

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 10-K

(Mark one)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended March 31, 2001

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 0-12699

### ACTIVISION, INC.

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**95-4803544**

(I.R.S. Employer Identification No.)

**3100 Ocean Park Blvd., Santa Monica, CA**

(Address of principal executive offices)

**90405**

(Zip Code)

**Registrant's telephone number, including area code: (310) 255-2000**

**Securities registered pursuant to Section 12(b) of the Act: None**

**Securities registered pursuant to Section 12(g) of the Act:**

**Common Stock, par value \$.000001 per share**

(Title of Class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of the Common Stock of the registrant held by non-affiliates of the registrant on June 13, 2001 was \$1,269,321,160.

The number of shares of the registrant's Common Stock outstanding as of June 13, 2001 was 32,204,371.

#### Documents Incorporated by Reference

Portions of the registrant's definitive Proxy Statement, to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Form 10-K, with respect to the 2001 Annual Meeting of Shareholders, are incorporated by reference into Part III of this Annual Report.

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**PART I**

**Item 1. BUSINESS**

(a)

*General*

Activision, Inc. (together with its subsidiaries, "Activision" or the "Company") is a leading international publisher, developer and distributor of interactive entertainment and leisure products. The Company was originally incorporated in California in 1979. In December 1992, the Company reincorporated in Delaware. In June 2000, the Company reorganized into a holding company organizational structure as described below.

The Company's products span a wide range of genres (including action, adventure, extreme sports, racing, strategy and simulation) and target markets (including game enthusiasts, mass market consumers, value buyers and children). In addition to its genre and market diversity, the Company publishes, develops and distributes products for a variety of game platforms and operating systems, including personal computers ("PCs"), the Sony PlayStation and PlayStation 2 and Nintendo N64 console systems and the Nintendo Game Boy handheld devices. The Company is also currently focusing on the development of products for Microsoft Xbox and Nintendo GameCube console systems and Nintendo Game Boy Advance hand held device. During January 2001, Sega Corp., the maker of the Sega Dreamcast ("Dreamcast") announced that it would stop making the Dreamcast in March 2001. Net revenues from the Dreamcast have historically represented only a small percentage of the Company's total net revenues. Accordingly, the Company believes that the departure of the Dreamcast console system from the market will not have a material impact upon its financial position or results of operations.

In the fourth quarter of the Company's fiscal year ended March 31, 2000, the Company adopted and began the implementation of a strategic restructuring plan. During fiscal 2001, the Company completed its restructuring initiatives. The plan and its components are described in Item 7—"Management's Discussion and Analysis of Financial Condition and Results of Operations."

(b)

*Holding Company Organizational Structure*

Effective June 9, 2000, Activision reorganized into a holding company form of organizational structure, whereby Activision Holdings, Inc., a Delaware corporation ("Activision Holdings"), became the holding company for Activision and its subsidiaries. The new holding company organizational structure will allow Activision to manage its entire organization more effectively and broadens the alternatives for future financings.

The holding company organizational structure was effected by a merger conducted pursuant to Section 251 (g) of the General Corporation Law of the State of Delaware, which provides for the formation of a holding company structure without a vote of the stockholders of the constituent corporations. In the merger, ATVI Merger Sub, Inc., a Delaware corporation, organized for the purpose of implementing the holding company organizational structure (the "Merger Sub"), merged with and into Activision with Activision as the surviving corporation (the "Surviving Corporation"). Prior to the merger, Activision Holdings was a direct, wholly-owned subsidiary of Activision and Merger Sub was a direct, wholly-owned subsidiary of Activision Holdings. Pursuant to the merger, (i) each issued and outstanding share of common stock of Activision (including treasury shares) was converted into one share of common stock of Activision Holdings, (ii) each issued and outstanding share of Merger Sub was converted into one share of the Surviving Corporation's common stock, and Merger Sub's corporate existence ceased, and (iii) all of the issued and outstanding shares of Activision Holdings owned by Activision were automatically canceled and retired. As a result of the merger, Activision became a direct, wholly-owned subsidiary of Activision Holdings.

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Immediately following the merger, Activision changed its name to "Activision Publishing, Inc." and Activision Holdings changed its name to "Activision, Inc." The holding company's common stock will continue to trade on The Nasdaq National Market under the symbol ATVI.

The conversion of shares of Activision's common stock in the merger occurred without an exchange of certificates. Accordingly, certificates formerly representing shares of outstanding common stock of Activision are deemed to represent the same number of shares of common stock of Activision Holdings. The change to the holding company structure was tax free for federal income tax purposes for stockholders.

These transactions had no impact on the Company's consolidated financial statements.

(c)

#### *Business Combinations*

Over the years, the Company has consummated a number of acquisitions of both software development companies and software distribution companies. All of the acquisitions detailed below, with the exception of the acquisitions of Expert Software, Inc. ("Expert") and Elsinore Multimedia, Inc. ("Elsinore"), were accounted for as poolings of interests. The acquisitions of Expert and Elsinore were accounted for using the purchase method of accounting. See the Consolidated Financial Statements and Notes thereto included in Item 8 of this Annual Report on Form 10-K for additional information regarding these acquisitions.

#### *Software Development Companies*

On September 30, 1999, the Company acquired JCM Productions, Inc. dba Neversoft Entertainment ("Neversoft"), a privately held console software developer in exchange for 698,835 shares of the Company's common stock. On June 29, 1999, the Company acquired Elsinore, a privately held interactive software development company, in exchange for 204,448 shares of the Company's common stock. On June 22, 1999, the Company acquired all of the outstanding capital stock of Expert, a publicly held developer and publisher of value-line interactive software for approximately \$24.7 million. On June 30, 1998, the Company acquired S.B.F. Services, Limited dba Head Games Publishing ("Head Games") in exchange for 1,000,000 shares of the Company's common stock. On August 26, 1997, the Company acquired Raven Software Corporation ("Raven") in exchange for 1,040,000 shares of the Company's common stock.

#### *Distribution Companies*

On September 29, 1998, the Company acquired CD Contact Data GmbH ("CD Contact") in exchange for 1,900,000 shares of the Company's common stock and the assumption of \$9.1 million in outstanding debt payable to CD Contact's former shareholders. On November 26, 1997, the Company acquired NBG EDV Handels-und Verlags GmbH ("NBG") in exchange for 281,206 shares of the Company's common stock. On November 26, 1997, the Company acquired Combined Distribution (Holdings) Limited ("CentreSoft") in exchange for 2,787,043 shares and 50,325 options to acquire shares of the Company's common stock.

(d)

#### *Financial Information About Industry Segments*

The Company has two reportable segments: publishing CD-based and cartridge based interactive entertainment and leisure software, and distributing interactive entertainment and leisure products. Publishing relates to the development (both internally and externally), marketing and sale of products owned or controlled by the Company, either directly, by license or through its affiliate label program with third party publishers. Distribution primarily refers to logistical and sales services provided by the Company's European distribution subsidiaries of other publishers' software and related products to the marketplace. See the Consolidated Financial Statements and Notes thereto included in Item 8 of this Annual Report on Form 10-K for certain financial information required by Item 1.

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(e)

#### *Narrative Description of Business*

##### **Factors Affecting Future Performance**

In connection with the Private Securities Litigation Reform Act of 1995 (the "Litigation Reform Act"), the Company is hereby disclosing certain cautionary information to be used in connection with written materials (including this Annual Report on Form 10-K) and oral statements made by or on behalf of its employees and representatives that may contain "forward-looking statements" within the meaning of the Litigation Reform Act. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as "may," "expect," "anticipate," "estimate" or "continue" or the negative thereof or other variations thereon or comparable terminology. The listener or reader is cautioned that all forward-looking statements are necessarily speculative and there are numerous risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. The discussion below highlights some of the more important risks identified by management, but should not be assumed to be the only factors that could affect future

performance. The reader or listener is cautioned that the Company does not have a policy of updating or revising forward-looking statements and thus he or she should not assume that silence by management over time means that actual events are bearing out as estimated in such forward-looking statements.

*Fluctuations In Quarterly Results; Future Operating Results Uncertain; Seasonality.* The Company's quarterly operating results have varied significantly in the past and will likely vary significantly in the future depending on numerous factors, several of which are not under the Company's control. Such factors include, but are not limited to, demand for products published or distributed by the Company, the size and rate of growth of the interactive entertainment and leisure markets, development and promotional expenses relating to the introduction of new products, changes in operating systems and platforms, product returns, the timing of orders from major customers, delays in shipment, the level of price competition, the timing of product introductions by the Company and its competitors, product life cycles, product defects and other quality problems, the level of the Company's international revenues, and personnel changes. Products are generally shipped as orders are received, and consequently, the Company operates with little or no backlog. Net revenues in any quarter are, therefore, substantially dependent on orders booked and shipped in that quarter.

The Company's expenses are based in part on the Company's product development, acquisition and marketing budgets. Many of the costs incurred by the Company to produce and sell its products are expensed as such costs are incurred, which often occurs before a product is released. In addition, a significant portion of the Company's expenses are fixed. As the Company increases its production, acquisition and sales activities, current expenses will increase and, if sales from previously released products are below expectations, net income is likely to be disproportionately affected.

Due to all of the foregoing, revenues and operating results for any future quarter are not predictable with any significant degree of accuracy. Accordingly, the Company believes that period-to-period comparisons of its operating results are not necessarily meaningful and should not be relied upon as indications of future performance.

The Company's business has experienced and is expected to continue to experience significant seasonality, in part due to consumer buying patterns. Net revenues typically are significantly higher during the fourth calendar quarter, primarily due to the increased demand for consumer software during the year-end holiday buying season. Net revenues and net income in other quarters are generally lower and vary significantly as a result of new product introductions and other factors. On average in the past three fiscal years, the Company has earned approximately 14% of its net revenues in the quarter ending June 30<sup>th</sup>, 20% in the quarter ending September 30<sup>th</sup>, 45% in the quarter ending

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December 31<sup>st</sup> and 21% in the quarter ending March 31<sup>st</sup>. The Company expects the seasonality pattern to continue.

*Dependence On New Product Development; Product Delays.* The Company's future success depends in part on the timely introduction of successful new products to replace declining revenues from older products. If, for any reason, revenues from new products were to fail to replace declining revenues from older products, the Company's business, operating results and financial condition would be materially and adversely affected. In addition, the Company believes that the competitive factors in the marketplace for premium-priced interactive products create the need for higher quality, distinctive products that incorporate increasingly complex technology and sophisticated graphics, sound and other effects and the need to support product releases with increased marketing, resulting in longer development periods and higher development, acquisition and marketing costs. The lack of market acceptance or significant delay in the introduction of, or the presence of a defect in, one or more premium-priced products could have a material adverse effect on the Company's business, operating results and financial condition, particularly in view of the seasonality of the Company's business. Further, because a large portion of a product's revenue generally is associated with initial shipments, the delay of a product introduction expected near the end of a fiscal quarter may have a material adverse effect on operating results for that quarter.

The Company has, in the past, experienced significant delays in the introduction of certain new products. The timing and success of interactive entertainment software products remain unpredictable due to the complexity of product development, including the uncertainty associated with technological developments. Although the Company has implemented substantial development controls, there likely will be delays in developing and introducing new products in the future. There can be no assurance that new products will be introduced on schedule, or at all, or that they will achieve market acceptance or generate significant revenues.

*Reliance on Third Party Developers and Independent Contractors.* The percentage of products published by the Company that are developed by independent third party developers has increased significantly over the last several fiscal years. The Company also utilizes independent contractors for many aspects of products that are developed internally by the Company and its subsidiaries. The Company has less control over the scheduling and the quality of work by independent contractors and third party developers than that of its own employees. A delay in the work performed by independent contractors and third party developers or poor quality of such work may result in product delays. Although the Company intends to continue releasing products that are developed primarily by its own employees and employees of its subsidiaries, the Company's ability to grow its business and its future operating results will depend, in significant part, on the Company's continued ability to initiate and maintain relationships with skilled independent contractors and third party developers. There can be no assurance that the Company will be able to initiate and maintain such relationships successfully in the future.

*Uncertainty Of Market Acceptance; Short Product Life Cycles.* The market for interactive entertainment software platforms and software products has been characterized by shifts in consumer preferences and short life cycles. Consumer preferences for entertainment and leisure software products are difficult to predict and few such products achieve sustained market acceptance. There can be no assurance that new products introduced by the Company will achieve any significant degree of market acceptance, that such acceptance will be sustained for any significant period, or that product life cycles will be sufficient to permit the Company to recoup product acquisition, development, marketing and other associated costs. In addition, if market acceptance is not achieved, the Company could be forced to accept substantial product returns to maintain its relationships with retailers and its access to distribution channels. Failure of new products to achieve or sustain market acceptance or product

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returns in excess of the Company's expectations would have a material adverse effect on the Company's business, operating results and financial

condition.

*Product Concentration; Dependence On Hit Products.* The Company derives a significant portion of its revenues from a relatively small number of products released each year. Many of these products have substantial development, production and acquisition costs and marketing budgets. In fiscal 2001, the Company had two products which accounted for 11% and 18%, respectively, of consolidated net revenues. In fiscal 2000 the Company had two products which each accounted for approximately 10% of consolidated net revenues. In fiscal 1999, no single product accounted for greater than 10% of consolidated net revenues. The Company anticipates that a relatively limited number of products will continue, in the aggregate, to produce a disproportionate amount of revenues. Due to this dependence on a limited number of products, the failure of one or more of these products to achieve anticipated results may have a material adverse effect on the Company's business, operating results and financial condition.

The Company's strategy also includes as a key component publishing titles that have franchise value, such that sequels, conversions, enhancements and add-on products can be released over time, thereby extending the life of the property in the market. While the focus on franchise properties, if successful, results in extending product life cycles, it also results in the Company depending on a limited number of titles for its revenues. There can be no assurance that the Company's existing franchise titles can continue to be exploited as successfully as in the past. In addition, new products that the Company believes will have potential value as franchise properties may not achieve market acceptance and therefore may not be a basis for future releases.

*Industry Competition; Competition For Shelf Space.* The interactive entertainment and leisure industry is intensely competitive. Competition is principally based on product quality and features, the compatibility of products with popular platforms, company or product line brand name recognition, access to distribution channels, marketing effectiveness, reliability and ease of use, price and technical support. Significant financial resources also have become a competitive factor in this industry, principally due to the substantial cost of product development and marketing that is required to support best-selling titles. In addition, competitors with broad product lines and popular titles typically have greater leverage with distributors and other customers who may be willing to promote titles with less consumer appeal in return for access to such competitor's most popular titles.

The Company's competitors range from small companies with limited resources to large companies with substantially greater financial, technical and marketing resources than those of the Company. The Company's competitors currently include Electronic Arts, Microsoft, Sony, Sega, Nintendo, Vivendi/Universal, Infogrames, THQ, Midway and Eidos, among many others.

The interactive entertainment software industry is undergoing significant consolidation which allows the Company's largest competitors to exercise control over a growing number of product lines and increasing concentration of development, financial and technical resources. As the Company's competitors grow stronger and competition increases, significant price pressure, increased production costs and reduced profit margins may result. Prolonged price competition or reduced demand would have a material adverse effect on the Company's business, operating results and financial condition. There can be no assurance that the Company will be able to compete successfully against current or future competitors or that competitive pressures faced by the Company will not have a material adverse effect on its business, operating results and financial condition.

Retailers typically have a limited amount of shelf space, and there is intense competition among interactive entertainment and leisure software producers for adequate levels of shelf space and promotional support from retailers. As the number of interactive entertainment and leisure products increase, the competition for shelf space has intensified, resulting in greater leverage for retailers and distributors in negotiating terms of sale, including price discounts and product return policies. The

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Company's products constitute a relatively small percentage of a retailer's sales volume, and there can be no assurance that retailers will continue to purchase the Company's products or promote the Company's products with adequate levels of shelf space and promotional support.

*Dependence On Retailers and Distributors; Risk Of Customer Business Failure; Product Returns.* The Company depends on access to retailers and distributors in order to market and sell its products. The loss of, or significant reduction in sales attributable to, any of the Company's principal distributors or retailers could materially adversely affect the Company's business, operating results and financial condition. An increasing focus by companies on inventory management and the maintenance of minimum inventory on-hand levels could affect the buying patterns of our principal distributors and retailers, thereby, resulting in less predictable purchasing patterns. Significant changes in the buying patterns of the Company's major customers could impact the Company's ability to accurately forecast sales and, as a consequence, the necessary production to fill such sales, which could have a material adverse effect on the financial condition and results of operations of the Company.

Retailers in the computer and software industry have from time to time experienced significant fluctuations in their businesses and there have been a number of business failures among these entities. The insolvency or business failure of any significant retailer or other wholesale purchaser of the Company's products could have a material adverse effect on the Company's business, operating results and financial condition. Sales are typically made on credit, with terms that vary depending upon the customer and the nature of the product. The Company does not hold collateral to secure payment. Although the Company has obtained insolvency risk insurance to protect against bankruptcy, insolvency, or liquidation that may occur to its customers, such insurance contains a significant deductible as well as a co-payment obligation, and the policy does not cover all instances of non-payment. In addition, while the Company maintains a reserve for uncollectible receivables that it believes to be adequate, the actual reserve which is maintained may not be sufficient in every circumstance. As a result of the foregoing, a payment default by a significant customer could have a material adverse effect on the Company's business, operating results and financial condition.

The Company also is exposed to the risk of product returns from retailers. Although the Company provides reserves for returns that it believes are adequate, and although the Company's agreements with certain of its customers place certain limits on product returns, the Company could be forced to accept substantial product returns to maintain its relationships with retailers and its access to distribution channels. Product returns that exceed the Company's reserves could have a material adverse effect on the Company's business, operating results and financial condition.

*Changes In Technology and Industry Standards.* The consumer software industry is undergoing rapid changes, including evolving industry standards, frequent new platform introductions and changes in consumer requirements and preferences. The introduction of new technologies, including new console systems such as the Sony PlayStation 2, Microsoft Xbox and Nintendo's GameCube and Game Boy Advance, technologies that support multi-player on-line games, and new media formats and methods of consumer delivery such as on-line delivery and wireless game play, could render the Company's previously released products obsolete or unmarketable. The development cycle for products utilizing new

console platforms, computer operating systems and microprocessors or formats may be significantly longer and more expensive than the Company's current development cycle for products on existing platforms, operating systems, microprocessors and formats and may require the Company to invest resources in products that may not become profitable. There can be no assurance that the mix of the Company's future product offerings will keep pace with technological changes or satisfy evolving consumer preferences, or that the Company will be successful in developing and marketing products for any future operating system or format. Failure to develop and introduce new products and product enhancements in a timely fashion could result in significant product returns and inventory obsolescence and could have a material adverse effect on the Company's business, operating results and financial condition.

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*Risks Associated with Leverage.* In June 1999, the Company obtained a term loan and revolving credit facility composed of a \$25.0 million term loan and up to \$100.0 million of revolving credit loans and letters of credit. The proceeds of the term loan were used to complete the acquisition of Expert Software, Inc. and to pay expenses associated with the acquisition and the financing transaction. The revolving credit facility is used for working capital and general corporate purposes. As of March 31, 2001, there was \$8.5 million outstanding under the term loan. As of March 31, 2001 there were no borrowings outstanding and \$18.2 million letters of credit outstanding under the revolving credit facility. As of March 31, 2001, the Company also had outstanding \$60.0 million of convertible subordinated notes due 2005.

Subsequent to March 31, 2001, the Company called for the redemption of its \$60.0 million convertible subordinated notes due 2005. In connection with that call, as of June 20, 2001, holders have converted into common stock approximately \$60.0 million aggregate principal amount of their convertible subordinated notes. Additionally, in May 2001, the Company repaid in full the remaining \$8.5 million balance of the term loan portion of the U.S. Facility. In conjunction with the accelerated repayment of the term loan, the Company amended the U.S. Facility effective May 7, 2001. The amended and restated U.S. Facility eliminates the term loan, reduces the revolver to \$78.0 million, reduces the interest rate to Prime plus 1.25% or LIBOR plus 2.25%, eliminates certain covenants, increases the advance rates and reduces the fee paid for maintenance of the facility.

The revolving credit facility is collateralized by substantially all of the assets of the Company and of its US subsidiaries. The facility contains various financial and other covenants that the Company and its subsidiaries must comply with. If the Company were to default under the terms of the credit facility, either as a result of a failure to pay principal or interest when due or as a result of a breach of a financial or other covenant, the lenders could stop providing funds and letters of credit to the Company and could declare an event of default and foreclose on the collateral. A default by the Company under the revolving credit facility would materially adversely affect the Company's business and could result in the Company declaring bankruptcy.

*Limited Protection Of Intellectual Property And Proprietary Rights; Risk Of Litigation.* The Company holds copyrights on the products, manuals, advertising and other materials owned by it and maintains trademark rights in the *Activision* name, the *Activision* logo, and the names of the products owned by the Company. The Company regards its software as proprietary and relies primarily on a combination of trademark, copyright and trade secret laws, employee and third-party nondisclosure agreements, and other methods to protect its proprietary rights. However, there can be no assurance that third parties will not assert infringement claims against the Company in the future with respect to current or future products. As is common in the industry, from time to time the Company receives notices from third parties claiming infringement of intellectual property rights of such parties. The Company investigates these claims and responds as it deems appropriate. Any claims or litigation, with or without merit, could be costly and could result in a diversion of management's attention, which could have a material adverse effect on the Company's business, operating results and financial condition. Adverse determinations in such claims or litigation could also have a material adverse effect on the Company's business, operating results and financial condition.

