

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 No. 611
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DECLARATION OF AMIR AGAM IN SUPPORT OF DEBTORS' MOTION
PURSUANT TO SECTIONS 105, 363 AND 365 OF THE BANKRUPTCY CODE
FOR AN ORDER AUTHORIZING THE DEBTORS TO ENTER INTO CERTAIN
ASSET PURCHASE AGREEMENTS FOR THE SALE OF CERTAIN
REMAINING INTELLECTUAL PROPERTIES

I, Amir Agam, hereby declare, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I am a Managing Director of FTI Consulting, Inc. ("FTI"). THQ Inc. ("THQI") and the other above-captioned debtors and debtors in possession (collectively, the "Debtors") retained FTI on or around November 7, 2012, to provide financial advisory and consulting services. FTI has assisted the Debtors in the financial aspects of their restructuring efforts.

2. I submit this declaration in support of the Debtors' Motion Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code for an Order Authorizing the Debtors to Enter Into Certain Asset Purchase Agreements for the Sale of Certain Remaining Intellectual Properties (the "Sale Motion").2

3. Except as otherwise stated, all statements in this Declaration are based upon my review of relevant documents, my discussions with the Debtors and their professionals, including

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.

2 All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.



other members of FTI, and my personal knowledge and experience. I am over eighteen (18) years of age and if called upon I would competently testify to each of the facts set forth below.

Qualifications of Declarant and FTI

4. I have more than 14 years of experience advising corporations and other constituents on restructuring transactions. I have considerable experience with sales of distressed companies and their assets.

5. FTI is a leading global business advisory firm with over 50 offices worldwide and more than 3,000 professionals. FTI's corporate finance/restructuring segment, which has more than 500 professionals, is one of the leading advisors to companies, directors, creditors, acquirers, and other parties-in-interest involved in financially troubled companies both in and outside of bankruptcy.

6. The Debtors were authorized to employ and retain FTI pursuant to the *Order Authorizing Retention of FTI Consulting, Inc. as Financial Advisor for the Debtors and Debtors in Possession* [D.I. 259].

Sale of a Substantial Portion of the Debtors' Operating Assets in January 2013

7. On January 22 and 23, 2013, the Debtors conducted an auction of a substantial portion of the Debtors' assets (the "**Auction**") pursuant to 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) Form and Manner of Notice of the Sale Hearing and (d) Related Relief* [D.I. 152] (the "**Bid Procedures Order**").

8. The Auction resulted in sales of a substantial portion of the Debtors' operating assets to five separate bidders (the "**Successful Bidders**") who submitted piecemeal bids for certain assets of the Debtors. The Court entered Orders approving the sales to the Successful Bidders on January 24, 2013. These sales closed during January 2013. Certain assets of the Debtors were not sold. Proceeds from these sales were used to pay in full the Debtors' prepetition secured debt facility with Wells Fargo Capital Finance, LLC ("**Wells Fargo**") and the

postpetition debtor in possession superpriority and secured financing in favor of Wells Fargo and Clearlake Capital Partners III (Master), L.P. (“**Clearlake**”).

Marketing and Sale Process of Remaining Intellectual Properties

9. Since late February 2013, the Debtors have been actively marketing the majority of their remaining intellectual properties (the “**IP**”). FTI assisted the Debtors in conducting the marketing process for the IP being sold. Specifically, the Debtors and FTI designated six lots of IP titles for bidding, with initial bids for such titles due on April 1, 2013. Final bids were due on April 15, 2013 (the “**Final Bid Deadline**”). In total, the Debtors received seventeen (17) final bids for certain of the IP.

10. The six lots of IP titles subject to bidding were initially the following:

- a. *Darksiders*;
- b. *Red Faction*;
- c. *Homeworld*;
- d. *MX*;
- e. Other software owned by THQI, including *Drawn to Life*, *Destroy all Humans!*, *Summoner* and other titles; and
- f. Other software licensed by THQI, including *Marvel Super Hero Squad*, *Supreme Commander* and other titles.

11. Following the Final Bid Deadline and receipt of seventeen (17) final bids for certain of the IP, the Debtors determined in their business judgment and in consultation with the professionals retained by the Official Committee of Unsecured Creditors (the “**Committee**”), to accept the final bid from Nordic Games Licensing AB (“**Nordic**”) of \$4.9 million for substantially all the IP being sold, except two titles, *Homeworld* (which was always marketed as a separate Lot) and *Drawn to Life* (which had been marketed as part of Lot 5, but was the subject of a separate stand-alone offer). For the *Drawn to Life* games, the Debtors accepted the final bid from 505 Games Srl (“**505 Games**”) in the amount of \$301,000. For the *Homeworld* games, the Debtors received three substantially similar final bids on the Final Bid Deadline. As a result, a

supplemental telephonic auction was held on April 19, 2013, for the *Homeworld* games, which resulted in a winning bid of \$1,350,000 from Gearbox Software, LLC (“**Gearbox**”) and backup bid from Aspyr Media, Inc. (“**Aspyr**”) of \$1,300,000. Each of Nordic, 505 Games and Gearbox is a “**Buyer**” and together, the “**Buyers.**” The *Homeworld* bid from Paradox Interactive AB was not selected as the final or backup bid. Accordingly, the total aggregate purchase price of the IP is \$6,551,000. None of the Buyers are insiders as that term is defined in section 101(31) of the Bankruptcy Code.

