Golden Books* and concludes that trademarks should be analyzed under the same rubric as copyright and patent licenses. *In re N.C.P. Marketing*, 337 B.R. at 235-36. Therefore, because SPCP granted THQI an exclusive license for the limited subject matter covered by that license, it is freely assignable and, under section 365(f) of the Bankruptcy Code, can be assigned without the consent of the licensor.

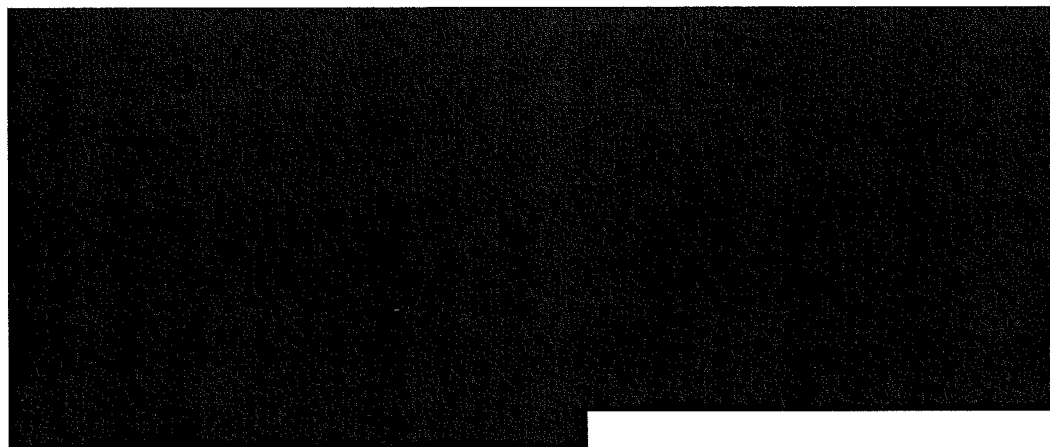
25. SPCP also objects to the sale of any product that may contain its “Proprietary Subject Matter” and requests language for the order approving a Sale regarding this objection. (SPCP Obj. ¶¶ 10-11.) The Debtors maintain that the SPCP Licenses may be assumed and assigned, so do not intend to prohibit the sale of Proprietary Subject Matter in connection with an assumption and assignment of the SPCP Licenses. Furthermore, in response to SPCP’s objection regarding a change in terms of the SPCP Licenses (SPCP Obj. ¶ 12.), if the SPCP Licenses are assumed and assigned, the SPCP Licenses would be assigned in whole and would not change the terms of the SPCP Licenses.

d) Crytek Objection.

26. Crytek and THQI are parties to that certain License Agreement (the

“Crytek License”) and Developer Agreement (each as defined in the Crytek Objection, and together, the “Crytek Agreements”).

27. Crytek objects to the assignment of the Crytek License Agreement because it purports to be a non-exclusive software license. Assignment of such a license would require the consent of the licensor. However, Crytek has consented to assignment of the Crytek License pursuant to the express terms of the Crytek License Agreement, which provides:



28. If a sale includes the “Game” related to the Crytek License, Crytek consents to the assignment of the Crytek License. This is the only context in which the Debtors are likely to have a proposed buyer for the Crytek License and, therefore, Crytek’s objection should be overruled.

29. The Debtors continue to evaluate Crytek’s objections that (i) the Crytek Agreements cannot be assumed and assigned without Crytek’s consent and (ii) language be added to an order approving the sale of the Debtors’ assets to prevent the unauthorized transfer of Crytek’s “Software”, and reserve all rights.

D. Other Objections.

30. The following summarizes other objections raised in the Objections.

a) Los Angeles County Treasurer and Tax Collector (the “County”)

31. “The Debtors may be liable for the Unsecured Priority Tax Claim, and thus, the County, out of an abundance of caution, makes this limited objection to ensure that the County will be paid.” (County Objection ¶ 5.) The County asserts no lien on the assets being sold and states no connection between the possible administrative claim it might have and the propriety of completing a sale.

32. The County Objection is unrelated to the Motion. Therefore, the County Objection should be overruled. The Debtors will address the County’s alleged claims at the appropriate time.

b) 505 Games S.r.l. (“505 Games”).

33. “. . . 505 Games objects to any proposed sale of the DTL Intellectual Property without a concurrent assumption and assignment of the THQ Contract to the Buyer of the DTL Intellectual Property. If the DTL Intellectual Property is sold to the Buyer and the THQ Contract is assumed and assigned to the Buyer, then 505 Games consents to the sale” (505 Games Objection, p. 9.)

34. At this time the Debtors believe the THQ Contract will be assigned to the Stalking Horse Bidder if it is the Successful Bidder and it will assume all obligations under that contract. Furthermore, the Debtors’ goal is to resolve this objection consensually between now and the Sale Hearing, because the Debtors do not presently anticipate any bidder seeking to acquire the DTL Intellectual Property but not assume the obligations under the THQ Contract. The Debtors will address the objection at the Sale Hearing to the extent the objection is not resolved.

c) TelePacific

35. “TelePacific objects to any assignment of its Contract unless the assignee

expressly and explicitly assumes all of the terms and obligations of the terms and obligations contained in the contract.” (TelePacific Objection ¶ 6.)

36. If the TelePacific contract is assumed and assigned as part of a Sale, the Debtors intend to provide in the Sale Order that the assignee expressly assumes all of the terms and obligations contained in the contract.

d) MS MCC Highland LLC (“MS MCC”)

37. The Debtors moved to reject the lease with MS MCC on January 15, 2013, but reserves its rights. (MS MCC Objection.)

38. The Debtors intend to reject the lease with MS MCC effective as of January 31, 2013, and will not assume the lease to assign as part of a Sale.

e) Wells Fargo Capital Finance LLC (“WFCF”)

39. WFCF “only consents to the Sale pursuant to Section 363(f) to the extent the proceeds from an approved Sale are in an amount sufficient to satisfy or collateralize all obligations owed to WFCF and Lenders and such proceeds are used to immediately satisfy all obligations owed to WFCF and Lenders.” (WFCF Objection ¶ 4.)

40. The Stalking Horse Bid meets the conditions of WFCF’s consent. Furthermore, the Debtors’ goal is to resolve this objection consensually between now and the Sale Hearing and will address the objection at the Sale Hearing to the extent the objection is not resolved.

f) Other Miscellaneous Objections.

41. Certain objections ask that the Court set a time for asserting rejection damages and purport to reserve rights as to a contract party’s claim against the Debtors in the event the contract is not assumed. These “objections” are not objections to the sale or to the assumption or assignment of individual contracts because they apply only if individual contracts

are *not* assigned as part of a sale of the Debtors' assets. Accordingly, they are relevant to the Sale Motion. The Debtors reserve all rights with respect to the disputed amount of damage claims that may be asserted if the Debtors ultimately reject any executory contract, but that issue is not relevant to the Sale Motion.

42. In addition, certain Objections reserve rights to object at the Sale Hearing and, in particular, once the purchaser is identified and objections related thereto can be addressed at the Sale Hearing once the purchaser is identified as a result of the sale process. The Debtors reserve all rights to address these objections at the Sale Hearing.

WHEREFORE, the Debtors respectfully request that the Court overrule certain of the Objections as proposed herein and grant the relief requested in the Sale Motion. The Debtors will endeavor to resolve all the Objections between now and the Sale Hearing and address matters that remain at the Sale Hearing.

Dated: January 21, 2013
Wilmington, Delaware



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EXHIBIT A

Relevant Agreements

[REDACTED]