Unauthorized copying and other forms of piracy are common within the software industry, and if a significant amount of unauthorized copying of the Company's products were to occur, the Company's business, operating results and financial condition would be adversely effected. Policing unauthorized use of the Company's products is difficult, and while the Company is unable to determine the extent to which piracy of its software products exists, software piracy can be expected to be a persistent problem. In selling its products, the Company relies primarily on "shrink wrap" licenses that are not signed by licensees and, therefore, may be unenforceable under the laws of certain jurisdictions. Further, the Company enters into transactions in countries where intellectual property laws are not well developed

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and are poorly enforced. Legal protections of the Company's rights may be ineffective in such countries.

*Dependence On Key Personnel.* The Company's success depends to a significant extent on the performance and continued service of its senior management and certain key employees. Competition for highly skilled employees with technical, management, marketing, sales, product development and other specialized training is intense, and there can be no assurance that the Company will be successful in attracting and retaining such personnel. Specifically, the Company may experience increased costs in order to attract and retain skilled employees. Although the Company enters into term employment agreements with most of its skilled employees and management personnel, there can be no assurance that such employees will not leave the Company or compete against the Company. The Company's failure to attract or retain qualified employees could have a material adverse effect on the Company's business, operating results and financial condition.

*Risks Associated With International Operations; Currency Fluctuations.* International sales and licensing accounted for 43%, 51% and 66% of the Company's total revenues in the fiscal years 2001, 2000 and 1999, respectively. The Company intends to continue to emphasize its direct and indirect sales, marketing and localization activities worldwide. This emphasis will require significant management time and attention and financial resources in order to develop adequate international sales and support channels. The Company may not be able to maintain or increase international market demand for its products. International sales are subject to inherent risks, including the impact of possible recessionary environments in economies outside the United States, currency fluctuations, the costs of transferring and localizing products for foreign markets, longer receivable collection periods and greater difficulty in accounts receivable collection, unexpected changes in regulatory requirements, difficulties and costs of staffing and managing foreign operations, and political and economic instability. The Company may not be able to sustain or increase international revenues and the foregoing factors may have a material adverse effect on the Company's future international revenues and, consequently, on the Company's business, operating results and financial condition. The Company currently does not engage in currency hedging activities. Although exposure to currency fluctuations to date has been insignificant, fluctuations in currency exchange rates may in the future have a material adverse impact on revenues from international sales and licensing and thus the Company's business, operating results and

financial condition.

*Risk Of Defects.* Interactive software products such as those offered by the Company frequently contain errors or defects. Despite extensive product testing, in the past the Company has released products with defects and has discovered errors in certain of its product offerings after their introduction. In particular, the PC hardware environment is characterized by a wide variety of non-standard peripherals (such as sound cards and graphics cards) and hardware configurations that make pre-release testing for programming or compatibility errors very difficult and time-consuming. Despite testing by the Company, new products or releases may contain errors after commencement of commercial shipments, resulting in a loss of or delay in market acceptance, which could have a material adverse effect on the Company's business, operating results and financial condition.

*Risks Associated With Acquisitions.* As the Company executes acquisitions, it must integrate the operations of its acquired subsidiaries with its previously existing operations. This process, as well as the process of managing new operations, requires substantial management time and effort and diverts the attention of management from other matters. In addition, there is a risk of loss of key employees, customers and vendors of the recently acquired operations as well as existing operations as this process is implemented. The Company may not be successful in integrating these operations.

Consistent with the Company's strategy of enhancing its distribution and product development capabilities, the Company intends to continue to pursue acquisitions of companies, intellectual property rights and other assets that can be purchased or licensed on acceptable terms and which the Company

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believes can be operated or exploited profitably. Some of these transactions could be material in size and scope. While the Company will continually be searching for appropriate acquisition opportunities, the Company may not be successful in identifying suitable acquisitions. If any potential acquisition opportunities are identified, the Company may not be able to consummate such acquisitions and if any such acquisition does occur, it may not enhance the Company's business or be accretive to the Company's earnings. As the interactive entertainment and leisure industry continues to consolidate, the Company faces significant competition in seeking acquisitions and may in the future face increased competition for acquisition opportunities. This may inhibit the Company's ability to complete suitable transactions. Future acquisitions could also divert substantial management time, could result in short term reductions in earnings or special transaction or other charges and may be difficult to integrate with existing operations or assets.

The Company may, in the future, issue additional shares of common stock in connection with one or more acquisitions, which may dilute its existing shareholders. The Company's shareholders will not have an opportunity, with respect to most of the Company's future acquisitions, to review the financial statements of the entity being acquired or to evaluate the benefits of the intellectual property rights being purchased or licensed, or to vote on the acquisitions.

*Risk of Distribution Companies' Vendor Defections; Vendor Concentration.* The Company's CD Contact, NBG and CentreSoft subsidiaries perform interactive entertainment distribution services in the Benelux territories, Germany and in the United Kingdom, respectively, and, via export, in other European territories for a variety of entertainment software publishers, many of which are competitors of the Company. These services are generally performed under limited term contracts, some of which provide for cancellation in the event of a change of control. While the Company expects to use reasonable efforts to retain these vendors, the Company may not be successful in this regard. The cancellation or non-renewal of one or more of these contracts could have a material adverse effect on the Company's business, operating results and financial condition. Three of CD Contact's third party vendors each accounted for approximately 11% of CD Contact's net revenues in fiscal year 2001. The net revenues from each of these vendors represented less than 1% of consolidated net revenues of the Company for this period. Two of CentreSoft's third party vendors accounted for 16%, and 11%, respectively, of CentreSoft's net revenues in fiscal year 2001. The net revenues from these vendors represented 3% and 2%, respectively, of consolidated net revenues of the Company for this period. One of NBG's third party vendors accounted for approximately 15% of NBG's net revenues in fiscal year 2001. The net revenues from this vendor represented 1% of consolidated net revenues of the Company for this period. All other third party vendors contributed less than 10% individually to the respective subsidiary's net revenues.

*Risks Associated with Fluctuations in Stock Value.* Due to analysts' expectations of continued growth and other factors, any shortfall in earnings could have an immediate and significant adverse effect on the trading price of the Company's common stock in any given period. As a result of the factors discussed in this report and other factors that may arise in the future, the market price of the Company's common stock historically has been, and may continue to be subject to significant fluctuations over a short period of time. These fluctuations may be due to factors specific to the Company, to changes in analysts' earnings estimates, or to factors affecting the computer, software, entertainment, media or electronics industries or the securities markets in general.

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## Strategy

The Company's objective is to be a worldwide leader in the development, publishing and distribution of quality interactive entertainment and leisure products that deliver, at each point of the value spectrum, a highly satisfying experience. The Company's strategy includes the following elements:

*Create and Maintain a Balanced and Diversified Portfolio of Operations.* The Company has assembled a large diversified portfolio of development, publishing and distribution operations and relationships which are complementary and, at the same time, reduce the Company's risk of concentration on any one developer, brand, platform, customer or market. The Company has focused historically on the development and publishing of premium products that provide the most sophisticated game play and entertainment experience at the top price point. While the Company will continue to take advantage of its expertise in this area, it has continued to diversify its business operations and product and audience mix. In addition to establishing, primarily through acquisitions, the European distribution business, the Company believes that as a result of its acquisition activities, it has positioned itself as a leading publisher of "value" products for the PC, which are characterized by less sophisticated game play and lower price points. Further, the Company publishes and distributes titles that operate on a variety of platforms (PC, Sony PlayStation and PlayStation 2, Sega Dreamcast and Nintendo N64 and Game Boy). The Company is also currently focusing on the development of products for Microsoft's Xbox and Nintendo's GameCube and Game Boy Advance. This diversification helps to reduce the risk of

downturn or underperformance in any of the Company's individual operations.

*Create and Maintain Strong Brands.* The Company focuses its development and publishing activities principally on titles that are, or have the potential to become, franchise properties with sustainable consumer appeal and brand recognition. These titles can thereby serve as the basis for sequels, prequels, mission packs, other add-ons and related new titles that can be released over an extended period of time. The Company believes that the publishing and distribution of products based in large part on franchise properties enhances revenue predictability and the probability of high unit volume sales and operating profits. In addition, the Company has entered into a series of strategic partnerships with the owners of intellectual property pursuant to which the Company has acquired the rights to publish titles based on franchises such as *Star Trek*, various Disney films such as *Toy Story 2*, and Marvel Comic's properties such as *Spiderman*, *X-Men* and *Blade*. The Company also has capitalized on the success of its *Tony Hawk Pro Skater* products to sign long term agreements with superstars of extreme sports such as Mat Hoffman in BMX pro biking, Kelly Slater in pro surfing, Shaun Palmer in snow boarding and Shaun Murray in wake boarding.

*Focus on On-Time Delivery.* The success of the Company's publishing business is dependent, in significant part, on its ability to develop games that will generate high unit volume sales that can be completed in accordance with planned budgets and schedules. In order to increase its ability to achieve this objective, the Company's publishing units have implemented a formal control process for the development of the Company's products. This process includes three key elements: (i) in-depth reviews are conducted for each project at five intervals during the development process by a team that includes several of the Company's highest ranking operating managers; (ii) each project is led by a small team which is given incentives to deliver a high-quality product, on-schedule and within budget; and (iii) day-to-day progress is monitored by a dedicated process manager in order to insure that issues, if any, are promptly identified and addressed in a timely manner.

*Leverage Infrastructure and Organization.* The Company is continually striving to reduce its risk and increase its operating leverage and efficiency. For example, the Company has significantly increased its product making capabilities by allocating a larger portion of its product development investments to experienced independent development companies. These companies generally are small firms focused on a particular product type of game and are run and owned by individuals who are willing to take

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development risk by accepting payments based on the completion of fixed performance milestones in exchange for a royalty on the revenue stream of the game after the Company recoups its development costs. The Company also has broadly instituted objective-based reward programs that provide incentives to management and staff to produce results that meet the Company's financial objectives.

*Grow Through Continued Strategic Acquisitions.* The interactive entertainment and leisure industry is consolidating, and the Company believes that success in this industry will be driven in part by the ability to take advantage of scale. Specifically, smaller companies are more capital constrained, enjoy less predictability of revenues and cash flow, lack product diversity and must spread fixed costs over a smaller revenue base. Several industry leaders are emerging that combine the entrepreneurial and creative spirit of the industry with professional management, the ability to access the capital markets and the ability to maintain favorable relationships with strategic developers, property owners and retailers. Through nine completed acquisitions since 1997, the Company believes that it has successfully diversified its operations, its channels of distribution, its development talent pool and its library of titles, and has emerged as one of the industry's leaders.

## Products

The Company historically has been best known for its action, adventure, strategy and simulation products. With the successful introduction of its *Tony Hawk Pro Skater* and *Tony Hawk Pro Skater 2* products, the Company also has become one of the industry leaders in the extreme sport category. The Company also distributes products in other categories such as leisure and role playing. The Company may in the future expand its product offerings into new categories.

The Company's current and upcoming releases are based on intellectual property and other character or story rights licensed from third parties, as well as a combination of characters, worlds and concepts derived from the Company's extensive library of titles, and original characters and concepts owned and created by the Company. In publishing products based on licensed intellectual property rights, the Company generally seeks to capitalize on the name recognition, marketing efforts and goodwill associated with the underlying property.

In the past years, the Company has entered into a series of long term or multi-product agreements with the owners of intellectual property that is well known throughout the world. In addition to the strategic relationships established by the Company with Disney Interactive for several animated film properties, with Viacom Consumer Products for *Star Trek* and with Lucas Arts Entertainment for *Star Wars* and *Indiana Jones*, the Company also has entered into long term license agreements with Cabela's for its *Big Game Hunter* series of products, Marvel Comics for such properties as *Spiderman*, *X-Men* and *Blade*, BBC Television for *The Weakest Link* and such superstars of extreme sports as Tony Hawk, Mat Hoffman, Kelly Slater, Shaun Palmer and Shaun Murray. The Company may not be able to seek out and sustain new long term relationships of similar caliber in the future.

In addition to its own internally developed products, the Company publishes and distributes software products for other independent developers and publishers such as id Software, Eidos and Fox. As the Company seeks to associate the "Activision" mark only with the highest quality interactive entertainment products, the Company attempts to be selective in acquiring publishing and distribution rights from third party developers. Such products typically are marketed under the Company's name as well as the name of the original developer. The Company believes that these efforts enable the Company to leverage its investment in worldwide sales and marketing and add a new source of products while balancing the risks inherent in internal product development and production. This activity also allows the Company to enter new product genres more quickly and provide consumers with a wider variety of products.

The Company has established itself as a leader in the "value priced" software publishing business with such products as Cabela's *Big Game Hunter* series and *Ski Resort Tycoon*. Products published by

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the Company in this category are generally developed by third parties, often under contract with the Company, and are marketed under the Activision Value and Head Games names.



## **Product Development and Support**

The Company uses both internal and external resources to develop products. The Company also acquires rights to products through publishing and distribution arrangements with other interactive entertainment and leisure companies.

### *Internal Development*

The Company's internal development and production groups are located at the Company's operational bases in California, Minnesota, Wisconsin, the United Kingdom and Japan.

Activision internally develops and produces titles using a model in which a core group of creative, production and technical professionals on staff at the Company, in cooperation with the Company's marketing and finance departments, have overall responsibility for the entire development and production process and for the supervision and coordination of internal and external resources. This team assembles the necessary creative elements to complete a title, using, where appropriate, outside programmers, artists, animators, musicians and songwriters, sound effects and special effects experts, and sound and video studios. The Company believes that this model allows the Company to supplement internal expertise with top quality external resources on an as needed basis.

The Company has adopted and implemented a rigorous procedure for the selection, development, production and quality assurance of its internally produced entertainment software titles. The process, entitled the Greenlight Process, involves one or more pre-development, development and production phases, each of which includes a number of specific performance milestones. This procedure is designed to enable the Company to manage and control production and development budgets and timetables, to identify and address production and technical issues at the earliest opportunity, and to coordinate marketing and quality control strategies throughout the production and development phases, all in an environment that fosters creativity. Checks and balances are intended to be provided through the structured interaction of the project team with the Company's creative, technical, marketing and quality assurance/customer support personnel, as well as the legal, accounting and finance departments.

### *External Development*

The Company licenses or acquires software products from independent developers for publishing or distribution by the Company. Acquired titles generally are marketed under the Company's name as well as the name of the original developer. The agreements with developers provide the Company with exclusive publishing and/or distribution rights for a specific period of time for specified platforms and territories. These agreements often grant to the Company the right to publish and/or distribute sequels, conversions, enhancements and add-ons to the product originally being developed and produced by the developer. In consideration for its services, the developer receives a royalty based on net sales of the product that it has developed. Typically, the developer also receives a nonrefundable advance which is recoupable by the Company from the royalties otherwise required to be paid to the developer. The royalty generally is paid in stages, with the payment of each stage tied to the completion of a detailed performance milestone.

The Company acquires titles from developers during various phases of the development and production processes for such titles. To the extent the Company acquires rights early in the development process, the Company generally will cause the independent developer to comply with the requirements of the pre-development, development and production processes applicable to titles internally produced by Activision. The Company will assign a game producer to each title who will serve as the principal liaison to the independent developer and help insure that performance milestones

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are timely met. The Company generally has the right to cease making payments to an independent developer if the developer fails to complete its performance milestones in a timely fashion.

The Company may make, from time to time, an investment and hold a minority equity interest in the third party developer in connection with entertainment software products to be developed by each of these developers for the Company, which the Company believes helps to create a closer relationship between the Company and the developer. The Company has a minority interest in Pandemic Studios, Raster Productions and Gray Matter Studios. There can be no assurance that the Company will realize long term benefits from such type of investments or that it will continue to carry such investments at its current value.

### *Product Support*

The Company provides various forms of product support to both its internally and externally developed titles. The Company's quality assurance personnel are involved throughout the development and production processes for each title published by the Company. All such products are subjected to extensive testing before release in order to ensure compatibility with the widest possible array of hardware configurations and to minimize the number of bugs and other defects found in the products. To support its products after release, the Company provides on-line support to its customers on a 24-hour basis as well as operator help lines during regular business hours. The customer support group tracks customer inquiries and this data is used to help improve the development and production processes.

## **Publishing and Distribution Activities**

### *Marketing*

The Company's marketing efforts include on-line activities (such as the creation of World Wide Web pages to promote specific Company titles), public relations, print and broadcast advertising, coordinated in-store and industry promotions including merchandising and point of purchase displays, participation in cooperative advertising programs, direct response vehicles, and product sampling through demonstration software distributed through the Internet or on compact discs. In addition, the Company's products contain software that enables customers to "electronically register" their purchases with the Company on-line.

The Company believes that certain of its franchise properties have loyal and devoted audiences who purchase the Company's sequels as a result of dedication to the property and satisfaction from previous product purchases. Marketing of these sequels is therefore directed both toward the established market as well as broader audiences. In marketing titles based on licensed properties, the Company believes that it derives

marketing synergies and related benefits from the marketing and promotional activities of the property owners. In marketing titles owned by third party developers, the Company believes that it derives marketing synergies and related benefits from the previously established reputation of and goodwill associated with the developer and/or properties owned by the developer.

#### *Sales and Distribution*

*Domestic Sales and Distribution.* The Company's products are available for sale or rental in thousands of retail outlets domestically. The Company's domestic customers include Best Buy, CompUSA, Computer City, Electronic Boutique, Babbages, Wal-Mart, K-Mart, Target and Toys "R" Us. During fiscal 2001, one customer accounted for approximately 10% of consolidated net revenues. During fiscal 2000 and fiscal 1999, no single domestic customer accounted for more than 10% of consolidated net revenues.

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In the United States, the Company's products are sold primarily on a direct basis to major computer and software retailing organizations, mass market retailers, consumer electronic stores and discount warehouses and mail order companies. The Company believes that a direct relationship with retail accounts results in more effective inventory management, merchandising and communications than would be possible through indirect relationships. The Company has implemented electronic data interchange ("EDI") linkage with many of its retailers to facilitate the placing and shipping of orders. The Company seeks to continue to increase the number of retail outlets reached directly through its internal sales force. The Company utilizes wholesale distributors such as Ingram Entertainment to service independent channels.

*International Sales and Distribution.* The Company conducts its international publishing and distribution activities through offices in the United Kingdom, Germany, France, Australia, Canada, the Netherlands, Belgium and Japan. The Company seeks to maximize its worldwide revenues and profits by releasing high quality foreign language localizations concurrently with the English language releases, whenever practicable, and by continuing to expand the number of direct selling relationships it maintains with key retailers in major territories. As part of the restructuring plan adopted in March 2000, described in Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations," the Company realigned its direct distribution system and restructured its worldwide distributor relationships, significantly reducing the number of distributors.

In November 1997, the Company commenced its European distribution operations through the acquisitions of NBG in Germany and CentreSoft in the United Kingdom. CentreSoft is Sony's exclusive distributor of PlayStation products to the independent channel in the United Kingdom and employs approximately 168 people, including one of the largest entertainment software sales and marketing organizations in that country. In September 1998, the Company acquired CD Contact, a company specializing in the localization and marketing of entertainment software products in the Benelux territories. The assets and personnel of CD Contact have been integrated with the Company's other distribution operations to form the core of Activision's international distribution operations.

*Affiliate Labels.* In addition to its own products, the Company distributes interactive entertainment products that are developed and marketed by other third party publishers through its "affiliate label" programs. The distribution of other publishers' products allows the Company to maximize the efficiencies of its sales force and provides the Company with the ability to better ensure adequate shelf presence at retail stores for all of the products that it distributes. It also mitigates the risk associated with a particular title or titles published by Activision failing to achieve expectations. Services provided by the Company under its affiliate label program include order solicitation, in-store marketing, logistics and order fulfillment, sales channel management, as well as other accounting and general administrative functions.

During the fiscal year 2001, the Company's affiliate label partners included Lucas Arts, Psygnosis, Fox Interactive, Interplay, Codemasters, 989 Studios and Encore Entertainment. Each affiliate label relationship is unique and may pertain only to distribution in certain geographic territories such as the United States or Europe and may be further limited only to the specifically named titles or titles operating on specific platforms.

#### **Internet**

The Company believes that there are opportunities for further exploitation of its titles through the Internet, on-line services, and dedicated Internet on-line gaming services. The Company is actively exploring the establishment of on-line game playing opportunities and Internet services as a method for realizing additional revenues from its products. There can be no assurance that the Company will be successful in exploiting these opportunities. The Company has been operating its on-line store under a

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third party fulfillment arrangement with Digital River, where customers can order a wide array of Activision titles.

#### **Hardware Licenses**

The Company's console products currently are being developed or published primarily for the Sony PlayStation and PlayStation 2, Nintendo N64, GameCube and Game Boy handheld devices, Microsoft Xbox, and Sega Dreamcast. In order to maintain general access to the console systems marketplace, the Company has obtained licenses for each of these platforms. Each license allows the Company to create one or more products for the applicable system, subject to certain approval rights as to quality which are reserved by each licensor. Each license also requires that the Company pay the licensor a per unit license fee for each unit manufactured.

In contrast, the Company currently is not required to obtain any license for the development and production of PC-CD products. Accordingly, the Company's per unit manufacturing cost for PC-CD products is less than the per unit manufacturing cost for console products.