12. Throughout the sale process of the IP, including before selecting the final bids, FTI consulted with the Committee’s professionals. The Committee’s professionals received copies of the bids from interested buyers, held discussions with FTI, and participated in the supplemental telephonic auction for the *Homeworld* games.

Asset Purchase Agreements

13. Subject to Bankruptcy Court approval, the Debtors have agreed to enter into the following purchase agreements (together, the “**Asset Purchase Agreements**”), each of which provides that it will become effective and binding on the parties immediately after entry of the order approving that Asset Purchase Agreement (the “**Effective Date**”):

- a. the *Asset Purchase Agreement dated as of April 22, 2013, By and Between Nordic Games Licensing AB and THQ Inc.* (the “**Nordic Asset Purchase Agreement**”), attached to **Exhibit 1** of the Sale Motion as **Exhibit A**;
- b. the *Asset Purchase Agreement dated as of April 18, 2013, By and Between 505 Games Srl and THQ Inc.* (the “**505 Asset Purchase Agreement**”), attached to **Exhibit 2** of the Sale Motion as **Exhibit A**; and
- c. the *Asset Purchase Agreement dated as of April 19, 2013, By and Between Gearbox Software, LLC and THQ Inc.* (the “**Homeworld Asset Purchase Agreement**”), attached to **Exhibit 3** of the Sale Motion as **Exhibit A**.

14. The Debtors seek authority to sell the IP, pursuant to the terms of the Asset Purchase Agreements, free and clear of all liens, claims, encumbrances and other interests.

15. The Debtors also seek authority to transfer all contracts related to the Acquired Business to each Buyer pursuant to the terms of the Asset Purchase Agreements. The contracts

to be transferred include both contracts under which the Debtors have substantive rights, but which are not executory contracts under Bankruptcy Code § 365, and other contracts that are executory contracts. The Debtors will assign their rights in non-executory contracts to each of the Buyers. As a condition to assignment of the executory contracts, the Debtors seek authority to assume the executory contracts, which will then be assigned to the applicable Buyer. The term “**Assumed Contracts**” under the Asset Purchase Agreements includes both (a) non-executory contracts, which will be assigned but need not be assumed, and (b) executory contracts (the “**Executory Contracts**”), which must be assumed as a condition precedent to the assignment of such contracts.

16. The Debtors propose to pay cure amounts owing by the Debtors, including amounts due pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and assignment of the Assumed Contracts that are executory contracts (the “**Cure Costs**” or “**Cure Amounts**”). The aggregate Cure Costs total \$150,859, which includes the amounts listed in Exhibit 5 (defined below) and the Determined Cure Amount of \$54,072 owed to Sony Pictures Television, Inc. (“**SPT**”), and all relate to Executory Contracts to be assumed and assigned to Nordic.³ The Buyers are paying these Cure Costs, as applicable, under the Asset Purchase Agreements. The lists of Assumed Contracts being assigned to each Buyer, and the Cure Costs for the Assumed Contracts that are executory contracts and have any existing defaults, are included in the exhibits attached to the Sale Motion as follows:

- a. **Exhibit 4** includes all Assumed Contracts being assigned to Nordic pursuant to the Nordic Asset Purchase Agreement⁴ and **Exhibit 5** provides the Cure Costs for the Assumed Contracts that are executory contracts and have any existing defaults;
- b. **Exhibit 6** includes all Assumed Contracts being assigned to 505 Games pursuant to the 505 Asset Purchase Agreement and there are no Cure

³ The Debtors received the *Limited Objection and Reservation of Rights of Pipeworks Software to Sale Motion and Proposed Cure Amount* [D.I. 649] (the “**Pipeworks Objection**”). The Debtors’ goal is to resolve this objection consensually between now and the sale hearing. It is possible that the resolution of this objection will increase the current Cure Costs.

⁴ The contracts being assigned to Nordic are designated “**AQUIRED**” in the list provided in **Exhibit 4**. The contracts designated “**REMOVED**” are not being assumed and assigned to Nordic.

Costs for such Assumed Contracts; and

- c. **Exhibit 7** includes all Assumed Contracts being assigned to Gearbox pursuant to the Homeworld Asset Purchase Agreement and there are no Cure Costs for such Assumed Contracts.

17. THQI and SPT agreed that SPT has a Determined Cure Amount in the amount of \$54,072, and this amount shall be paid to SPT at the same time as Determined Cure Amounts set forth on Exhibit 5 are paid.

18. FTI advised the Debtors on marketing the IP and conducting the Sale of the IP and billed hourly for these services pursuant to its retention agreement with the Debtors. The Debtors have not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Asset Purchase Agreements, the other Transaction Documents (as defined in the Asset Purchase Agreements) or the transactions contemplated thereby for which Buyers are or will become liable.

19. Each of the Asset Purchase Agreements was negotiated, proposed and entered into by the Debtors and the Buyer without collusion, and in good faith, and resulted from arm's length bargaining positions. I believe that the prices to be paid by each of the Buyers are the highest and best prices available after the reasonable and thorough marketing process conducted by FTI and the Debtors. Accordingly, I believe granting the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and their creditors.

20. None of the Buyers are holding themselves out to the public as a continuation of the Debtors and the transactions contemplated under the Asset Purchase Agreements do not amount to a consolidation, merger or de factor merger of any of the Buyers and any of the Debtors.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
is true and correct.

Dated: May 9, 2013

/s/ Amir Agam

Amir Agam