#### **Manufacturing**

The Company prepares a set of master program copies, documentation and packaging materials for its products for each respective hardware platform on which the product will be released. Except with respect to products for use on the Sony and Nintendo systems, the Company's disk duplication, packaging, printing, manufacturing, warehousing, assembly and shipping are performed by third party subcontractors.

In the case of products for the Sony and Nintendo systems, in order to maintain protection over their hardware technologies, such hardware

producers generally specify and/or control the manufacturing and assembly of finished products. The Company delivers the master materials to the licensor or its approved replicator which then manufactures finished goods and delivers them to the Company for distribution under the Company's label. At the time the Company's product unit orders are filled by the manufacturer, the Company becomes responsible for the costs of manufacturing and the applicable per unit royalty on such units, even if the units do not ultimately sell.

To date, the Company has not experienced any material difficulties or delays in the manufacture and assembly of its products or material returns due to product defects.

## Competition

The interactive entertainment and leisure industry is intensely competitive and is in the process of substantial consolidation. The availability of significant financial resources has become a major competitive factor in this industry primarily as a result of the increasing development, acquisition, production and marketing budgets required to publish quality titles. In addition, competitors with large product lines and popular titles typically have greater leverage with distributors and other customers who may be willing to promote titles with less consumer appeal in return for access to such competitor's most popular titles. See "Factors Affecting Future Performance".

The Company seeks to compete by publishing high quality titles and by supporting these titles with substantial marketing efforts; by focusing on properties with sustainable consumer appeal; by working to strengthen its relationships with retailers and other resellers and otherwise expanding its channels of distribution; and by pursuing opportunities for strategic acquisitions. See "Strategy."

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## Employees

As of March 31, 2001, the Company had 764 employees, including 258 in product development, 61 in North American publishing, 110 in corporate finance, operations and administration, 77 in international publishing, and 258 in European distribution activities.

As of March 31, 2001, approximately 110 of the Company's full-time employees were subject to term employment agreements with the Company. These agreements generally commit such employees to employment terms of between one and three years from the commencement of their respective agreements. Most of the employees subject to such agreements are executives of the Company or members of the product development, sales or marketing divisions. These individuals perform services for the Company as executives, directors, producers, associate producers, computer programmers, game designers, sales directors and marketing product managers. The execution by the Company of employment agreements with such employees, in the Company's experience, significantly reduces the Company's turnover during the development and production of its entertainment software products and allows the Company to plan more effectively for future development activities.

None of the Company's employees are subject to a collective bargaining agreement, and the Company has experienced no labor-related work stoppages.

## Financial Information about Foreign and Domestic Operations and Export Sales

See Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Note 7 of Notes to Consolidated Financial Statements included in Item 8.

## Item 2. PROPERTIES

The Company's principal corporate, administrative, and product development offices are located in approximately 98,000 square feet of leased space in a building located at 3100 Ocean Park Boulevard, Santa Monica, California 90405. The following is a listing of the principal offices maintained by the Company at June 13, 2001:

Location of Principal Facilities	Square Feet	Lease Expiration Date
Santa Monica, California	98,000	April 30, 2007
Woodland Hills, California	10,000	April 20, 2005
Madison, Wisconsin	13,300	December 31, 2004
Eden Prairie, Minnesota	9,800	September 30, 2005
Dallas, Texas	2,300	February 28, 2003
New York, New York	500	April 30, 2003
Ontario, Canada	1,900	June 30, 2003
Middlesex, United Kingdom	10,600	November 1, 2001
Berkshire, United Kingdom	8,200	September 8, 2010
Birmingham, United Kingdom	81,000	May 20, 2011 - May 31, 2012
Birmingham, United Kingdom	43,300	Month to Month
Antwerpen, Belgium	3,200	May 1, 2002
Eemnes, The Netherlands	1,900	January 1, 2002
Argenteuil, France	1,800	December 15, 2006
Sydney, Australia	3,300	October 31, 2002
Ismaning, Germany	4,200	November 30, 2001
Burglengenfeld, Germany	58,000	Owned
Tokyo, Japan	530	July 31, 2001

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### Item 3. LEGAL PROCEEDINGS

The Company is party to routine claims and suits brought against it in the ordinary course of business including disputes arising over the ownership of intellectual property rights and collection matters. In the opinion of management, the outcome of such routine claims will not have a material adverse effect on the Company's business, financial condition, results of operations or liquidity.

### Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

Not applicable.

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## PART II

### Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

The Company's common stock is quoted on the NASDAQ National Market under the symbol "ATVI."

The following table sets forth for the periods indicated the high and low reported sale prices for the Company's common stock. As of June 13, 2001, there were approximately 4,800 holders of record of the Company's common stock.

	High	Low
<i>Fiscal 2000</i>		
First Quarter ended June 30, 1999	\$ 14.56	\$ 10.31
Second Quarter ended September 30, 1999	17.75	12.63
Third Quarter ended December 31, 1999	17.50	13.94
Fourth Quarter ended March 31, 2000	17.69	12.06
<i>Fiscal 2001</i>		
First Quarter ended June 30, 2000	\$ 12.16	\$ 5.38
Second Quarter ended September 30, 2000	15.63	6.31
Third Quarter ended December 31, 2000	15.25	10.31
Fourth Quarter ended March 31, 2001	25.25	13.63
<i>Fiscal 2002</i>		
First Quarter through June 13, 2001	\$ 41.15	\$ 20.88

On June 13, 2001, the reported last sales price for the Company's common stock was \$40.93.

#### Dividends

The Company paid no cash dividends in 2001 or 2000 and does not intend to pay any cash dividends at any time in the foreseeable future. The Company expects that earnings will be retained for the continued growth and development of the Company's business. In addition, the Company's bank credit facility currently prohibits the Company from paying dividends on its common stock. Future dividends, if any, will depend upon the Company's earnings, financial condition, cash requirements, future prospects and other factors deemed relevant by the Company's Board of Directors.

#### Sales of Unregistered Equity Securities

In 1998, the Company granted warrants to purchase 750,000 shares of the Company's common stock to Viacom International Inc. ("Viacom"), an affiliate of Viacom Consumer Products, Inc. ("VCP"), in connection with, and as partial consideration for, a license agreement between VCP and the Company that gives the Company the right to utilize intellectual properties associated with the *Star Trek* television series' and films in conjunction with Activision products. Warrants to purchase 500,000 share of the Company's common stock have an exercise price of \$10.27 per share, vested upon grant, have a ten year term and become exercisable ratably over a five year term. The remaining warrants vested upon grant, have a ten year term, become exercisable ratably over a five year term beginning on September 16, 2003 and have an exercise price based on the average closing price of the Company's common stock for the 30 trading days preceding September 16, 2003.

In September 1998, the Company granted warrants to purchase 250,000 shares of the Company's common stock to Disney Entertainment, Inc. ("Disney") as partial consideration for a license

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agreement between Disney and the Company that gives the Company the right to utilize intellectual properties associated with certain Disney animated films in conjunction with Activision products.

In May 1999, the Company granted warrants to purchase 100,000 shares of the Company's common stock at an exercise price of \$11.63 per share to Cabela's, Incorporated ("Cabela's") in connection with, and as partial consideration for, a license agreement that allows the Company to

utilize the Cabela's name in conjunction with certain Activision products. The warrants vested upon grant, have a seven year term and are exercisable in annual increments over the warrant term.

In June 1999, the Company issued 204,448 shares of its common stock in connection with the acquisition of Elsinore Multimedia, Inc.

In September 1999, the Company issued 698,835 shares of its common stock in connection with the acquisition of JCM Productions, Inc. dba Neversoft Entertainment.

In December 1999, the Company issued 77,031 shares of its common stock in connection with a 40% equity investment in Gray Matter Studios, formerly known as Video Games West, Inc.

None of the shares, warrants, options or shares into which the warrants or options are exercisable were registered under the Securities Act of 1933, as amended (the "Securities Act"), by reason of the exemption under Section 4(2) of the Securities Act. The Company subsequently registered the shares issued in connection with the Elsinore Multimedia, Inc., JCM Productions, Inc. dba Neversoft Entertainment and Gray Matter Studios transactions for resale by the holders thereof.

#### Repurchase Plan

As of May 9, 2000, the Board of Directors authorized the Company to purchase up to \$15.0 million in shares of its common stock as well as its convertible subordinated notes. The shares and notes could be purchased from time to time through the open market or in privately negotiated transactions. The amount of shares and notes purchased and the timing of purchases were based on a number of factors, including the market price of the shares and notes, market conditions, and such other factors as the Company's management deemed appropriate. The Company has financed the purchase of shares with available cash. During the quarter ended June 30, 2000 the Company repurchased 2.3 million shares of its common stock for approximately \$15.0 million.

#### Shareholders' Rights Plan

On April 18, 2000, the Company's Board of Directors approved a shareholders rights plan (the "Rights Plan"). Under the Rights Plan, each common stockholder at the close of business on April 19, 2000 will receive a dividend of one right for each share of common stock held. Each right represents the right to purchase one one-hundredth (1/100) of a share of the Company's Series A Junior Preferred Stock at an exercise price of \$40.00. Initially, the rights are represented by the Company's common stock certificates and are neither exercisable nor traded separately from the Company's common stock. The rights will only become exercisable if a person or group acquires 15% or more of the common stock of the Company, or announces or commences a tender or exchange offer which would result in the bidder's beneficial ownership of 15% or more of the Company's common stock.

In the event that any person or group acquires 15% or more of the Company's outstanding common stock each holder of a right (other than such person or members of such group) will thereafter have the right to receive upon exercise of such right, in lieu of shares of Series A Junior Preferred Stock, the number of shares of common stock of the Company having a value equal to two times the then current exercise price of the right. If the Company is acquired in a merger or other business combination transaction after a person has acquired 15% or more the Company's common stock, each holder of a right will thereafter have the right to receive upon exercise of such right a number of the acquiring company's common shares having a market value equal to two times the then

current exercise price of the right. For persons who, as of the close of business on April 18, 2000, beneficially own 15% or more of the common stock of the Company, the Rights Plan "grandfathers" their current level of ownership, so long as they do not purchase additional shares in excess of certain limitations.

The Company may redeem the rights for \$.01 per right at any time until the first public announcement of the acquisition of beneficial ownership of 15% of the Company's common stock. At any time after a person has acquired 15% or more (but before any person has acquired more than 50%) of the Company's common stock, the Company may exchange all or part of the rights for shares of common stock at an exchange ratio of one share of common stock per right. The rights expire on April 18, 2010.

#### Item 6. SELECTED CONSOLIDATED FINANCIAL DATA

The following table summarizes certain selected consolidated financial data, which should be read in conjunction with the Company's Consolidated Financial Statements and Notes thereto and with Management's Discussion and Analysis of Financial Condition and Results of Operations included elsewhere herein. The selected consolidated financial data presented below as of and for each of the fiscal years in the five-year period ended March 31, 2001 are derived from the audited consolidated financial statements of the Company. The Consolidated Balance Sheets as of March 31, 2001 and 2000 and the Consolidated Statements of Operations and Statements of Cash Flows for each of the fiscal years in the three-year period ended March 31, 2001, and the reports thereon, are included elsewhere in this Form 10-K.

(In thousands, except per share data)

	Fiscal years ended March 31,				
	2001	2000	1999	1998	1997
				Restated(1)	
<b>Statement of Operations Data:</b>					
Net revenues	\$ 620,183	\$ 572,205	\$ 436,526	\$ 312,906	\$ 190,446
Cost of sales—product costs	324,907	319,422	260,041	176,188	103,124
Cost of sales—royalties and software amortization	89,702	91,238	36,990	29,840	13,108
Income (loss) from operations	39,807	(30,325)	26,667	9,218	11,497

Income (loss) before income tax provision	32,544	(38,736)	23,636	8,106	11,578
Net income (loss)	20,507	(34,088)	14,891	4,970	7,583
Basic earnings (loss) per share	0.82	(1.38)	0.65	0.22	0.36
Diluted earnings (loss) per share	0.75	(1.38)	0.62	0.21	0.35
Basic weighted average common shares outstanding	24,865	24,691	22,861	22,038	20,961
Diluted weighted average common shares outstanding	27,400	24,691	23,932	22,909	21,650

#### Selected Operating Data:

EBITDA(2)	46,075	15,541	33,155	14,564	15,690
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#### Cash (used in) provided by:

Operating activities	147,529	77,389	18,190	31,670	4,984
Investing activities	(74,595)	(99,547)	(64,331)	(43,814)	(19,617)
Financing activities	2,547	42,028	7,220	62,862	11,981

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As of March 31,

Restated

2001                      2000                      1999                      1998                      1997

#### Balance Sheet Data:

Working capital	\$ 182,980	\$ 158,225	\$ 136,355	\$ 115,782	\$ 52,142
Cash and cash equivalents	125,550	49,985	33,037	74,319	23,352
Goodwill, net	10,316	12,347	21,647	23,473	23,756
Total assets	359,957	309,737	283,345	229,366	132,203
Long-term debt	63,401	73,778	61,143	61,192	5,907
Redeemable and convertible preferred stock	—	—	—	—	1,500
Shareholders' equity	181,306	132,009	127,190	97,475	80,321

(1)

Consolidated financial information for fiscal years 1999 - 1996 has been restated retroactively for the effects of the September 1999 acquisition of Neversoft, accounted for as a pooling of interests. Consolidated financial information for fiscal years 1998 - 1996 has been restated retroactively for the effects of the acquisitions of S.B.F. Services, Limited dba Head Games Publishing and CD Contact Data GmbH, in June 1998 and September 1998, respectively, accounted for as pooling of interests. Consolidated financial information for fiscal year 1997 has been restated retroactively for the effects of the acquisitions of Raven Software Corporation, NBG EDV Handels—und Verlags GmbH and Combined Distribution (Holdings) Limited in November 1997, August 1997 and November 1997, respectively, accounted for as pooling of interests.

(2)

EBITDA represents income (loss) before interest, income taxes and, depreciation and amortization on property and equipment and goodwill. The Company believes that EBITDA provides useful information regarding the Company's ability to service its debt; however, EBITDA does not represent cash flow from operations as defined by generally accepted accounting principles and should not be considered a substitute for net income, as an indicator of the Company's operating performance, or cash flow or as a measure of liquidity.

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## Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Overview

The Company is a leading international publisher, developer and distributor of interactive entertainment and leisure products. The Company currently focuses its publishing, development and distribution efforts on products designed for personal computers ("PCs") as well as the Sony PlayStation ("PSX") and PlayStation 2 ("PS2") and Nintendo N64 ("N64") console systems and Nintendo Game Boy handheld game devices. The Company is also currently focusing on the development of products for Microsoft Xbox ("Xbox") and Nintendo GameCube console systems and Nintendo Game Boy Advance hand held device. During January 2001, Sega Corp., the maker of the Sega Dreamcast ("Dreamcast") console system announced that it would quit making the Dreamcast in March 2001. Net revenues from the Dreamcast have historically represented only a small percentage of the Company's total net revenues. Accordingly, the Company believes that the departure of the Dreamcast console system from the market will not have a material impact upon its financial position or results of operations.

The Company distributes its products worldwide through its direct sales forces, through its distribution subsidiaries, and through third party distributors and licensees.

The Company's financial information as of and for the year ended March 31, 1999 has been restated to reflect the effect of pooling of interests transactions as discussed in Item 1 and Item 6 of this Report.

The Company recognizes revenue from the sale of its products once they are shipped and are available for general release to customers. Subject to certain limitations, the Company permits customers to obtain exchanges and returns within certain specified periods and provides price protection on certain unsold merchandise. Revenue from product sales is reflected after deducting the estimated allowance for returns and price

protection. Management of the Company estimates the amount of future returns and price protection based upon historical results and current known circumstances. With respect to license agreements that provide customers the right to multiple copies in exchange for guaranteed amounts, revenue is recognized upon delivery. Per copy royalties on sales that exceed the guarantee are recognized as earned.

Cost of sales-product costs represents the cost to purchase, manufacture and distribute PC and console product units. Manufacturers of the Company's PC software are located worldwide and are readily available. Console CDs and cartridges are manufactured by the respective video game console manufacturers, Sony, Nintendo and Sega or its agents, who often require significant lead time to fulfill the Company's orders.

Cost of sales-royalties and software amortization represents amounts due developers, product owners and other royalty participants as a result of product sales, as well as amortization of capitalized software development costs. The costs incurred by the Company to develop products are accounted for in accordance with accounting standards that provide for the capitalization of certain software development costs once technological feasibility is established and such costs are determined to be recoverable. Additionally, various contracts are maintained with developers, product owners or other royalty participants, which state a royalty rate, territory and term of agreement, among other items. Commencing upon product release, prepaid royalties and capitalized software costs are amortized to cost of sales—royalties and software amortization based on the ratio of current revenues to total projected revenues, generally resulting in an amortization period of one year or less.

For products that have been released, management evaluates the future recoverability of prepaid royalties and capitalized software costs on a quarterly basis. Prior to a product's release, the Company charges to expense, as part of product development costs, capitalized costs when, in management's

estimate, such amounts are not recoverable. The following criteria is used to evaluate recoverability: historical performance of comparable products; the commercial acceptance of prior products released on a given game engine; orders for the product prior to its release; estimated performance of a sequel product based on the performance of the product on which the sequel is based; and actual development costs of a product as compared to the Company's budgeted amount.

The following table sets forth certain consolidated statements of operations data for the periods indicated as a percentage of total net revenues and also breaks down net revenues by territory and platform, as well as operating income by business segment:

	Fiscal years ended March 31,								
	(In thousands)								
	2001		2000		1999				
Net revenues	\$	620,183	100 %	\$	572,205	100 %	\$	436,526	100 %
Costs and expenses:									
Cost of sales — product costs		324,907	52 %		319,422	56 %		260,041	60 %
Cost of sales — royalties and software amortization		89,702	14 %		91,238	16 %		36,990	9 %
Product development		41,396	8 %		26,275	5 %		22,875	5 %
Sales and marketing		85,378	14 %		87,303	15 %		66,420	15 %
General and administrative		37,491	6 %		36,674	6 %		21,948	5 %
Amortization of intangible assets		1,502	0 %		41,618	7 %		1,585	0 %
Total costs and expenses		580,376	94 %		602,530	105 %		409,859	94 %
Income (loss) from operations		39,807	6 %		(30,325)	(5)%		26,667	6 %
Interest income (expense), net		(7,263)	(1)%		(8,411)	(2)%		(3,031)	(1)%
Income (loss) before income tax provision		32,544	5 %		(38,736)	(7)%		23,636	5 %
Income tax provision (benefit)		12,037	2 %		(4,648)	(1)%		8,745	2 %
Net income (loss)	\$	20,507	3 %	\$	(34,088)	(6)%	\$	14,891	3 %
<b>NET REVENUES BY TERRITORY:</b>									
United States	\$	352,893	57 %	\$	282,847	49 %	\$	149,705	34 %
Europe		256,228	41 %		277,485	49 %		278,032	64 %
Other		11,062	2 %		11,873	2 %		8,789	2 %
Total net revenues	\$	620,183	100 %	\$	572,205	100 %	\$	436,526	100 %
<b>ACTIVITY/PLATFORM MIX:</b>									
Publishing:									
Console	\$	349,528	75 %	\$	281,204	71 %	\$	111,662	54 %
PC		116,534	25 %		115,487	29 %		93,880	46 %
Total publishing net revenues		466,062	75 %		396,691	69 %		205,542	47 %

Distribution:						
Console	117,365	76 %	129,073	74 %	156,584	68 %
PC	36,756	24 %	46,441	26 %	74,400	32 %
Total distribution net revenues	154,121	25 %	175,514	31 %	230,984	53 %
Total net revenues	\$ 620,183	100 %	\$ 572,205	100 %	\$ 436,526	100 %
OPERATING INCOME (LOSS)						
Publishing	\$ 35,687	5 %	\$ (35,049)	(6)%	\$ 12,398	3 %
Distribution	4,120	1 %	4,724	1 %	14,269	3 %
Total operating income (loss)	\$ 39,807	6 %	\$ (30,325)	(5)%	\$ 26,667	6 %

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### Results of Operations—Fiscal Years Ended March 31, 2001 and 2000

Net income for fiscal year 2001 was \$20.5 million or \$0.75 per diluted share, as compared to net loss of \$34.1 million or \$1.38 per diluted share in fiscal year 2000. The 2000 results were negatively impacted by a strategic restructuring charge totaling \$70.2 million, approximately \$61.8 million net of tax, or \$2.50 per diluted share. See the analysis of the results of operations for the fiscal years ended March 31, 2000 and 1999 for a detailed discussion of the restructuring plan. During fiscal 2001, the Company completed those restructuring initiatives.

#### Net Revenues

Net revenues for the year ended March 31, 2001 increased 8% from the same period last year, from \$572.2 million to \$620.2 million. This increase was driven by the performance of the Company's publishing segment, partially offset by declines experienced in the Company's distribution segment.

Publishing net revenues for the year ended March 31, 2001 increased 17% from \$396.7 million to \$466.1 million. This increase primarily was due to publishing console net revenues increasing 24% from \$281.2 million to \$349.5 million. The increase in publishing console net revenues was attributable to the release in fiscal 2001 of several titles that sold very well in the marketplace, including *Tony Hawk Pro Skater 2* (PSX, Dreamcast and Game Boy), *Spiderman* (PSX, N64 and Game Boy), *X-Men Mutant Academy* (PSX and Game Boy), as well as continuing strong sales of the original *Tony Hawk Pro Skater* (PSX and N64). Publishing PC net revenues for the year ended March 31, 2001 remained relatively constant with the prior year, increasing 1% from \$115.5 million to \$116.5 million.

For the year ended March 31, 2001, distribution net revenues decreased 12% from prior fiscal year from \$175.5 million to \$154.1 million. The decrease was mainly attributable to the continued weakness in the European console market as a result of the transition to next-generation console systems. Based on previous new hardware launches, the Company expects that its distribution business will benefit in future periods from the introduction of PS2 and other next-generation consoles. In the fourth quarter of fiscal 2001, distribution had its best results in eight quarters, reflecting the accelerating opportunities from the introduction of new console systems.

Domestic net revenues grew 25.0% from \$282.8 million to \$352.9 million. International net revenues decreased by 8% from \$289.4 million to \$267.3 million. The increase in domestic net revenues is reflective of the increases in the Company's publishing segment as described above and the decrease in international net revenues is reflective of the declines in the Company's distribution segment as described above.

#### Costs and Expenses

Cost of sales—product costs represented 52% and 56% of net revenues for the year ended March 31, 2001 and 2000, respectively. The decrease in cost of sales—product costs as a percentage of net revenues for the year ended March 31, 2001 was due to the decrease in distribution net revenue, partially offset by a higher publishing console net revenue mix. Distribution products have a higher per unit product cost than publishing products, and console products have a higher per unit product cost than PC products.

Cost of sales—royalty and software amortization expense represented 14% and 16% of net revenues for the year ended March 31, 2001 and 2000, respectively. The decrease in cost of sales—royalty and software amortization expense as a percentage of net revenues is reflective of the \$11.9 million of write-offs recorded in the fourth quarter of fiscal 2000 relating to the Company's restructuring plan as later described in the analysis of the results of operations for the fiscal years ended March 31, 2000 and 1999.

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Product development expenses of \$41.4 million and \$26.3 million represented 8% and 5% of net revenues for the fiscal year ended March 31, 2001 and 2000, respectively. These increases in product development expenses in dollars and as a percentage of net revenues reflect the Company's investment in the development of products for next-generation console and hand-held devices, including PS2, Xbox, GameCube and Game Boy Advance. The increases are also reflective of the increase in the number of titles expected to be released in fiscal 2002, 52 titles, compared to fiscal 2001, 35 titles. Of the 52 titles expected to be released in fiscal 2002, 19 titles are for next-generation platforms, which have higher development costs than existing-platform titles.

Sales and marketing expenses of \$85.4 million and \$87.3 million represented 14% and 15% of net revenues for the fiscal year ended March 31, 2001 and 2000, respectively. This decrease reflects the Company's ability to generate savings by building on the existing awareness of our



branded products and sequel titles sold during fiscal 2001.

General and administrative expenses for the year ended March 31, 2001 remained constant with the prior fiscal year, increasing 2% from \$36.7 million to \$37.5 million. As a percentage of net revenues, fiscal 2001 general and administrative expenses also remained relatively constant with the prior fiscal year at approximately 6%.

Amortization of intangibles decreased substantially from \$41.6 million in fiscal 2000 to \$1.5 million in fiscal 2001. This was due to the write-off in fiscal 2000 of goodwill acquired in purchase acquisitions in conjunction with the Company's restructuring plan as subsequently described.

#### *Operating Income (Loss)*

Operating income (loss) for the year ended March 31, 2001, was \$39.8 million, compared to \$(30.3) million in fiscal 2000. This increase in consolidated operating income is primarily the result of increased operating income in the Company's publishing business.

Publishing operating income (loss) for the year ended March 31, 2001 increased to \$35.7 million, compared to \$(35.0) million in the prior fiscal year. The increase reflects the charges incurred in fiscal 2000 in conjunction with the Company's restructuring plan as subsequently described, which predominantly impacted the Company's publishing segment. Distribution operating income for the year ended March 31, 2001 remained flat at \$4.1 million, compared to \$4.7 million in the prior fiscal year.

#### *Other Income (Expense)*

Interest expense, net of interest income, decreased to \$7.3 million for the year ended March 31, 2001, from \$8.4 million for the year ended March 31, 2000. This decrease in interest expense was due to lower average borrowings on the revolving portion of the Company's \$125.0 million term loan and revolving credit facility (the "U.S. Facility") during fiscal 2001 when compared to prior fiscal year, as well as increased interest earned as a result of higher investable cash balances throughout the year.

#### *Provision for Income Taxes*

The income tax provision of \$12.0 million for the fiscal year ended March 31, 2001, reflects the Company's effective income tax rate of approximately 37%. The significant items generating the variance between the Company's effective rate and its statutory rate of 35% are state taxes and nondeductible goodwill amortization, partially offset by a decrease in the Company's deferred tax asset valuation allowance and research and development tax credits. The realization of deferred tax assets primarily is dependent on the generation of future taxable income. Management believes that it is more likely than not that the Company will generate taxable income sufficient to realize the benefit of net deferred tax assets recognized.

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## **Results of Operations—Fiscal Years Ended March 31, 2000 and 1999**

Net loss for fiscal year 2000 was \$34.1 million or \$1.38 per diluted share, as compared to net income of \$14.9 million or \$0.62 per diluted share in fiscal year 1999. The 2000 results were negatively impacted by a strategic restructuring charge totaling \$70.2 million, approximately \$61.8 million net of tax, or \$2.50 per diluted share.

#### *Strategic Restructuring Plan*

In the fourth quarter of fiscal 2000, the Company finalized a strategic restructuring plan to accelerate the development and sale of interactive entertainment and leisure products for the next-generation consoles and the Internet. Costs associated with this plan amounted to \$70.2 million, approximately \$61.8 million net of taxes, and were recorded in the consolidated statement of operations in the fourth quarter of fiscal year 2000 and classified as follows (amounts in millions):

Net revenues	\$ 11.7
Cost of sales—royalties and software amortization	11.9
Product development	4.2
General and administrative	5.2
Amortization of intangible assets	37.2
	<hr/>
	\$ 70.2

The component of the charge included in amortization of intangible assets represented a write down of intangibles including goodwill, relating to Expert Software, Inc. ("Expert"), one of the Company's value publishing subsidiaries, totaling \$26.3 million. The Company consolidated Expert into Head Games, forming one integrated business unit. As part of this consolidation, the Company discontinued substantially all of Expert's product lines, terminated substantially all of Expert's employees and phased out the use of the Expert name. In addition, a \$10.9 million write down of goodwill relating to TDC, an OEM business unit, was recorded. During fiscal 1999, the OEM market went through radical changes due to price declines of PCs and hardware accessories. The sum of the undiscounted future cash flow of these assets was not sufficient to cover the carrying value of these assets and as such was written down to fair market value.

The component of the charge included in net revenues and general and administrative expense represents costs associated with the planned termination of a substantial number of third party distributor relationships in connection with the Company's realignment of its worldwide publishing business to leverage its existing sales and marketing organizations and improve the control and management of its products. These actions resulted in an increase in the allowance for sales returns of \$11.7 million and the allowance for doubtful accounts of \$3.4 million. The plan also included a severance charge of \$1.2 million for employee redundancies.

The components of the charge included in cost of sales—royalties and software amortization and product development represent costs to write down certain assets associated with exiting certain product lines and re-evaluating other product lines which resulted in reduced expectations.

During fiscal 2001, the Company completed the restructuring initiatives associated with the fiscal 2000 restructuring plan without any significant adjustments.

#### *Net Revenues*

Net revenues for the year ended March 31, 2000 increased 31% from the same period last year, from \$436.5 million to \$572.2 million. The increase was due to a 53% increase in console net revenues from \$268.2 million to \$410.3 million, slightly offset by a 4% decrease in PC net revenues from

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\$168.3 million to \$161.9 million. Domestic net revenues grew 89% from \$149.7 million to \$282.8 million. International net revenues remained fairly constant, increasing 1% from \$286.8 million to \$289.4 million.

Publishing net revenues for the year ended March 31, 2000 increased 93% from \$205.5 million to \$396.7 million. This increase primarily was due to publishing console net revenues increasing 152% from \$111.7 million to \$281.2 million. The increase in publishing console net revenues was attributable to the release in fiscal 2000 of a larger number of titles that sold well in the marketplace, including Blue Stinger (Dreamcast), Space Invaders (PlayStation, N64 and Gameboy Color) and Toy Story II (PlayStation and N64), Tarzan (N64 and Gameboy), A Bug's Life (N64), Vigilante 8: Second Offense (PlayStation, N64 and Gameboy), WuTang: Shaolin Style (PlayStation) and Tony Hawk's Pro Skater (PlayStation, N64 and Gameboy). Publishing PC net revenues for the year ended March 31, 2000 increased 23% from \$93.9 million to \$115.5 million. This increase primarily was due to the release of Quake 3 Arena, Cabela's Big Game Hunter III, Star Trek: Hidden Evil, Armada and Soldier of Fortune.

For the year ended March 31, 2000, distribution net revenues decreased 24% from prior fiscal year from \$231.0 million to \$175.5 million. The decrease was mainly attributable to the pricing reductions initiated by leading retail chains in the United Kingdom (the "UK"), which in turn reduced market share for the independent retail channel in the UK to which the Company's CentreSoft subsidiary is the sole authorized Sony PlayStation distributor, as well as the unfavorable impact of foreign currency translation rates.

Net OEM licensing, on-line and other revenues for the fiscal year ended March 31, 2000 increased 40% from \$19.0 million to \$26.7 million. The increase was primarily due to an increase in licensing revenues, partially offset by a decrease in OEM revenues. Licensing revenues increased due to an increase in the number of licensing arrangements entered into by the Company during fiscal 2000. OEM revenues decreased due to the radical changes being experienced in the OEM market in fiscal 2000, which resulted from declining prices of personal computers and hardware accessories and the reluctance of hardware manufacturers to produce large inventories.

#### *Costs and Expenses*

Cost of sales—product costs represented 56% and 60% of net revenues for the year ended March 31, 2000 and 1999, respectively. The decrease in cost of sales—product costs as a percentage of net revenues for the year ended March 31, 2000 was due to the decrease in distribution net revenue, partially offset by a higher publishing console net revenue mix. Distribution products have a higher per unit product cost than publishing products, and console products have a higher per unit product cost than PC products.

Cost of sales—royalty and software amortization expense represented 16% and 9% of net revenues for the year ended March 31, 2000 and 1999, respectively. The increase in cost of sales—royalty and software amortization expense as a percentage of net revenues was primarily due to changes in the Company's product mix, with an increase in the number of branded products with higher royalty obligations as compared to the prior fiscal year and increases in amortization expenses relating to the release of a greater number of products with capitalizable development costs. The increase also partially resulted from \$11.9 million of write-offs recorded in the fourth quarter of fiscal 2000 relating to the Company's restructuring plan as previously described.

Product development expenses for the year ended March 31, 2000 increased 15% from the same period last year from \$22.9 million to \$26.3 million. The increase was primarily due to a \$4.2 million charge to product development costs relating to the Company's restructuring plan as previously described.

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As a percentage of net revenues, total product creation costs (i.e., royalties and software amortization expense plus product development expenses) increased from 14% to 21% for the year ended March 31, 2000. Such increases were attributable to the increases in product development costs, as described above.

Sales and marketing expenses for the year ended March 31, 2000 increased 31% from the same period last year, from \$66.4 million to \$87.3 million, but remained relatively constant as a percentage of net revenues at 15% at March 31, 2000 and 1999. The increase in the amount of sales and marketing expenses primarily was due to an increase in the number of titles released and an increase in television advertising during the final quarter of fiscal 2000 to support the Company's premium titles.

General and administrative expenses for the year ended March 31, 2000 increased 67% from the prior fiscal year, from \$21.9 million to \$36.7 million. As a percentage of net revenues, general and administrative expenses remained relatively constant at approximately 5% to 6%. The increase in the amount of general and administrative expenses was due to an increase in worldwide administrative support needs and headcount related expenses and charges incurred in conjunction with the Company's restructuring plan previously described.

Amortization of intangibles increased substantially from \$1.6 million in fiscal 1999 to \$41.6 million in fiscal 2000. This was due to the write-off of goodwill acquired in purchase acquisitions.

#### *Operating Income (Loss)*

Operating income (loss) for the year ended March 31, 2000, was \$(30.3) million, compared to \$26.7 million in fiscal 1999.

Publishing operating income (loss) for the year ended March 31, 2000 decreased 382% to \$(35.0) million, compared to \$12.4 million in the prior

fiscal year. The decrease reflects the charges incurred in conjunction with the Company's restructuring plan as previously described, which predominantly impacted the Company's publishing segment. Distribution operating income for the year ended March 31, 2000 decreased 67% to \$4.7 million, compared to \$14.3 million in the prior fiscal year. The period over period change primarily was due to a decrease in distribution sales and the UK price reductions, as noted earlier.

#### Other Income (Expense)

Interest expense, net of interest income, increased to \$8.4 million for the year ended March 31, 2000, from \$3.0 million for the year ended March 31, 1999. This increase primarily was the result of interest costs associated with the Company's \$125 million term loan and revolving credit facility obtained in June 1999.

#### Provision for Income Taxes

The income tax benefit of \$4.6 million for the year ended March 31, 2000 reflected the Company's effective income tax rate of approximately 12%. The significant items that generated the variance between the Company's effective rate and its statutory rate of 34% were nondeductible goodwill amortization and an increase in the Company's deferred tax asset valuation allowance, partially offset by research and development tax credits. The realization of deferred tax assets primarily is dependent on the generation of future taxable income. Management believes that it is more likely than not that the Company will generate taxable income sufficient to realize the benefit of net deferred tax assets recognized.

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### Quarterly Operating Results

The Company's quarterly operating results have in the past varied significantly and will likely vary significantly in the future, depending on numerous factors, several of which are not under the Company's control. See Item 1 "Business—Factors Affecting Future Performance" and Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations—Strategic Restructuring Plan." The Company's business also has experienced and is expected to continue to experience significant seasonality, in part due to consumer buying patterns. Net revenues typically are significantly higher during the fourth calendar quarter, primarily due to the increased demand for consumer software during the year-end holiday buying season. Accordingly, the Company believes that period-to-period comparisons of its operating results are not necessarily meaningful and should not be relied upon as indications of future performance.

The following table is a comparative breakdown of the Company's quarterly results for the immediately preceding eight quarters (amounts in thousands, except per share data):

	Quarter ended							
	March 31, 2001	Dec. 31, 2000	Sept. 30, 2000	June 30, 2000	March 31, 2000(1)	Dec. 31, 1999	Sept. 30, 1999	June 30, 1999(2)
Net revenues	\$ 126,789	\$ 264,473	\$ 144,363	\$ 84,558	\$ 103,838	\$ 268,862	\$ 115,363	\$ 84,142
Operating income (loss)	2,015	34,754	9,536	(6,498)	(65,990)	38,241	3,525	(6,101)
Net income (loss)	875	20,505	4,306	(5,179)	(52,877)	22,301	1,063	(4,575)
Basic earnings (loss) per share	0.03	0.84	0.18	(0.21)	(2.07)	0.89	0.04	(0.19)
Diluted earnings (loss) per share	0.03	0.70	0.17	(0.21)	(2.07)	0.75	0.04	(0.19)

(1) See Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations—Strategic Restructuring Plan."

(2) Restated for acquisition of Neversoft

### Liquidity and Capital Resources

The Company's cash and cash equivalents increased \$75.6 million, from \$50.0 million at March 31, 2000 to \$125.6 million at March 31, 2001. This was in comparison to a \$17.0 million increase in cash flows in fiscal year 2000 from \$33.0 million at March 31, 1999 to \$50.0 million at March 31, 2000. This increase in cash in fiscal year 2001 resulted from \$81.6 million and \$2.5 million provided by operating activities and financing activities, respectively, offset by \$8.6 million utilized in investing activities. The cash provided by operating activities primarily was the result of changes in accounts receivable and accounts payable, driven by a seasonal change in working capital needs. The cash used in investing activities primarily is the result of capital expenditures. The cash provided by financing activities is primarily the result of \$33.6 million of cash proceeds from the issuance common stock pursuant to employee stock option plans, the employee stock purchase plan and warrants. These inflows were partially offset by \$16.1 in net cash payments on borrowings, as well as \$15.0 million of cash used by the Company to purchase its common stock under its repurchase program.

In connection with the Company's purchases of Nintendo N64 hardware and software cartridges for distribution in North America and Europe, Nintendo requires the Company to provide irrevocable letters of credit prior to accepting purchase orders from the Company. Furthermore, Nintendo maintains a policy of not accepting returns of Nintendo N64 hardware and software cartridges. Because of these and other factors, the carrying of an inventory of Nintendo N64 hardware and software cartridges entails significant capital and risk. As of March 31, 2001, the Company had \$5.4 million of N64 hardware and software cartridge inventory on hand, which represented approximately 12% of all inventory.

In December 1997, the Company completed the private placement of \$60.0 million principal amount of 6<sup>3</sup>/<sub>4</sub>% convertible subordinated notes due 2005 (the "Notes"). The Notes are convertible, in

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whole or in part, at the option of the holder at any time after December 22, 1997 (the date of original issuance) and prior to the close of business on

the business day immediately preceding the maturity date, unless previously redeemed or repurchased, into common stock, \$.000001 par value, of the Company, at a conversion price of \$18.875 per share, (equivalent to a conversion rate of 52.9801 shares per \$1,000 principal amount of Notes), subject to adjustment in certain circumstances. The Notes are redeemable, in whole or in part, at the option of the Company at any time on or after January 10, 2001. If redemption occurs prior to December 31, 2003, the Company must pay a premium on such redeemed Notes. Subsequent to March 31, 2001, the Company called for the redemption of the Notes. In connection with that call, as of June 20, 2001, holders have converted for common stock approximately \$60.0 million aggregate principal amount of their convertible subordinated notes.

The Company has a \$100.0 million revolving credit facility and a \$25.0 million term loan with a syndicate of banks (the "U.S. Facility"). The revolving portion of the U.S. Facility provides the Company with the ability to borrow up to \$100.0 million and issue letters of credit up to \$80 million on a revolving basis against eligible accounts receivable and inventory. The \$25.0 million term loan portion of the U.S. Facility was used to fund the acquisition of Expert Software, Inc. in June 1999 and to pay costs related to such acquisition and the securing of the U.S. Facility. The term loan has a three year term with principal amortization on a straight-line quarterly basis beginning December 31, 1999 and a borrowing rate based on the banks' base rate (which is generally equivalent to the published prime rate) plus 2% or LIBOR plus 3%. The revolving portion of the U.S. Facility has a borrowing rate based on the banks' base rate plus 1.75% or LIBOR plus 2.75% and matures June 2002. The U.S. Facility had a weighted average interest rate of approximately 9.70% for the year ending March 31, 2001. The Company pays a commitment fee of 1/2% on the unused portion of the revolving line. The U.S. Facility is collateralized by substantially all of the assets of the Company and its U.S. subsidiaries. The U.S. Facility contains various covenants which limit the ability of the Company to incur additional indebtedness, pay dividends or make other distributions, create certain liens, sell assets, or enter into certain mergers or acquisitions. The Company is also required to maintain specified financial ratios related to net worth and fixed charges. As of March 31, 2001, the Company was in compliance with these covenants. As of March 31, 2001, approximately \$8.5 million was outstanding under the term loan portion of the U.S. Facility. As of March 31, 2001, there were no borrowings outstanding and \$18.2 million letters of credit outstanding against the revolving portion of the U.S. Facility.

In May 2001, the Company repaid the remaining \$8.5 million balance of the term loan portion of the U.S. Facility. In conjunction with the accelerated repayment of the term loan, the Company amended the U.S. Facility effective May 7, 2001. The amended and restated U.S. Facility eliminates the term loan, reduces the revolvers to \$78.0 million, reduces the interest rate to Prime plus 1.25% or LIBOR plus 2.25%, eliminates certain covenants, increases the advance rates and reduces the fee paid for maintenance of the facility.

The Company has a revolving credit facility through its CD Contact subsidiary in the Netherlands (the "Netherlands Facility"). The Netherlands Facility permits revolving credit loans and letters of credit up to Netherlands Guilder ("NLG") 26 million (\$10 million) at March 31, 2001, based upon eligible accounts receivable and inventory balances. The Netherlands Facility is due on demand, bears interest at a Eurocurrency rate plus 1.50% (weighted average interest rate of 7.40% as of March 31, 2001) and matures August 2003. The Company had \$1.8 million of borrowings outstanding under the Netherlands Facility at March 31, 2001. There were no letters of credit under the Netherlands Facility as of March 31, 2001.

The Company also has revolving credit facilities with its CentreSoft subsidiary located in the United Kingdom, (the "UK Facility") and its NBG subsidiary located in Germany, (the "German Facility"). The UK Facility can be used for working capital requirements and provides for British Pounds ("GBP") 7 million (\$10.0 million) of revolving loans and GBP 3 million (\$4.3 million) of letters of credit, bears interest at LIBOR plus 2%, is collateralized by substantially all of the assets of the

subsidiary and matures in July 2001. The UK Facility also contains various covenants that require the subsidiary to maintain specified financial ratios related to, among others, fixed charges. The Company was in compliance with these covenants as of March 31, 2001. No borrowings were outstanding against the UK Facility at March 31, 2001. Letters of credit of GBP 3.0 million (\$4.3 million) were outstanding against the UK Facility at March 31, 2001. The German Facility can be used for working capital requirements and provides for revolving loans up to Deutsche Marks ("DM") 4 million (\$1.8 million), bears interest at 7.0%, is collateralized by a cash deposit of approximately GBP 650,000 (\$928,000) made by the Company's CentreSoft subsidiary and has no expiration date. No borrowings were outstanding against the German Facility as of March 31, 2001.

In the normal course of business, the Company enters into contractual arrangements with third parties for the development of products. Under these agreements, the Company commits to provide specified payments to a developer, contingent upon the developer's achievement of contractually specified milestones. Assuming all contractually specified milestones are achieved, for contracts in place as of March 31, 2001, the total future minimum contract commitment is approximately \$62.1 million, which is scheduled to be paid as follows (amounts in thousands):

Year ending March 31,	
2002	\$ 35,197
2003	13,528
2004	6,250
2005	2,925
2006	1,675
Thereafter	2,500
	\$ 62,075

Additionally, as of March 31, 2001, under the terms of a production financing arrangement, the Company has a commitment to purchase two future PlayStation 2 titles from independent third party developers for an estimated \$5.7 million. Failure by the developers to complete the project within the contractual time frame or specifications alleviates the Company's commitment.

The Company historically has financed its acquisitions through the issuance of shares of its common stock. The Company will continue to evaluate potential acquisition candidates as to the benefit they bring to the Company and as to the ability of the Company to make such acquisitions and maintain compliance with its bank facilities.

In May 2000, the Board of Directors authorized the Company to purchase up to \$15.0 million in shares of its common stock as well as its convertible subordinated notes. The shares and notes could be purchased in the open market or in privately negotiated transactions at such times and in such amounts as management deemed appropriate, depending on market conditions and other factors. During fiscal 2001, the Company

repurchased 2.3 million shares of its common stock for approximately \$15.0 million.

The Company believes that it has sufficient working capital (\$183.0 million at March 31, 2001), as well as proceeds available from the U.S. Facility, the UK Facility, the Netherlands Facility and the German Facility, to finance the Company's operational requirements for at least the next twelve months, including acquisitions of inventory and equipment, the funding of the development, production, marketing and sale of new products, the acquisition of intellectual property rights for future products from third parties and the repurchase of common stock and notes under the Company's repurchase plan.

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## **Inflation**

The Company's management currently believes that inflation has not had a material impact on continuing operations.

## **Euro Conversion**

On January 1, 1999, eleven of the fifteen member countries of the European Union adopted the "euro" as their common currency. The sovereign currencies of the participating countries are scheduled to remain legal tender as denominations of the euro between January 1, 1999 and January 1, 2002. Beginning January 1, 2002, the participating countries will issue new euro-denominated bills and coins for use in cash transactions. No later than July 1, 2002, the participating countries will withdraw all bills and coins denominated in the sovereign currencies, so that the sovereign currencies no longer will be legal tender for any transactions, making conversion to the euro complete. The Company has performed an internal analysis of the possible implications of the euro conversion on the Company's business and financial condition, and has determined that the impact of the conversion will be immaterial to its overall operations. The Company's wholly owned subsidiaries operating in participating countries represented 8% and 12% of the Company's consolidated net revenues for the years ended March 31, 2001 and 2000, respectively.

## **Implementation of SAB 101**

The Securities and Exchange Commission ("SEC") issued Staff Accounting Bulletin ("SAB") 101, Revenue Recognition in Financial Statements, in December 1999. The SAB summarizes certain of the SEC staff's views in applying generally accepted accounting principles to revenue recognition in financial statements. During the year ended March 31, 2001, the Company performed a review of its revenue recognition policies and determined that it is in compliance with SAB 101.

## **Recently Issued Accounting Standards**

Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities," ("SFAS No. 133") as subsequently amended by SFAS No. 137 and SFAS No. 138, is effective for all fiscal years beginning after June 15, 2000. SFAS No. 133 establishes accounting and reporting standards for derivative instruments and for hedging activities. It requires that an entity recognize all derivatives as either assets or liabilities in the statement of financial position and measure those instruments at fair value. The Company does not currently participate in hedging activities or own derivative instruments but plans to adopt SFAS No. 133 beginning April 1, 2001. Management does not believe the adoption of SFAS No. 133 will have a material impact on the financial position or results of operations of the Company.

## **Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Market risk is the potential loss arising from fluctuations in market rates and prices. The Company's market risk exposures primarily include fluctuations in interest rates and foreign currency exchange rates. The Company's market risk sensitive instruments are classified as "other than trading." The Company's exposure to market risk as discussed below includes "forward-looking statements" and represents an estimate of possible changes in fair value or future earnings that would occur assuming hypothetical future movements in interest rates or foreign currency exchange rates. The Company's views on market risk are not necessarily indicative of actual results that may occur and do not represent the maximum possible gains and losses that may occur, since actual gains and losses will differ from those estimated, based upon actual fluctuations in foreign currency exchange rates, interest rates and the timing of transactions.

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## **Interest Rate Risk**

The Company has a number of variable rate and fixed rate debt obligations, denominated both in U.S. dollars and various foreign currencies as detailed in Note 10 to the Consolidated Financial Statements appearing elsewhere in this Annual Report. The Company manages interest rate risk by monitoring its ratio of fixed and variable rate debt obligations in view of changing market conditions. Additionally, in the future, the Company may consider the use of interest rate swap agreements to further manage potential interest rate risk.

As of March 31, 2001, the carrying value of the Company's variable rate debt was \$10.3 million, which includes the U.S. Facility (\$8.5 million) and the Netherlands Facility (\$1.8 million). As of March 31, 2000, the carrying value of the Company's variable rate debt was \$26.0 million, which included the U.S. Facility (\$22.5 million) and the Netherlands Facility (\$3.5 million). A hypothetical 1% increase in the applicable interest rates of the Company's variable rate debt would increase annual interest expense by approximately \$103,000 and \$260,000, as March 31, 2001 and 2000, respectively.

The Company additionally has 6<sup>3</sup>/<sub>4</sub>% convertible subordinated notes due 2005 (the "Notes") that have a carrying value of \$60.0 million as of March 31, 2001 and 2000. The Notes have a fair value of \$60.0 million and \$51.6 million as of March 31, 2001 and 2000, respectively. The fair value of the Notes was determined based on quoted market prices. A hypothetical 1% increase in market rates would decrease their fair value by approximately \$600,000 and \$516,000 as of March 31, 2001 and 2000, respectively.

Subsequent to March 31, 2001, the Company's holdings of market risk sensitive instruments changed. Subsequent to March 31, 2001, the Company called for the redemption of \$60.0 million of the Notes. In connection with that call, as of June 20, 2001, holders have converted to common stock approximately \$60.0 million aggregate principal amount of their Notes. Additionally, in May 2001, the Company repaid in full the

remaining \$8.5 million balance of the term loan portion of the U.S. Facility.

### **Foreign Currency Exchange Rate Risk**

The Company transacts business in many different foreign currencies and may be exposed to financial market risk resulting from fluctuations in foreign currency exchange rates, particularly GBP. The volatility of GBP (and all other applicable currencies) will be monitored frequently throughout the coming year. While the Company has not traditionally engaged in foreign currency hedging, the Company may in the future use hedging programs, currency forward contracts, currency options and/or other derivative financial instruments commonly utilized to reduce financial market risks if it is determined that such hedging activities are appropriate to reduce risk.

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## **Item 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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Report of Independent Accountants	F-1
Consolidated Balance Sheets as of March 31, 2001 and 2000	F-3
Consolidated Statements of Operations for the Years Ended March 31, 2001, 2000 and 1999	F-4
Consolidated Statements of Changes in Shareholders' Equity for the Years Ended March 31, 2001, 2000 and 1999	F-5
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Item 14. Exhibit Index	F-32

All other schedules of the Registrant are omitted because of the absence of conditions under which they are required or because the required information is included elsewhere in the financial statements or in the notes thereto.

## **Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

The Company replaced KPMG LLP ("KPMG") as its principal accountant, effective March 20, 2001. The action was recommended by the Company's Audit Committee of the Board of Directors and was approved by the Company's Board of Directors.

KPMG's reports on the Company's financial statements for the past two years did not contain an adverse opinion or a disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles. During the Company's two most recently completed fiscal years and any subsequent interim period preceding the decision not to renew KPMG, (i) there were no disagreements with KPMG on any matter of accounting principles or practice, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of KPMG, would have caused it to make a reference to the subject matter of the disagreement in connection with its report, and (ii) there were no reportable events as described in Item 304 of Regulation S-K.

The Company engaged PricewaterhouseCoopers LLP ("PricewaterhouseCoopers") as the Company's principal accountant to audit the Company's financial statements, effective as of March 20, 2001. During the Company's two most recent fiscal years and three subsequent interim periods prior to engaging PricewaterhouseCoopers, neither the Company nor anyone on its behalf consulted with PricewaterhouseCoopers regarding the application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the Company's financial statements, and neither a written report nor oral advice was provided to the Company by PricewaterhouseCoopers that was an important factor considered by the Company in reaching a decision as to any accounting, auditing or financial reporting issue.

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## **PART III**

### **Item 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

The information required by this Item is incorporated by reference to the sections of the Company's definitive Proxy Statement for its 2001 Annual Meeting of Shareholders, entitled "Election of Directors" and "Executive Officers and Key Employees" to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Form 10-K.

### **Item 11. EXECUTIVE COMPENSATION**

The information required by this Item is incorporated by reference to the sections of the Company's definitive Proxy Statement for its 2001 Annual Meeting of Shareholders, entitled "Executive Compensation" and "Indebtedness of Management" to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Form 10-K.

### **Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The information required by this Item is incorporated by reference to the sections of the Company's definitive Proxy Statement for its 2001 Annual Meeting of Shareholders, entitled "Security Ownership of Certain Beneficial Owners and Management" to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Form 10-K.

### **Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

The information required by this Item is incorporated by reference to the sections of the Company's definitive Proxy Statement for its 2001

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**PART IV**

**Item 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K**

- (a) 1. *Financial Statements* See Item 8.—Consolidated Financial Statements and Supplementary Data Index for Financial Statements and Schedule on page 36 herein.
2. *Financial Statement Schedule* The following financial statement schedule of Activision, Inc. for the years ended March 31, 2001, 2000 and 1999 is filed as part of this report and should be read in conjunction with the Consolidated Financial Statements of Activision, Inc.

Schedule II—Valuation and Qualifying Accounts and Reserves

Other financial statement schedules are omitted because the information called for is not required or is shown either in the Consolidated Financial Statements or the notes thereto.

3. *Exhibits Required by Item 601 of Regulation S-K*

Exhibit Number	Exhibit
2.1	Agreement and Plan of Merger dated as of June 9, 2000 among Activision, Inc., Activision Holdings, Inc. and ATVI Merger Sub, Inc. (incorporated by reference to Exhibit 2.4 of the Company's Form 8-K filed June 16, 2000).
3.1	Amended and Restated Certificate of Incorporation of Activision Holdings, dated June 1, 2000 (incorporated by reference to Exhibit 2.5 of the Company's Form 8-K, filed on June 16, 2000).
3.2	Amended and Restated Bylaws of Activision Holdings (incorporated by reference to Exhibit 2.6 of the Company's Form 8-K, filed on June 16, 2000).
3.3	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Activision Holdings dated as of June 9, 2000 (incorporated by reference to Exhibit 2.7 of the Company's Form 8-K, filed on June 16, 2000).
4.1	Rights Agreement dated as of April 18, 2000, between the Company and Continental Stock Transfer & Trust Company, which includes as exhibits the form of Right Certificates as Exhibit A, the Summary of Rights to Purchase Series A Junior Preferred Stock as Exhibit B and the form of Certificate of Designation of Series A Junior Preferred Stock of the Company as Exhibit C, (incorporated by reference to the Company's Registration Statement on Form 8-A, Registration No. 001-15839, filed April 19, 2000).
10.1	Mediagenic 1991 Stock Option and Stock Award Plan, as amended (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-8, Registration No. 33-63638, filed on December 8, 1995).
10.2	Mediagenic 1991 Director Warrant Plan, as amended (incorporated by reference to Exhibit 28.2 to the Company's Registration Statement on Form S-8, Registration No. 33-63638, filed on June 1, 1993).
10.3	Activision, Inc. Employee Stock Purchase Plan, as amended, (incorporated by reference to Exhibit 4.1 of the Company's Form S-8, Registration No. 333-36272 filed on May 4, 2000).
10.4	Activision, Inc. 1998 Incentive Plan (incorporated by reference to Appendix I of the Company's 1998 Proxy Statement).
10.5	Activision, Inc. 1999 Incentive Plan (incorporated by reference to Exhibit 10.5 of the Company's Form 10-K for the year ending March 31, 2000)
10.6	Lease Agreement dated as of December 20, 1996, between the Company and Barclay Curci Investment Company (incorporated by reference to Exhibit 10.14 of the Company's Form 10-Q for the quarter ended December 31, 1996).
10.7	Share Exchange Agreement dated November 23, 1997, among the Company and the holders of all of the issued and outstanding capital stock of Combined Distribution (Holdings) Limited (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed December 5, 1997).

- 10.8 Purchase Agreement dated as of December 16, 1997, among the Company and Credit Suisse First Boston Corporation, Piper Jaffray, Inc. and UBS Securities LLC (the "Initial Purchasers") (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed December 23, 1997).
- 10.9 Registration Rights Agreement dated as of December 16, 1997, among the Company and the Initial Purchasers (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed December 23, 1997).
- 10.10 Indenture dated as of December 22, 1997, between the Company and State Street Bank and Trust Company of California, N.A., as Trustee (incorporated by reference to Exhibit 10.3 of the Company's Form 8-K filed December 23, 1997).
- 10.11 Amended and restated employment agreement dated May 22, 2000 between the Company and Robert A. Kotick (incorporated by reference to Exhibit 10.1 of the Company's Form 10-Q for the quarter ended September 30, 2000)
- 10.12 Employment agreement dated October 19, 1998 between the Company and Ronald Doornink (incorporated by reference to Exhibit 10.12 of the Company's Form 10-K for the year ending March 31, 1999).
- 10.13 Employment agreement dated April 1, 2000 between the Company and Lawrence Goldberg (incorporated by reference to Exhibit 10.1 of the Company's Form 10-Q for the quarter ending June 30, 2000).
- 10.14 Employment agreement dated July 18, 2000 between the Company and William J. Chardavoyne (incorporated by reference to Exhibit 10.2 of the Company's Form 10-Q for the quarter ending June 30, 2000).
- 10.15 Stock option agreement dated May 22, 2000 between the Company and Robert A. Kotick (incorporated by reference to the Company's Form 10-Q for the quarter ending September 30, 2000).

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- 10.16 Service Agreement dated November 24, 1997 between Combined Distribution (Holdings) Limited and Richard Andrew Steele (incorporated by reference to Exhibit 10.17 of the Company's Form 10-K for the year ending March 31, 1999).
  - 10.17 Amended and restated employment agreement dated May 22, 2000 between the Company and Brian G. Kelly (incorporated by reference to Exhibit 10.3 of the Company's Form 10-Q for the quarter ending September 30, 2000).
  - 10.18 Articles of Merger dated June 30, 1998 between S.B.F. Acquisition Corp., a wholly owned subsidiary of the Company, and S.B.F. Services, Limited dba Head Games Publishing (incorporated by reference to Exhibit 2.1 of the Company's Form 8-K, filed on July 2, 1998).
  - 10.19 Share Exchange Agreement dated September 29, 1998 by and between the Company and Mr. Frank d'Oleire, Mrs. Christa d'Oleire, Ms. Fiona d'Oleire, Ms. Alexa d'Oleire acting as Dr. d'Oleire Beteiligungsgesellschaft bR, Mr. Martinus J.C. Bubbert, and Mr. Dennis W. Buis (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K, filed on October 8, 1998).
  - 10.20 Amended and Restated Agreement and Plan of Merger dated April 19, 1999 by and among the Company, Expert Acquisition Corp. and Expert Software, Inc. (incorporated by reference to Exhibit 2.1 of the Form 8-K of Expert Software, Inc., filed April 29, 1999).
  - 10.21 Credit Agreement dated as of June 21, 1999 among the Company, Head Games Publishing, Inc., Expert Software, Inc., various financial institutions, PNC Bank, National Association, as issuing bank, administrative agent and collateral agent for such financial institutions, and Credit Suisse First Boston, as syndication agent (incorporated by reference to Exhibit 10.22 of the Company's Form 10-K for the year ending March 31, 1999).
  - 10.22 Share Exchange Agreement dated as of June 29, 1999, among the Company, Jill G. Mark and Robert N. Herrick (incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-3, Registration No. 333-85385, filed August 17, 1999).
  - 10.23 Agreement and Plan of Reorganization dated as of September 30, 1999, among the Company, Neversoft Entertainment, Inc., JCM Productions, Inc., Joel Jewett, Michael West and Christopher Ward (incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-3, Registration No. 333-94509, filed January 12, 2000).
  - 10.24 Employment agreement dated July 12, 1999, between the Company and Mr. Michael Rowe (incorporated by reference to Exhibit 6.1 of the Company's Form 10-Q for the quarter ending June 30, 1999).
  - 10.25 Employment agreement dated July 12, 1999, between the Company and Ms. Kathy Vrabeck (incorporated by reference to Exhibit 6.2 of the Company's Form 10-Q for the quarter ending June 30, 1999).





By:	<u>          /s/ WILLIAM J. CHARDAVOYNE          </u> (William J. Chardavoyne)	Chief Financial Officer and Chief Accounting Officer	June 25, 2001
By:	<u>          /s/ HAROLD A. BROWN          </u> (Harold A. Brown)	Director	June 25, 2001
By:	<u>          /s/ BARBARA S. ISGUR          </u> (Barbara S. Isgur)	Director	June 25, 2001
By:	<u>          /s/ STEVEN T. MAYER          </u> (Steven T. Mayer)	Director	June 25, 2001
By:	<u>          /s/ ROBERT J. MORGADO          </u> (Robert J. Morgado)	Director	June 25, 2001

**REPORT OF INDEPENDENT ACCOUNTANTS**

To the Board of Directors and Shareholders:

In our opinion, the accompanying consolidated balance sheet as of March 31, 2001 and the related consolidated statements of operations, changes in shareholders' equity and cash flows present fairly, in all material respects, the financial position of Activision, Inc. and its subsidiaries (the "Company") at March 31, 2001, and the results of their operations and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audit. We conducted our audit of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

PricewaterhouseCoopers LLP  
Los Angeles, CA  
May 9, 2001

**REPORT OF INDEPENDENT ACCOUNTANTS**

The Board of Directors and Shareholders:

We have audited the accompanying consolidated balance sheet of ACTIVISION, INC. and subsidiaries as of March 31, 2000 and the related consolidated statements of operations, changes in shareholders' equity and cash flows for each of the years in the two-year period ended March 31, 2000. In connection with our audit of the consolidated financial statements, we also have audited financial statement schedule II for each of the years in the two-year period ended March 31, 2000. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of ACTIVISION, INC. and subsidiaries as of March 31, 2000, and the results of their operations and their cash flows for each of the years in the two-year period ended March 31, 2000, in conformity with generally accepted accounting principles. Also in our opinion, the related financial statement schedule for each of the years in the two-year period ended March 31, 2000, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

**Part I. Financial Information.**

Item I. Financial Statements.

**ACTIVISION, INC. AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

(In thousands, except share data)

	March 31, 2001	March 31, 2000
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 125,550	\$ 49,985
Accounts receivable, net of allowances of \$28,461 and \$31,521 at March 31, 2001 and 2000, respectively	73,802	108,108
Inventories	43,888	40,453
Prepaid royalties and capitalized software costs	27,502	31,655
Deferred income taxes	14,292	14,159
Other current assets	13,196	17,815
<b>Total current assets</b>	<b>298,230</b>	<b>262,175</b>
Prepaid royalties and capitalized software costs	14,703	9,153
Property and equipment, net	15,240	10,815
Deferred income taxes	13,759	6,055
Goodwill, net	10,316	12,347
Other assets	7,709	9,192
<b>Total assets</b>	<b>\$ 359,957</b>	<b>\$ 309,737</b>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Current portion of long-term debt	\$ 10,231	\$ 16,260
Accounts payable	60,980	38,286
Accrued expenses	44,039	49,404
<b>Total current liabilities</b>	<b>115,250</b>	<b>103,950</b>
Long-term debt, less current portion	3,401	13,778
Convertible subordinated notes	60,000	60,000
<b>Total liabilities</b>	<b>178,651</b>	<b>177,728</b>
Commitments and contingencies		
Shareholders' equity:		
Preferred stock, \$.000001 par value, 5,000,000 shares authorized, no shares issued at March 31, 2001 and 2000	—	—
Common stock, \$.000001 par value, 50,000,000 shares authorized, 30,166,455 and 26,488,260 shares issued and 27,282,476 and 25,988,260 shares outstanding at March 31, 2001 and 2000, respectively	—	—
Additional paid-in capital	200,786	151,714
Retained earnings (deficit)	12,146	(8,361)

Accumulated other comprehensive loss	(11,377)	(6,066)
Less: Treasury stock, cost, 2,883,979 and 500,000 shares as of March 31, 2001 and 2000, respectively	(20,249)	(5,278)
<b>Total shareholders' equity</b>	<b>181,306</b>	<b>132,009</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 359,957</b>	<b>\$ 309,737</b>

The accompanying notes are an integral part of these consolidated financial statements.

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**ACTIVISION, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

(In thousands, except per share data)

	For the years ended March 31,		
	2001	2000	1999
Net revenues	\$ 620,183	\$ 572,205	\$ 436,526
Costs and expenses:			
Cost of sales—product costs	324,907	319,422	260,041
Cost of sales—royalties and software amortization	89,702	91,238	36,990
Product development	41,396	26,275	22,875
Sales and marketing	85,378	87,303	66,420
General and administrative	37,491	36,674	21,948
Amortization of intangible assets	1,502	41,618	1,585
<b>Total costs and expenses</b>	<b>580,376</b>	<b>602,530</b>	<b>409,859</b>
Income (loss) from operations	39,807	(30,325)	26,667
Interest expense, net	(7,263)	(8,411)	(3,031)
Income (loss) before income tax provision	32,544	(38,736)	23,636
Income tax provision (benefit)	12,037	(4,648)	8,745
Net income (loss)	\$ 20,507	\$ (34,088)	\$ 14,891
Basic earnings (loss) per share	\$ 0.82	\$ (1.38)	\$ 0.65
Weighted average common shares outstanding	24,865	24,691	22,861
Diluted earnings (loss) per share	\$ 0.75	\$ (1.38)	\$ 0.62
Weighted average common shares outstanding—assuming dilution	27,400	24,691	23,932

The accompanying notes are an integral part of these consolidated financial statements.

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**ACTIVISION, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY**

For the years ended March 31, 2001, 2000 and 1999

(In thousands)	Common Stock		Additional Paid-In Capital	Retained Earnings (Deficit)	Treasury Stock		Accumulated Other Comprehensive Income (Loss)	Shareholders' Equity
	Shares	Amount			Shares	Amount		
<b>Balance, March 31, 1998</b>	<b>23,107</b>	<b>\$ —</b>	<b>\$ 91,825</b>	<b>\$ 10,836</b>	<b>(500)</b>	<b>\$ (5,278)</b>	<b>\$ 92</b>	<b>\$ 97,475</b>
Components of comprehensive income:								
Net income for the year	—	—	—	14,891	—	—	—	14,891
Foreign currency translation adjustment	—	—	—	—	—	—	(2,602)	(2,602)
<b>Total comprehensive income</b>								<b>12,289</b>
Issuance of common stock and common stock warrants	—	—	3,368	—	—	—	—	3,368
Issuance of common stock pursuant to employee stock option plans	605	—	5,271	—	—	—	—	5,271
Issuance of common stock pursuant to employee stock purchase plan	92	—	798	—	—	—	—	798
Tax benefit attributable to employee stock option plans	—	—	1,059	—	—	—	—	1,059
Tax benefit derived from net operating loss carryforward utilization	—	—	2,430	—	—	—	—	2,430
Conversion of notes payable to common stock	—	—	4,500	—	—	—	—	4,500
<b>Balance, March 31, 1999</b>	<b>23,804</b>	<b>—</b>	<b>109,251</b>	<b>25,727</b>	<b>(500)</b>	<b>(5,278)</b>	<b>(2,510)</b>	<b>127,190</b>
Components of comprehensive income:								
Net loss for the year	—	—	—	(34,088)	—	—	—	(34,088)
Foreign currency translation adjustment	—	—	—	—	—	—	(3,556)	(3,556)
<b>Total comprehensive loss</b>								<b>(37,644)</b>
Issuance of common stock and common stock warrants	—	—	8,529	—	—	—	—	8,529
Issuance of common stock pursuant to employee stock option plans	2,331	—	21,718	—	—	—	—	21,718
Issuance of common stock pursuant to employee stock purchase plan	72	—	762	—	—	—	—	762
Tax benefit attributable to employee stock option plans	—	—	3,017	—	—	—	—	3,017
Tax benefit derived from net operating loss carryforward utilization	—	—	1,266	—	—	—	—	1,266
Acquisitions and investments made with common stock and common stock options	281	—	7,171	—	—	—	—	7,171
<b>Balance, March 31, 2000</b>	<b>26,488</b>	<b>—</b>	<b>151,714</b>	<b>(8,361)</b>	<b>(500)</b>	<b>(5,278)</b>	<b>(6,066)</b>	<b>132,009</b>
Components of comprehensive income:								
Net income for the year	—	—	—	20,507	—	—	—	20,507
Foreign currency translation adjustment	—	—	—	—	—	—	(5,311)	(5,311)
<b>Total comprehensive income</b>								<b>15,196</b>
Issuance of common stock and common stock warrants	100	—	1,050	—	—	—	—	1,050
Issuance of common stock pursuant to employee stock option plans	3,499	—	31,693	—	—	—	—	31,693
Issuance of common stock pursuant to employee stock purchase plan	79	—	845	—	—	—	—	845
Tax benefit attributable to employee stock option plans	—	—	11,832	—	—	—	—	11,832
Tax benefit derived from net operating loss carryforward utilization	—	—	3,652	—	—	—	—	3,652
Purchase of treasury shares	—	—	—	—	(2,384)	(14,971)	—	(14,971)
<b>Balance March 31, 2001</b>	<b>30,166</b>	<b>\$ —</b>	<b>\$ 200,786</b>	<b>\$ 12,146</b>	<b>(2,884)</b>	<b>\$ (20,249)</b>	<b>(11,377)</b>	<b>\$ 181,306</b>

The accompanying notes are an integral part of these consolidated financial statements.

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**ACTIVISION, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	For the years ended March 31,		
	2001	2000	1999
Cash flows from operating activities:			
Net income (loss)	\$ 20,507	\$ (34,088)	\$ 14,891
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Deferred income taxes	(6,597)	(4,311)	3,806
Depreciation and amortization	6,268	45,866	6,488
Amortization of prepaid royalties and capitalized software costs	68,925	78,714	27,055

Expense related to common stock warrants	1,406	5,769	388
Tax benefit of stock options exercised	11,832	3,017	1,059
Change in assets and liabilities (net of effects of purchases and acquisitions):			
Accounts receivable	30,027	9,900	(43,686)
Inventories	(5,283)	(7,342)	(11,506)
Prepaid royalties and capitalized software costs	(65,964)	(74,506)	(60,531)
Other assets	6,062	(6,307)	(6,862)
Accounts payable	21,361	(8,038)	(6,620)
Accrued expenses and other liabilities	(6,979)	(5,791)	33,177
	<u>81,565</u>	<u>2,883</u>	<u>(42,341)</u>
Net cash provided by (used in) operating activities			
Cash flows from investing activities:			
Cash used in purchase acquisitions (net of cash acquired)	—	(20,523)	—
Capital expenditures	(9,780)	(4,518)	(3,800)
Proceeds from disposal of property and equipment	1,149	—	—
	<u>(8,631)</u>	<u>(25,041)</u>	<u>(3,800)</u>
Net cash used in investing activities			
Cash flows from financing activities:			
Proceeds from issuance of common stock pursuant to employee stock option plans	31,693	21,718	5,271
Proceeds from issuance of common stock pursuant to employee stock purchase plan	845	762	798
Proceeds from issuance of common stock pursuant to warrants	1,050	—	—
Borrowing under line-of-credit agreement	577,590	361,161	5,300
Payment under line-of-credit agreement	(581,618)	(355,156)	(5,300)
Payment on term loan	(11,450)	(1,645)	—
Proceeds from term loan	—	25,000	—
Notes payable, net	(592)	(6,457)	1,151
Cash paid to secure line of credit and term loan	—	(3,355)	—
Purchase of treasury stock	(14,971)	—	—
	<u>2,547</u>	<u>42,028</u>	<u>7,220</u>
Net cash provided by financing activities			
Effect of exchange rate changes on cash	84	(2,922)	(2,361)
	<u>75,565</u>	<u>16,948</u>	<u>(41,282)</u>
Net increase (decrease) in cash and cash equivalents			
Cash and cash equivalents at beginning of period	49,985	33,037	74,319
	<u>\$ 125,550</u>	<u>\$ 49,985</u>	<u>\$ 33,037</u>
Cash and cash equivalents at end of period			

The accompanying notes are an integral part of these consolidated financial statements.

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## ACTIVISION, INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### 1. Summary of Significant Accounting Policies

##### Business

Activision, Inc. ("Activision" or the "Company") is a leading international publisher, developer and distributor of interactive entertainment and leisure products. The Company currently focuses its publishing, development and distribution efforts on products designed for personal computers ("PCs") as well as the Sony PlayStation ("PSX") and PlayStation 2 ("PS2") and Nintendo N64 ("N64") console systems and Nintendo Game Boy handheld game devices. The Company is also currently focusing on the development of products for Microsoft Xbox ("Xbox") and Nintendo GameCube console systems and Nintendo Game Boy Advance hand held device. During January 2001, Sega Corp., the maker of the Sega Dreamcast ("Dreamcast") announced that it would stop making the Dreamcast in March 2001. Net revenues from the Dreamcast have historically represented only a small percentage of the Company's total net revenues. Accordingly, the Company believes that the departure of the Dreamcast console system from the market will not have a material impact upon its financial position or results of operations.

The Company maintains operations in the U.S., Canada, the United Kingdom, France, Germany, Japan, Australia, Belgium and the

Netherlands. For fiscal year 2001, international operations contributed approximately 43% of net revenues.

#### *Principles of Consolidation*

The consolidated financial statements include the accounts of Activision, Inc., a Delaware corporation, and its wholly-owned subsidiaries (the "Company" or "Activision"). All intercompany accounts and transactions have been eliminated in consolidation.

#### *Basis of Presentation*

The consolidated financial statements have been retroactively restated to reflect the poolings of interests of the Company with JCM Productions, Inc. dba Neversoft Entertainment ("Neversoft") in September 1999.

#### *Cash and Cash Equivalents*

Cash and cash equivalents include cash, money markets and short-term investments with original maturities of not more than 90 days.

The Company's cash and cash equivalents were comprised of the following at March 31, 2001 and 2000 (amounts in thousands):

	March 31,	
	2001	2000
Cash	\$ 63,018	\$ 32,637
Money market funds	62,532	17,348
	<u>\$ 125,550</u>	<u>\$ 49,985</u>

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#### *Concentration of Credit Risk*

Financial instruments which potentially subject the Company to concentration of credit risk consist principally of temporary cash investments and accounts receivable. The Company places its temporary cash investments with financial institutions. At various times during the fiscal years ended March 31, 2001 and 2000, the Company had deposits in excess of the Federal Deposit Insurance Corporation ("FDIC") limit at these financial institutions. The Company's customer base includes retail outlets and distributors including consumer electronics and computer specialty stores, discount chains, video rental stores and toy stores in the United States and countries worldwide. The Company performs ongoing credit evaluations of its customers and maintains allowances for potential credit losses. The Company generally does not require collateral or other security from its customers.

As of and for the year ending March 31, 2001, the Company's publishing business had one customer that accounted for 10% of its consolidated net revenues and 15% of its consolidated accounts receivable, net. For the years ending March 31, 2000 and 1999, no single customer accounted for 10% or more of consolidated net revenues.

#### *Fair Value of Financial Instruments*

The estimated fair values of financial instruments have been determined by the Company using available market information and valuation methodologies described below. However, considerable judgment is required in interpreting market data to develop the estimates of fair value. Accordingly, the estimates presented herein may not be indicative of the amounts that the Company could realize in a current market exchange. The use of different market assumptions or valuation methodologies may have a material effect on the estimated fair value amounts.

**Cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities:** The carrying amounts of these instruments approximate fair value due to their short-term nature.

**Long-term debt and convertible subordinated notes:** The carrying amounts of the Company's variable rate debt approximate fair value because the interest rates are based on floating rates identified by reference to market rates. The fair value of the Company's fixed rate debt is based on quoted market prices, where available, or discounted future cash flows based on the Company's current incremental borrowing rates for similar types of borrowing arrangements as of the balance sheet date. The carrying amount and fair value of the Company's long-term debt and convertible subordinated notes, was \$73.6 million and \$60.0 million, respectively, as of March 31, 2001 and \$90.0 million and \$81.6 million, respectively, as of March 31, 2000.

#### *Prepaid Royalties and Capitalized Software Costs*

Prepaid royalties include payments made to independent software developers under development agreements and license fees paid to intellectual property rights holders for use of their trademarks or copyrights. Intellectual property rights which have alternative future uses are capitalized. Capitalized software costs represent costs incurred for development that are not recoupable against future royalties.

The Company accounts for prepaid royalties relating to development agreements and capitalized software costs in accordance with Statement of Financial Accounting Standards ("SFAS") No. 86, "Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed." Software development costs and prepaid royalties are capitalized once technological feasibility is established. Technological feasibility is evaluated on a product by product basis. For products where proven game engine technology exists, this may occur early in the development cycle. Software development costs are expensed if and when they are deemed unrecoverable. Amounts related to software development which are not capitalized are charged immediately to product development expense.

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The following criteria is used to evaluate recoverability of software development costs: historical performance of comparable products; the commercial acceptance of prior products released on a given game engine; orders for the product prior to its release; estimated performance of a sequel product based on the performance of the product on which the sequel is based; and actual development costs of a product as compared to the Company's budgeted amount.

Commencing upon product release prepaid royalties and capitalized software development costs are amortized to cost of sales—royalties and software amortization on the ratio of current revenues to total projected revenues, generally resulting in an amortization period of one year or less. For products that have been released, management evaluates the future recoverability of capitalized amounts on a quarterly basis.

As of March 31, 2001, prepaid royalties and unamortized capitalized software costs totaled \$38.3 million (including \$14.7 million classified as non-current) and \$3.9 million, respectively. As of March 31, 2000, prepaid royalties and unamortized capitalized software costs totaled \$29.2 million (including \$9.2 million classified as non-current) and \$11.6 million, respectively. Amortization of prepaid royalties and capitalized software costs was \$68.9 million, \$78.7 million and \$27.1 million for the years ended March 31, 2001, 2000 and 1999, respectively.

#### *Inventories*

Inventories are valued at the lower of cost (first-in, first-out) or market.

#### *Revenue Recognition*

**Product Sales:** The Company recognizes revenue from the sale of its products once they are shipped and are available for general release to customers. Subject to certain limitations, the Company permits customers to obtain exchanges or return products within certain specified periods and provides price protection on certain unsold merchandise. Management of the Company estimates the amount of future returns, and price protections based upon historical results and current known circumstances. Revenue from product sales is reflected net of the allowance for returns and price protection.

**Software Licenses:** For those license agreements which provide the customers the right to multiple copies in exchange for guaranteed amounts, revenue is recognized at delivery. Per copy royalties on sales which exceed the guarantee are recognized as earned.

#### *Advertising Expenses*

The Company expenses advertising and the related costs as incurred. Advertising expenses for the years ended March 31, 2001, 2000 and 1999 were approximately \$16.5 million, \$18.6 million and \$15.6 million, respectively, and are included in sales and marketing expense in the consolidated statements of operations.

#### *Goodwill and Long-Lived Assets*

Cost in excess of the fair value of net assets of companies acquired, goodwill, is being amortized on a straight-line basis over periods ranging from 5 to 20 years. As of March 31, 2001 and 2000, accumulated amortization amounted to \$51.9 million and \$50.8 million, respectively. The Company accounts for impairment of long-lived assets, including goodwill, in accordance with SFAS No. 121, "Accounting for Impairment of Long-Lived Assets and Long-Lived Assets to Be Disposed Of." This Statement requires that long-lived assets and certain identifiable intangibles, including goodwill, be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the asset to undiscounted cash flows expected to be

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generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount exceeds the fair value of the assets. In conjunction with its strategic restructuring plan as detailed in Note 3, in the fourth quarter of fiscal 2000, the Company recorded a charge for impairment of goodwill of \$37.2 million. See Note 3 for further discussion.

#### *Interest Expense, net*

Interest expense, net is comprised of the following, (amounts in thousands):

	March 31,		
	2001	2000	1999
Interest expense	\$ (9,399)	\$ (9,375)	\$ (4,974)
Interest income	2,136	964	1,943
<b>Net interest income (expense)</b>	<b>\$ (7,263)</b>	<b>\$ (8,411)</b>	<b>\$ (3,031)</b>

#### *Income Taxes*

The Company accounts for income taxes using SFAS No. 109, "Accounting for Income Taxes." Under SFAS No. 109, income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

#### *Foreign Currency Translation*



The functional currencies of the Company's foreign subsidiaries are their local currencies. All assets and liabilities of the Company's foreign subsidiaries are translated into U.S. dollars at the exchange rate in effect at the end of the period, and revenue and expenses are translated at weighted average exchange rates during the period. The resulting translation adjustments are reflected as a component of shareholders' equity.

#### *Estimates*

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

#### *Earnings Per Common Share*

Basic earnings per share is computed by dividing net income by the weighted average number of common shares outstanding for all periods. Diluted earnings per share is computed by dividing net income by the weighted average number of common shares and common stock equivalents from outstanding stock options and warrants and convertible debt. Common stock equivalents are calculated using the treasury stock method and represent incremental shares issuable upon exercise of the Company's outstanding options and warrants and conversion of the Company's convertible debt. However, potential common shares are not included in the denominator of the diluted earnings per

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share calculation when inclusion of such shares would be anti-dilutive, such as in a period in which the Company records a net loss.

#### *Stock Based Compensation*

Prior to April 1, 1996, the Company accounted for its stock option plan in accordance with the provisions of Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB No. 25"), and related interpretations. As such, compensation expense would be recorded on the date of the grant only if the current market price of the underlying stock exceeded the option exercise price. On April 1, 1996 the Company adopted SFAS No. 123, "Accounting for Stock-Based Compensation," which permits entities to recognize as expense over the vesting period, the fair value of all stock-based awards on the date of the grant. Alternatively, SFAS No. 123 also allows entities to continue to apply the provisions of APB No. 25 and provide pro forma net income and pro forma earnings per share disclosures for employee stock option grants made in 1995 and future years as if the fair-value-based method defined in SFAS No. 123 had been applied. The Company has elected to continue to apply the provisions of APB No. 25 and provide the pro forma disclosure provisions of SFAS No. 123.

Warrants granted to non-employees are accounted for in accordance with the Financial Accounting Standards Board's Emerging Issues Task Force Issue No. 96-18 "Accounting for Equity Instruments that are Issued To Other Than Employees for Acquiring or in Connection With Selling Goods or Services" (EITF 96-18).

#### *Related Parties*

As of March 31, 2001 and 2000, the Company had \$4.3 million and \$2.7 million, respectively, of loans outstanding due from employees. The loans bear interest at 6.75% and are primarily due from Company executives.

#### *Implementation of SAB 101*

The Securities and Exchange Commission ("SEC") issued Staff Accounting Bulletin ("SAB") 101, Revenue Recognition in Financial Statements, in December 1999. The SAB summarizes certain of the SEC staff's views in applying generally accepted accounting principles to revenue recognition in financial statements. During the year ended March 31, 2001, the Company performed a review of its revenue recognition policies and determined that it is in compliance with SAB 101.

#### *Recently Issued Accounting Standards*

Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities," ("SFAS No. 133") as subsequently amended by SFAS No. 137 and SFAS No. 138, is effective for all fiscal years beginning after June 15, 2000. SFAS No. 133 establishes accounting and reporting standards for derivative instruments and for hedging activities. It requires that an entity recognize all derivatives as either assets or liabilities in the statement of financial position and measure those instruments at fair value. The Company does not currently participate in hedging activities or own derivative instruments but plans to adopt SFAS No. 133 beginning April 1, 2001. Management does not believe the adoption of SFAS No. 133 will have a material impact on the financial position or results of operations of the Company.

#### *Reclassifications*

Certain amounts in the consolidated financial statements have been reclassified to conform with the current year's presentation. These reclassifications had no effect on net income (loss), shareholders' equity or net increase (decrease) in cash and cash equivalents.

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## **2. Acquisitions**

### ***Fiscal 2000 Transactions***

#### ***Acquisition of Neversoft***

On September 30, 1999, the Company acquired Neversoft, a privately held console software developer, in exchange for 698,835 shares of the Company's common stock. The acquisition was accounted for as a pooling of interests. Accordingly, in fiscal 2000 the Company restated the financial statements for all periods prior to the closing of the transaction.

The following table represents the results of operations of the previously separate companies for the period before the combination was consummated which are included in fiscal year 2000 combined net income (loss) (amounts in thousands).

	Fiscal Year 2000		
	Activision Six Months Ended Sept. 30, 1999	Neversoft Six Months Ended Sept. 30, 1999	Total Six Months Ended Sept. 30, 1999
Revenues	\$ 199,505	\$ —	\$ 199,505
Net income (loss)	\$ (3,028)	\$ (484)	\$ (3,512)

#### *Acquisition of Elsinore Multimedia*

On June 29, 1999, the Company acquired Elsinore Multimedia, Inc. ("Elsinore"), a privately held interactive software development company, in exchange for 204,448 shares of the Company's common stock.

The acquisition was accounted for using the purchase method of accounting. Accordingly, the results of operations of Elsinore have been included in the Company's consolidated financial statements from the date of acquisition. The aggregate purchase price has been allocated to the assets and liabilities acquired, consisting mostly of goodwill of \$3.0 million, that is being amortized over a five year period. Pro forma statements of operations reflecting the acquisition of Elsinore are not shown, as they would not differ materially from reported results.

#### *Acquisition of Expert Software*

On June 22, 1999, the Company acquired all of the outstanding capital stock of Expert Software, Inc. ("Expert"), a publicly held developer and publisher of value-line interactive leisure products, for approximately \$24.7 million. The aggregate purchase price of approximately \$24.7 million consisted of \$20.3 million in cash payable to the former shareholders of Expert, the valuation of employee stock options in the amount of \$3.3 million, and other acquisition costs.

The acquisition was accounted for using the purchase method of accounting. Accordingly, the results of operations of Expert have been included in the Company's consolidated financial statements from the date of acquisition.

The aggregate purchase price was allocated to the fair values of the assets and liabilities acquired as follows (amounts in thousands):

Tangible assets	\$ 4,743
Existing products	1,123
Goodwill	28,335
Liabilities	(9,532)
	\$ 24,669

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However, as more fully described in Note 3, in the fourth quarter of fiscal 2000, the Company implemented a strategic restructuring plan to accelerate the development of games for the next-generation consoles and the Internet. In conjunction with that plan, the Company consolidated Expert and its Head Games subsidiary, forming one integrated business unit in the value software category. As part of this consolidation, the Company discontinued several of Expert's product lines and terminated substantially all of Expert's employees. In addition, the Company phased out the use of the Expert name. As a result of these initiatives, in fiscal 2000, the Company incurred a nonrecurring charge of \$26.3 million resulting from the write-down of intangibles acquired, including goodwill.

#### ***Fiscal 1999 Transactions***

The acquisitions of Head Games and CD Contact were originally treated as immaterial poolings of interests. However, after reviewing the results of operations of the entities, including the materiality and impact on the Company's trends, in fiscal 1999 the Company restated the financial statements for all periods prior to the closing of each respective transaction.

#### *Acquisition of Head Games*

On June 30, 1998, the Company acquired Head Games in exchange for 1,000,000 shares of the Company's common stock. The acquisition was accounted for as a pooling of interests.

#### *Acquisition of CD Contact*

On September 29, 1998, the Company acquired CD Contact in exchange for 1,900,000 shares of the Company's common stock and the assumption of \$9.1 million in outstanding debt payable to CD Contact's former shareholders. The acquisition was accounted for as a pooling of interests.

The following table represents the results of operations of the previously separate companies for the periods before the combinations were consummated that are included in the fiscal 1999 combined net income of the Company (amounts in thousands):

Fiscal Year 1999

	Activision Year Ended March 31, 1999	Head Games Three Months Ended June 30, 1998	CD Contact Six Months Ended Sept. 30, 1998	Neversoft Year Ended March 31, 1999	Total Year Ended March 31, 1999
Revenues	\$ 412,225	\$ 2,195	\$ 22,065	\$ 41	\$ 436,526
Net income (loss)	\$ 14,194	\$ 394	\$ 666	\$ (363)	\$ 14,891

### 3. Strategic Restructuring Plan

In the fourth quarter of fiscal 2000, the Company finalized a strategic restructuring plan to accelerate the development and sale of interactive entertainment and leisure products for the next-generation consoles and the Internet. Costs associated with this plan amounted to \$70.2 million, approximately \$61.8 million net of taxes, and were recorded in the consolidated statement of operations in the fourth quarter of fiscal year 2000 and classified as follows (amount in millions):

Net revenues	\$ 11.7
Cost of sales—royalties and software amortization	11.9
Product development	4.2
General and administrative	5.2
Amortization of intangible assets	37.2
	\$ 70.2

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The component of the charge included in amortization of intangible assets represented a write down of intangibles including goodwill, relating to Expert Software, Inc. ("Expert"), one of the Company's value publishing subsidiaries, totaling \$26.3 million. The Company consolidated Expert into Head Games, forming one integrated business unit. As part of this consolidation, the Company discontinued substantially all of Expert's product lines, terminated substantially all of Expert's employees and phased out the use of the Expert name. In addition, a \$10.9 million write down of goodwill relating to TDC, an OEM business unit, was recorded. In fiscal 2000, the OEM market went through radical changes due to price declines of PCs and hardware accessories. The sum of the undiscounted future cash flow of these assets was not sufficient to cover the carrying value of these assets and as such was written down to fair market value.

The component of the charge included in net revenues and general and administrative expense represents costs associated with the planned termination of a substantial number of its third party distributor relationships in connection with the Company's realignment of its worldwide publishing business to leverage its existing sales and marketing organizations and improve the control and management of its products. These actions resulted in an increase in the allowance for sales returns of \$11.7 million and the allowance for doubtful accounts of \$3.4 million. The plan also included a severance charge of \$1.2 million for employee redundancies.

The components of the charge included in cost of sales—royalties and software amortization and product development represent costs to write down certain assets associated with exiting certain product lines and re-evaluating other product lines which resulted in reduced expectations.

During fiscal 2001, the Company completed the restructuring initiatives associated with the fiscal 2000 restructuring plan without any significant adjustments.

### 4. Inventories

The Company's inventories consist of the following (amounts in thousands):

	March 31,	
	2001	2000
Purchased parts and components	\$ 1,885	\$ 2,857
Finished goods	42,003	37,596
	\$ 43,888	\$ 40,453

### 5. Property and Equipment

Property and equipment are recorded at cost. Depreciation and amortization are provided using the straight-line method over the shorter of the estimated useful lives or the lease term: buildings, 30 years; computer equipment, office furniture and other equipment, 3 years; leasehold improvements, through the life of the lease. When assets are retired or disposed of, the cost and accumulated

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depreciation thereon are removed and any resultant gains or losses are recognized in current operations. Property and equipment was as follows (amounts in thousands):

March 31,

	2001	2000
Land	\$ 214	\$ 526
Buildings	4,004	2,468
Computer equipment	21,512	18,670
Office furniture and other equipment	5,585	5,800
Leasehold improvements	3,713	3,229
Total cost of property and equipment	35,028	30,693
Less accumulated depreciation	(19,788)	(19,878)
Property and equipment, net	\$ 15,240	\$ 10,815

Depreciation expense for the years ended March 31, 2001, 2000 and 1999 was \$4.8 million, \$4.2 million and \$4.9 million, respectively.

## 6. Accrued Expenses

Accrued expenses were comprised of the following (amounts in thousands):

	March 31,	
	2001	2000
Accrued royalties payable	\$ 14,764	\$ 13,300
Affiliated label payable	733	4,033
Accrued selling and marketing costs	4,603	10,493
Income tax payable	859	4,934
Accrued interest expense	1,150	1,013
Accrued bonus and vacation pay	11,958	5,514
Other	9,972	10,117
Total	\$ 44,039	\$ 49,404

## 7. Operations by Reportable Segments and Geographic Area

The Company publishes, develops and distributes interactive entertainment and leisure products for a variety of game platforms, including PCs, the Sony PlayStation and PlayStation 2 console systems, the Nintendo 64 console system, the Nintendo Game Boy and the Sega Dreamcast console system. The Company has also begun product development for next-generation console systems and hand held devices, including Microsoft's Xbox and Nintendo's GameCube and Game Boy Advance. Based on its organizational structure, the Company operates in two reportable segments: publishing and distribution.

The Company's publishing segment publishes titles that are developed both internally through the studios owned by the Company and externally through third party developers. In the United States, the Company's products are sold primarily on a direct basis to major computer and software retailing organizations, mass market retailers, consumer electronic stores, discount warehouses and mail order companies. The Company conducts its international publishing activities through offices in the United Kingdom, Germany, France, Australia, Canada and Japan. The Company's products are sold internationally on a direct to retail basis and through third party distribution and licensing arrangements and through the Company's wholly-owned distribution subsidiaries located in the United Kingdom, the Netherlands and Germany.

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The Company's distribution segment, located in the United Kingdom, the Netherlands and Germany, distributes interactive entertainment software and hardware and provides logistical services for a variety of publishers and manufacturers.

The President and Chief Operating Officer allocates resources to each of these segments using information on their respective revenues and operating profits before interest and taxes. The President and Chief Operating Officer has been identified as the Chief Operating Decision Maker as defined by SFAS No. 131, "Disclosure about Segments of an Enterprise and Related Information," ("SFAS No. 131").

The President and Chief Operating Officer does not evaluate individual segments based on assets or depreciation.

The accounting policies of these segments are the same as those described in the Summary of Significant Accounting Policies. Revenue derived from sales between segments is eliminated in consolidation.

Information on the reportable segments for the three years ended March 31, 2001 is as follows (amounts in thousands):

	Year ended March 31, 2001		
	Publishing	Distribution	Total
Total segment revenues	\$ 466,062	\$ 154,121	\$ 620,183
Revenue from sales between segments	(39,331)	39,331	—

Revenues from external customers	\$ 426,731	\$ 193,452	\$ 620,183
Operating income	\$ 35,687	\$ 4,120	\$ 39,807
Total assets	\$ 271,488	\$ 88,469	\$ 359,957
Year ended March 31, 2000			
	Publishing	Distribution	Total
Total segment revenues	\$ 396,691	\$ 175,514	\$ 572,205
Revenue from sales between segments	(40,255)	40,255	—
Revenues from external customers	\$ 356,436	\$ 215,769	\$ 572,205
Operating income (loss)	\$ (35,049)	\$ 4,724	\$ (30,325)
Total assets	\$ 230,961	\$ 78,776	\$ 309,737
Year ended March 31, 1999			
	Publishing	Distribution	Total
Total segment revenues	\$ 205,542	\$ 230,984	\$ 436,526
Revenue from sales between segments	(19,202)	19,202	—
Revenues from external customers	\$ 186,340	\$ 250,186	\$ 436,526
Operating income	\$ 12,398	\$ 14,269	\$ 26,667
Total assets	\$ 185,567	\$ 97,778	\$ 283,345

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Geographic information for the three years ended March 31, 2001 is based on the location of the selling entity. Revenues from external customers by geographic region were as follows (amounts in thousands):

	Year ended March 31,		
	2001	2000	1999
United States	\$ 352,893	\$ 282,847	\$ 149,705
Europe	256,228	277,485	278,032
Other	11,062	11,873	8,789
Total	\$ 620,183	\$ 572,205	\$ 436,526

Revenues by platform were as follows (amounts in thousands):

	Year ended March 31,		
	2001	2000	1999
Console	\$ 466,893	\$ 410,277	\$ 268,246
PC	153,290	161,928	168,280
Total	\$ 620,183	\$ 572,205	\$ 436,526

## 8. Computation of Earnings Per Share

The following table sets forth the computations of basic and diluted earnings (loss) per share, (amounts in thousands, except per share data):

	Year ended March 31,		
	2001	2000	1999
Numerator			

Numerator for basic and diluted earnings per share-income (loss) available to common shareholders	\$ 20,507	\$ (34,088)	\$ 14,891
<b>Denominator</b>			
Denominator for basic earnings per share-weighted average common shares outstanding	24,865	24,691	22,861
Effect of dilutive securities:			
Employee stock options	2,354	—	942
Warrants to purchase common stock	181	—	129
Potential dilutive common shares	2,535	—	1,071
Denominator for diluted earnings per share-weighted average common shares outstanding plus assumed conversions	27,400	24,691	23,932
Basic earnings (loss) per share	\$ 0.82	\$ (1.38)	\$ 0.65
Diluted earnings (loss) per share	\$ 0.75	\$ (1.38)	\$ 0.62

Options to purchase 2,338,841, 2,555,397 and 2,188,175 shares of common stock were outstanding for the years ended March 31, 2001, 2000 and 1999, respectively, but were not included in the calculations of diluted earnings (loss) per share because their effect would be antidilutive. Convertible subordinated notes were also not included in the calculations of diluted earnings per share because their effect would be antidilutive.

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Subsequent to March 31, 2001, the Company called for the redemption of its \$60.0 million convertible subordinated notes due 2005. In connection with that call, holders have converted into common stock approximately \$60.0 million aggregate principal amount of their convertible subordinated notes, resulting in the issuance of approximately 3,175,000 shares of common stock to such holders.

## 9. Income Taxes

Domestic and foreign income (loss) before income taxes and details of the income tax provision (benefit) are as follows (amounts in thousands):

	Year ended March 31,		
	2001	2000	1999
Income (loss) before income taxes:			
Domestic	\$ 24,276	\$ (37,115)	\$ 5,945
Foreign	8,268	(1,621)	17,691
	\$ 32,544	\$ (38,736)	\$ 23,636
Income tax expense (benefit):			
Current:			
Federal	\$ 394	\$ (383)	\$ 37
State	112	337	124
Foreign	4,351	2,610	5,456
Total current	4,857	2,564	5,617
Deferred:			
Federal	(5,610)	(10,047)	(418)
State	(1,761)	(1,448)	57
Foreign	(479)	—	—
Total deferred	(7,850)	(11,495)	(361)
Add back benefit credited to additional paid-in capital:			
Tax benefit related to stock option exercises	11,378	3,017	1,059
Tax benefit related to utilization of pre- bankruptcy net operating loss carryforwards	3,652	1,266	2,430
	15,030	4,283	3,489
Income tax provision (benefit)	\$ 12,037	\$ (4,648)	\$ 8,745

The items accounting for the difference between income taxes computed at the U.S. federal statutory income tax rate and the income tax provision for each of the years are as follows:

	Year ended March 31,		
	2001	2000	1999
Federal income tax provision (benefit) at statutory rate	35.0 %	(34.0)%	34.0 %
State taxes, net of federal benefit	3.3 %	(4.5)%	1.3 %
Nondeductible amortization	1.3 %	18.6 %	1.7 %
Nondeductible merger fees	—	0.4 %	0.8 %
Research and development credits	(5.7)%	(8.6)%	(5.4)%
Incremental effect of foreign tax rates	0.5 %	2.8 %	(0.9)%
Increase of valuation allowance	4.0 %	13.8 %	5.1 %
Rate changes	(1.5)%	—	—
Other	0.1 %	(0.5)%	0.4 %
	37.0 %	(12.0)%	37.0 %

Deferred income taxes reflect the net tax effects of temporary differences between the amounts of assets and liabilities for accounting purposes and the amounts used for income tax purposes. The components of the net deferred tax asset and liability are as follows (amounts in thousands):

	March 31,	
	2001	2000
<b>Deferred asset:</b>		
Allowance for bad debts	\$ 716	\$ 1,019
Allowance for sales returns	3,900	5,151
Inventory reserve	992	799
Vacation & bonus reserve	1,663	763
Royalty reserve	170	774
Other	1,643	1,585
Tax credit carryforwards	14,224	12,062
Net operating loss carryforwards	12,362	12,828
Amortization & depreciation	6,816	7,055
<b>Deferred asset</b>	<b>42,486</b>	<b>42,036</b>
Valuation allowance	(9,895)	(13,041)
<b>Net deferred asset</b>	<b>32,591</b>	<b>28,995</b>
<b>Deferred liability:</b>		
Capitalized research expenses	3,087	7,864
State taxes	1,453	917
<b>Deferred liability</b>	<b>4,540</b>	<b>8,781</b>
<b>Net deferred asset</b>	<b>\$ 28,051</b>	<b>\$ 20,214</b>

In accordance with Statement of Position 90-7 ("SOP 90-7"), "Financial Reporting by Entities in Reorganization Under the Bankruptcy Code," issued by the AICPA, benefits from loss carryforwards arising prior to the Company's reorganization are recorded as additional paid-in capital. During the year ended March 31, 2001, \$3.7 million was recorded as additional paid-in capital.

As of March 31, 2001, the Company's available federal net operating loss carryforward of \$30.8 million is subject to certain limitations as defined under Section 382 of the Internal Revenue Code. The net operating loss carryforwards expire from 2006 to 2019. The Company's available state

net operating loss carryforward of \$8.0 million is not subject to limitations under Section 382 of the Internal Revenue Code. The Company has tax

credit carryforwards of \$9.4 million and \$4.8 million for federal and state purposes, respectively, which expire from 2006 to 2021.

At March 31, 2001, the Company's deferred income tax asset for tax credit carryforwards and net operating loss carryforwards was reduced by a valuation allowance of \$9.9 million. Of such valuation allowance, none relates to SOP 90-7 which, if realized, would be recorded as additional paid-in capital. Realization of the deferred tax assets is dependent upon the continued generation of sufficient taxable income prior to expiration of tax credits and loss carryforwards. Although realization is not assured, management believes it is more likely than not that the net carrying value of the deferred tax asset will be realized. The amount of deferred tax assets considered realizable, however, could be reduced in the future if estimates of future taxable income are reduced.

Cumulative undistributed earnings of foreign subsidiaries for which no deferred taxes have been provided approximated \$22.8 million at March 31, 2001. Deferred income taxes on these earnings have not been provided as these amounts are considered to be permanent in duration.

## 10. Long-Term Debt

### Bank Lines of Credit and Other Debt

The Company's long-term debt consists of the following (amounts in thousands):

	March 31,	
	2001	2000
U.S. Facility	\$ 8,432	\$ 22,496
The Netherlands Facility	1,759	3,509
Mortgage notes payable and other	3,441	4,033
	13,632	30,038
Less current portion	(10,231)	(16,260)
Long-term debt, less current portion	\$ 3,401	\$ 13,778

In June 1999, the Company obtained a \$100.0 million revolving credit facility and a \$25.0 million term loan (the "U.S. Facility") with a syndicate of banks. The revolving portion of the U.S. Facility provides the Company with the ability to borrow up to \$100.0 million and issue letters of credit up to \$80 million on a revolving basis against eligible accounts receivable and inventory. The \$25.0 million term loan portion of the U.S. Facility was used to acquire Expert Software, Inc. in June 1999 and to pay costs related to such acquisition and the securing of the U.S. Facility. The term loan has a three year term with principal amortization on a straight-line quarterly basis beginning December 31, 1999 and a borrowing rate based on the banks' base rate (which is generally equivalent to the published prime rate) plus 2% or LIBOR plus 3%. The revolving portion of the U.S. Facility has a borrowing rate based on the banks' base rate plus 1.75% or LIBOR plus 2.75% and matures June 2002. The U.S. Facility had a weighted average interest rate of approximately 9.70% and 9.50% for the year ended March 31, 2001 and 2000, respectively. The Company pays a commitment fee of 1/2% on the unused portion of the revolving line. The U.S. Facility is collateralized by substantially all of the assets of the Company and its U.S. subsidiaries. The U.S. Facility contains various covenants that limit the ability of the Company to incur additional indebtedness, pay dividends or make other distributions, create certain liens, sell assets, or enter into certain mergers or acquisitions. The Company is also required to maintain specified financial ratios related to net worth and fixed charges. As of March 31, 2001 and 2000, the Company was in compliance with these covenants. As of March 31, 2001, approximately \$8.5 million was outstanding under the term loan portion of the U.S. Facility. As of March 31, 2001, there were no borrowings outstanding and \$18.2 million of letters of credit outstanding against the

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revolving portion of the U.S. Facility. As of March 31, 2000, \$20.0 million was outstanding under the term loan portion and \$2.5 million was outstanding under the revolving portion of the U.S. Facility. No letters of credit were outstanding against the revolving portion of the U.S. Facility at March 31, 2000.

The Company has a revolving credit facility through its CD Contact subsidiary in the Netherlands (the "Netherlands Facility"). The Netherlands Facility permits revolving credit loans and letters of credit up to Netherlands Guilders ("NLG") 26 million (\$10.4 million) as of March 31, 2001 and NLG 45 million (\$19.4 million) as of March 31, 2000, based upon eligible accounts receivable and inventory balances. The Netherlands Facility is due on demand, bears interest at a Eurocurrency rate plus 1.50% and 1.25% in fiscal 2001 and 2000, respectively (weighted average interest rate of approximately 7.40% and 6.80% as of March 31, 2001 and 2000, respectively) and matures August 2003. Borrowings outstanding under the Netherlands Facility were \$1.8 million and \$3.5 million at March 31, 2001 and 2000, respectively. Letters of credit outstanding under the Netherlands Facility were NLG 3.8 million (\$1.6 million) as of March 31, 2000. There were no letters of credit outstanding under the Netherlands Facility as of March 31, 2001.

The Company also has revolving credit facilities with its CentreSoft subsidiary located in the United Kingdom (the "UK Facility") and its NBG subsidiary located in Germany (the "German Facility"). The UK Facility provides for British Pounds ("GBP") 7.0 million (\$10.0 million) of revolving loans and GBP 3.0 million (\$4.3 million) of letters of credit as of March 31, 2001 and GBP 7.0 million (\$11.2 million) of revolving loans and GBP 6.0 million (\$9.6 million) of letters of credit as of March 31, 2000. The UK Facility bears interest at LIBOR plus 2%, is collateralized by substantially all of the assets of the subsidiary and matures in July 2001. The UK Facility also contains various covenants that require the subsidiary to maintain specified financial ratios related to, among others, fixed charges. As of March 31, 2001 and 2000, the Company was in compliance with these covenants. No borrowings were outstanding against the UK facility at March 31, 2001 or 2000. Letters of credit of GBP 3.0 million (\$4.3 million) and GBP 6.0 million (\$9.6 million) were outstanding against the UK Facility at March 31, 2001 and 2000, respectively. As of March 31, 2001 and 2000, the German Facility provides for revolving loans up to Deutsche Marks ("DM") 4 million (\$1.8 million), bears interest at 7.0%, is collateralized by a cash deposit of approximately GBP 650,000 (\$928,000) made by the Company's CentreSoft subsidiary and has no expiration date. No borrowings were outstanding against the German Facility as of March 31, 2001 and 2000.



Mortgage notes payable relate to the land, office and warehouse facilities of the Company's German and Netherlands subsidiaries. The notes bear interest at 5.45% and 5.35%, respectively, and are collateralized by the related assets. The Netherlands mortgage note payable is due in quarterly installments of NLG 25,000 (\$10,000) and matures January 2019. The German mortgage note payable is due in bi-annual installments of DM 145,000 (\$65,500) beginning June 2002 and matures December 2019.

Annual maturities of long-term debt are as follows (amounts in thousands):

2002	\$ 10,231
2003	235
2004	171
2005	171
2006	171
Thereafter	2,653
<b>Total</b>	<b>\$ 13,632</b>

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#### *Private Placement of Convertible Subordinated Notes*

In December 1997, the Company completed the private placement of \$60.0 million principal amount of 6<sup>3</sup>/<sub>4</sub>% convertible subordinated notes due 2005 (the "Notes"). The Notes are convertible, in whole or in part, at the option of the holder at any time after December 22, 1997 (the date of original issuance) and prior to the close of business on the business day immediately preceding the maturity date, unless previously redeemed or repurchased, into common stock, \$.000001 par value, of the Company, at a conversion price of \$18.875 per share, (equivalent to a conversion rate of 52.9801 shares per \$1,000 principal amount of Notes), subject to adjustment in certain circumstances. The Notes are redeemable, in whole or in part, at the option of the Company at any time on or after January 10, 2001, subject to premiums through December 31, 2003.

#### **11. Commitments and Contingencies**

##### *Developer Contracts*

In the normal course of business, the Company enters into contractual arrangements with third parties for the development of products. Under these agreements, the Company commits to provide specified payments to a developer, contingent upon the developer's achievement of contractually specified milestones. Assuming all contractually specified milestones are achieved, for contracts in place as of March 31, 2001, the total future minimum contract commitment is approximately \$62.1 million, which is scheduled to be paid as follows (amount in thousands):

Year ending March 31,	
2002	\$ 35,197
2003	13,528
2004	6,250
2005	2,925
2006	1,675
Thereafter	2,500
	<b>\$ 62,075</b>

Additionally, under the terms of a production financing arrangement, the Company has a commitment to purchase two future PlayStation 2 titles from independent third party developers for an estimated \$5.7 million. Failure by the developers to complete the project within the contractual time frame or specifications alleviates the Company's commitment.

##### *Lease Obligations*

The Company leases certain of its facilities under non-cancelable operating lease agreements. Total future minimum lease commitments as of March 31, 2001 are as follows (amounts in thousands):

Year ending March 31,	
2002	\$ 3,991
2003	3,728
2004	3,606
2005	3,389
2006	3,044
Thereafter	5,576
<b>Total</b>	<b>\$ 23,334</b>

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Facilities rent expense for the years ended March 31, 2001, 2000 and 1999 was approximately \$4.7 million, \$4.4 million and \$4.4 million,

respectively.

#### *Legal Proceedings*

The Company is party to routine claims and suits brought against it in the ordinary course of business, including disputes arising over the ownership of intellectual property rights and collection matters. In the opinion of management, the outcome of such routine claims will not have a material adverse effect on the Company's business, financial condition, results of operations or liquidity.

## **12. Stock Compensation Plans**

### *Employee Options*

The Company sponsors three stock option plans for the benefit of officers, employees, consultants and others.

The Activision 1991 Stock Option and Stock Award Plan, as amended, (the "1991 Plan") permits the granting of "Awards" in the form of non-qualified stock options, incentive stock options ("ISOs"), stock appreciation rights ("SARs"), restricted stock awards, deferred stock awards and other common stock-based awards. The total number of shares of common stock available for distribution under the 1991 Plan is 7,567,000. The 1991 Plan requires available shares to consist in whole or in part of authorized and unissued shares or treasury shares. There were approximately 229,000 shares remaining available for grant under the 1991 Plan as of March 31, 2001.

On September 23, 1998, the stockholders of the Company approved the Activision 1998 Incentive Plan (the "1998 Plan"). The 1998 Plan permits the granting of "Awards" in the form of non-qualified stock options, ISOs, SARs, restricted stock awards, deferred stock awards and other common stock-based awards to directors, officers, employees, consultants and others. The total number of shares of common stock available for distribution under the 1998 Plan is 3,000,000. The 1998 Plan requires available shares to consist in whole or in part of authorized and unissued shares or treasury shares. There were approximately 648,000 shares remaining available for grant under the 1998 Plan as of March 31, 2001.

On April 26, 1999, the Board of Directors approved the Activision 1999 Incentive Plan (the "1999 Plan"). The 1999 Plan permits the granting of "Awards" in the form of non-qualified stock options, ISOs, SARs, restricted stock awards, deferred share awards and other common stock-based awards to directors, officers, employees, consultants and others. The total number of shares of common stock available for distribution under the 1999 Plan is 5,000,000. The 1999 Plan requires available shares to consist in whole or in part of authorized and unissued shares or treasury shares. As of March 31, 2001, there were approximately 262,000 shares remaining available for grant under the 1999 Plan.

The exercise price for Awards issued under the 1991 Plan, 1998 Plan and 1999 Plan (collectively, the "Plans") is determined at the discretion of the Board of Directors (or the Compensation Committee of the Board of Directors, which administers the Plans), and for ISOs, is not to be less than the fair market value of the Company's common stock at the date of grant, or in the case of non-qualified options, must exceed or be equal to 85% of the fair market value at the date of grant. Options typically become exercisable in installments over a period not to exceed five years and must be exercised within 10 years of the date of grant. However, certain options granted to executives vest immediately. Historically, stock options have been granted with exercise prices equal to or greater than the fair market value at the date of grant.

In connection with current and prior employment agreements between the Company and Robert A. Kotick, the Company's Chairman and Chief Executive Officer, and Brian G. Kelly, the Company's Co-Chairman, Mr. Kotick and Mr. Kelly have been granted options to purchase common stock.

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Relating to such grants, as of March 31, 2001, 4,269,000 and 3,186,000 shares with weighted average exercise prices of \$8.43 and \$9.22 were outstanding and exercisable, respectively.

The Company also issues stock options in conjunction with acquisition transactions. For the year ended March 31, 2001, approximately 13,000 and 1,000 options with weighted average exercise prices of \$9.74 and \$6.76 were outstanding and exercisable, respectively, relating to options issued in conjunction with the acquisitions of Head Games and Expert.

### *Director Warrants*

The Director Warrant Plan, which expired on December 19, 1996, provided for the automatic granting of warrants ("Director Warrants") to purchase 16,667 shares of common stock to each director of the Company who was not an officer or employee of the Company or any of its subsidiaries. Director Warrants granted under the Director Warrant Plan vest 25% on the first anniversary of the date of grant, and 12.5% each six months thereafter. The expiration of the Plan had no effect on the outstanding Director Warrants. As of March 31, 2001, there were no shares of common stock available for distribution under the Director Warrant Plan.

The range of exercise prices for Director Warrants outstanding as of March 31, 2001 was \$.75 to \$8.50. The range of exercise prices for Director Warrants is wide due to increases and decreases in the Company's stock price over the period of the grants. As of March 31, 2001, 28,700 of the outstanding and vested Director Warrants have a weighted average remaining contractual life of 0.78 years and a weighted average exercise price of \$.75; 20,000 of the outstanding and vested Director Warrants have a weighted average remaining contractual life of 3.82 years and a weighted average exercise price of \$6.50; and 20,000 of the outstanding and vested Director Warrants have a weighted average remaining contractual life of 3.82 years and a weighted average exercise price of \$8.50.

During the fiscal year ended March 31, 1997, the Company issued warrants to purchase 40,000 shares of the Company's common stock, at exercise prices ranging from \$11.80 to \$13.88 to two of its outside directors in connection with their election to the Board. Such warrants have vesting terms identical to the Directors Warrants and expire within 10 years. Relating to such warrants, as of March 31, 2001, 40,000 and 39,000 shares with weighted average exercise prices of \$12.85 and \$12.89 were outstanding and exercisable, respectively.

### *Employee Stock Purchase Plan*

The Company has an employee stock purchase plan for all eligible employees (the "Purchase Plan"). Under the Purchase Plan, shares of the Company's common stock may be purchased at six-month intervals at 85% of the lower of the fair market value on the first or last day of each

six-month period (the "Offering Period"). Employees may purchase shares having a value not exceeding 10% of their gross compensation during an Offering Period. Employees purchased 34,615 and 39,002 shares at a price of \$9.46 and \$10.68 per share during the Purchase Plan's offering period ended September 30, 2000 and 1999, respectively, and 43,910 and 33,440 shares at a price of \$11.79 and \$10.25 per share during the Purchase Plan's offering period ended March 31, 2001 and 2000, respectively.

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#### Activity of Employee and Director Options and Warrants

Activity of all employee and director options and warrants during the last three fiscal years was as follows (amounts in thousands, except weighted average exercise price amounts):

	2001		2000		1999	
	Shares	Wtd Avg Ex Price	Shares	Wtd Avg Ex Price	Shares	Wtd Avg Ex Price
Outstanding at beginning of year	10,332	\$ 11.07	9,949	\$ 10.54	6,218	\$ 11.47
Granted	6,767	6.91	3,767	11.52	5,538	10.27
Exercised	(3,500)	9.06	(2,331)	9.15	(605)	8.68
Forfeited	(1,655)	9.73	(1,053)	11.91	(1,202)	15.33
Outstanding at end of year	11,944	\$ 9.68	10,332	\$ 11.07	9,949	\$ 10.54
Exercisable at end of year	6,544	\$ 9.99	4,715	\$ 10.25	4,154	\$ 10.00

For the year ended March 31 2001, 4,342,000 options with a weighted average exercise price of \$7.19 were granted at an exercise price equal to the fair market value on the date of grant and 2,425,000 options with a weighted average exercise price of \$6.43 were granted at an exercise price greater than fair market value on the date of grant.

For the year ended March 31 2000, 2,501,000 options with a weighted average exercise price of \$12.88 were granted at an exercise price equal to the fair market value on the date of grant and 705,000 options with a weighted average exercise price of \$10.71 were granted at an exercise price greater than fair market value on the date of grant. Additionally, in conjunction with the acquisition of Expert, 561,000 options with a weighted average exercise price of \$6.48 were granted at an exercise price less than market value on the date of grant. Options granted to Expert were outside any of the Plans.

For the year ended March 31, 1999, 5,320,000 options were granted at an exercise price equal to the fair market value on the date of grant and 218,000 options were granted at an exercise price greater than fair market value on the date of grant.

The following tables summarize information about all employee and director stock options and warrants outstanding as of March 31, 2001 (share amounts in thousands):

	Outstanding Options			Exercisable Options	
	Shares	Remaining Wtd Avg Contractual Life (in years)	Wtd Avg Exercise Price	Shares	Wtd Avg Exercise Price
Range of exercise prices:					
\$0.75 to \$0.75	29	0.78	0.75	29	0.75
\$3.00 to \$6.00	1,336	8.30	5.82	333	5.30
\$6.03 to \$6.13	2,002	9.14	6.13	917	6.13
\$6.16 to \$9.44	1,306	8.04	7.79	506	8.70
\$9.50 to \$10.25	1,608	6.88	9.89	1,462	9.88
\$10.31 to \$10.31	340	8.29	10.31	167	10.31
\$10.38 to \$10.50	1,999	7.97	10.50	1,975	10.50
\$10.56 to \$12.50	1,307	7.48	11.14	422	10.98
\$12.63 to \$14.50	1,306	7.87	13.53	332	13.44
\$14.56 to \$23.86	711	6.31	17.84	401	18.86

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#### Non-Employee Warrants

In prior years, the Company has granted stock warrants to third parties in connection with the development of software and the acquisition of licensing rights for intellectual property. The warrants generally vest upon grant and are exercisable over the term of the warrant. The exercise price of third party warrants is generally greater than or equal to the fair market value of the Company's common stock at the date of grant.

No such grants were made during the fiscal year ending March 31, 2001. As of March 31, 2001, 1,316,000 third party warrants to purchase common stock were outstanding with a weighted average exercise price of \$10.89 per share.

During the fiscal year ended March 31, 2000, the Company granted warrants to a third party to purchase 100,000 shares of the Company's common stock at an exercise price of \$11.63 per share in connection with, and as partial consideration for, a license agreement that allows the Company to utilize the third party's name in conjunction with certain Activision products. The warrants vested upon grant, have a seven year term and become exercisable ratably in annual installments over the warrant term. As of March 31, 2000, 1,580,000 third party warrants to purchase common stock were outstanding with a weighted average exercise price of \$11.02 per share.

During the fiscal year ended March 31, 1999, the Company issued the following warrants to third parties to purchase an aggregate of 1,000,000 shares of common stock in connection with software license agreements:

Warrants	Shares	Exercise Price	Vesting Schedule	Expiration Date
#1	500,000	\$ 10.27	Vested upon date of grant; exercisable ratably over 5 years beginning on date of grant.	9/16/08
#2	250,000	(a)	Vested upon date of grant; exercisable ratably over 5 years beginning on 9/16/03.	9/16/08
#3	250,000	\$ 12.70	Vested and exercisable upon date of grant.	7/2/08
Total	1,000,000			

(a) Exercise price will be equal to the average closing price of the Company's common stock on the NASDAQ National Market for the 30 trading days preceding September 16, 2003.

As of March 31, 1999, 1,480,000 third party warrants to purchase common stock were outstanding with a weighted average exercise price of \$10.98 per share

The fair value of the warrants was determined using the Black-Scholes pricing model, assuming a risk-free rate of 4.77%, a volatility factor of 66% and expected terms as noted above. The weighted average estimated fair value of third party warrants granted during the years ending March 31, 2000 and 1999 were \$7.89 per share and \$7.93 per share, respectively. No warrants were granted during the fiscal year ending March 31, 2001. In accordance EITF 96-18, the Company measures the fair value of the securities on the measurement date. The fair value of each warrant is capitalized and amortized to royalty expense when the related product is released and the related revenue is recognized. During fiscal year 2001, 2000 and 1999, \$1.4 million, \$5.8 million and \$0.4 million, respectively, was amortized and included in royalty expense relating to warrants.

#### Pro Forma Information

The Company has elected to follow APB Opinion No. 25, "Accounting for Stock Issued to Employees," in accounting for its employee stock options. Under APB No. 25, if the exercise price of

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the Company's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized in the Company's financial statements.

Pro forma information regarding net income (loss) and earnings per share is required by SFAS No. 123. This information is required to be determined as if the Company had accounted for its employee stock options (including shares issued under the Purchase Plan and Director Warrant Plan and other employee option grants, collectively called "options") granted during fiscal 2001, 2000 and 1999 under the fair value method of that statement. The fair value of options granted in the years ended March 31, 2001, 2000 and 1999 reported below has been estimated at the date of grant using a Black-Scholes option pricing model with the following weighted average assumptions:

	Option Plans and Other Employee Options			Purchase Plan			Director Warrant Plan		
	2001	2000	1999	2001	2000	1999	2001	2000	1999
Expected life (in years)	1	1	1.5	0.5	0.5	0.5	1	1	0.5
Risk free interest rate	4.09%	6.15%	4.77%	4.09%	6.15%	4.77%	4.09%	6.15%	4.77%
Volatility	70%	67%	66%	70%	67%	66%	70%	67%	66%
Dividend yield	—	—	—	—	—	—	—	—	—

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions, including the expected stock price volatility. Because the Company's options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in the opinion of management, the existing models do not necessarily provide a reliable single measure of the fair value of its options. For options granted during fiscal 2001, the per share weighted average fair value of options with exercise prices equal to market value on date of grant and exercise prices greater than market value were \$3.12, and \$1.34, respectively. For options granted during fiscal 2000, the per share weighted average fair value of options with exercise prices equal to market value on date of grant, exercise prices greater than market value and exercise prices less than market value were \$5.91, \$2.64 and \$8.00, respectively. The weighted average estimated fair value of options and warrants granted during the year ended March 31, 1999 was \$11.12 per share. The per share weighted average estimated fair value of Employee Stock Purchase Plan shares granted during the years ended March 31,

2001, 2000 and 1999 were \$3.48, \$3.35 and \$2.85, respectively.

For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the options' vesting period. The Company's pro forma information follows (amounts in thousands except for per share information):

	Year ended March 31,		
	2001	2000	1999
Pro forma net income (loss)	\$ 11,531	\$ (45,355)	\$ 748
Pro forma basic earnings (loss) per share	0.46	(1.84)	0.01
Pro forma diluted earnings (loss) per share	0.42	(1.84)	0.01

The effects on pro forma disclosures of applying SFAS No. 123 are not likely to be representative of the effects on pro forma disclosures of future years.

#### *Employee Retirement Plan*

The Company has a retirement plan covering substantially all of its eligible employees. The retirement plan is qualified in accordance with Section 401(k) of the Internal Revenue Code. Under the plan, employees may defer up to 15% of their pre-tax salary, but not more than statutory limits.

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The Company contributes 5% of each dollar contributed by a participant. The Company's matching contributions to the plan were \$62,000, \$46,000 and \$40,000 during the years ended March 31, 2001, 2000 and 1999, respectively.

### **13. Shareholders Equity**

#### *Repurchase Plan*

As of May 9, 2000, the Board of Directors authorized the Company to purchase up to \$15.0 million in shares of its common stock as well as its convertible subordinated notes. The shares and notes could be purchased from time to time through the open market or in privately negotiated transactions. The amount of shares and notes purchased and the timing of purchases was based on a number of factors, including the market price of the shares and notes, market conditions, and such other factors as the Company's management deemed appropriate. The Company has financed the purchase of shares with available cash. As of the quarter ending June 30, 2000, the Company had repurchased 2.3 million shares of its common stock for approximately \$15.0 million.

#### *Shareholders' Rights Plan*

On April 18, 2000, the Company's Board of Directors approved a shareholders rights plan (the "Rights Plan"). Under the Rights Plan, each common stockholder at the close of business on April 19, 2000, will receive a dividend of one right for each share of common stock held. Each right represents the right to purchase one one-hundredth (1/100) of a share of the Company's Series A Junior Preferred Stock at an exercise price of \$40.00. Initially, the rights are represented by the Company's common stock certificates and are neither exercisable nor traded separately from the Company's common stock. The rights will only become exercisable if a person or group acquires 15% or more of the common stock of the Company, or announces or commences a tender or exchange offer which would result in the bidder's beneficial ownership of 15% or more of the Company's common stock.

In the event that any person or group acquires 15% or more of the Company's outstanding common stock each holder of a right (other than such person or members of such group) will thereafter have the right to receive upon exercise of such right, in lieu of shares of Series A Junior Preferred Stock, the number of shares of common stock of the Company having a value equal to two times the then current exercise price of the right. If the Company is acquired in a merger or other business combination transaction after a person has acquired 15% or more the Company's common stock, each holder of a right will thereafter have the right to receive upon exercise of such right a number of the acquiring company's common shares having a market value equal to two times the then current exercise price of the right. For persons who, as of the close of business on April 18, 2000, beneficially own 15% or more of the common stock of the Company, the Rights Plan "grandfathers" their current level of ownership, so long as they do not purchase additional shares in excess of certain limitations.

The Company may redeem the rights for \$.01 per right at any time until the first public announcement of the acquisition of beneficial ownership of 15% of the Company's common stock. At any time after a person has acquired 15% or more (but before any person has acquired more than 50%) of the Company's common stock, the Company may exchange all or part of the rights for shares of common stock at an exchange ratio of one share of common stock per right. The rights expire on April 18, 2010.

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### **14. Supplemental Cash Flow Information**

Non-cash investing and financing activities and supplemental cash flow information is as follows (amounts in thousands):

	Years ended March 31,		
	2001	2000	1999
Non-cash investing and financing activities:			

Stock and warrants to acquire common stock issued in exchange for licensing rights	\$	—	\$	8,529	\$	3,368
Tax benefit derived from net operating loss carryforward utilization		3,652		1,266		2,430
Stock issued to effect business combination		—		7,171		—
Assumption of debt to effect business combination		—		—		9,100
Conversion of notes payable to common stock		—		—		4,500
Supplemental cash flow information:						
Cash paid for income taxes	\$	6,753	\$	6,333	\$	2,814
Cash paid for interest	\$	5,720	\$	10,519	\$	5,513

## 15. Quarterly Financial and Market Information (Unaudited)

(Amounts in thousands, except per share data)	Quarter Ended				Year Ended
	June 30	Sept 30	Dec 31	Mar 31(1)	
<b>Fiscal 2001:</b>					
Net revenues	\$ 84,558	\$ 144,363	\$ 264,473	\$ 126,789	\$ 620,183
Operating income (loss)	(6,498)	9,536	34,754	2,015	39,807
Net income (loss)	(5,179)	4,306	20,505	875	20,507
Basic earnings (loss) per share	(0.21)	0.18	0.84	0.03	0.82
Diluted earnings (loss) per share	(0.21)	0.17	0.70	0.03	0.75
Common stock price per share					
High	12.16	15.63	15.25	25.25	25.25
Low	5.38	6.31	10.31	13.63	5.38
<b>Fiscal 2000 (quarter ended June 30 restated):</b>					
Net revenues	\$ 84,142	\$ 115,363	\$ 268,862	\$ 103,838	\$ 572,205
Operating income (loss)	(6,101)	3,525	38,241	(65,990)	(30,325)
Net income (loss)	(4,575)	1,063	22,301	(52,877)	(34,088)
Basic earnings (loss) per share	(0.19)	0.04	0.89	(2.07)	(1.38)
Diluted earnings (loss) per share	(0.19)	0.04	0.75	(2.07)	(1.38)
Common stock price per share					
High	14.56	17.75	17.50	17.69	17.75
Low	10.31	12.63	13.94	12.06	10.31

(1) In the fourth quarter of fiscal 2000, the Company initiated a strategic restructuring which resulted in additional costs of \$70.2 million reflected in the consolidated statement of operations in the fourth quarter. See Note 3, "Strategic Restructuring Plan."

## 16. Organizational Structure

Effective June 9, 2000, Activision reorganized into a holding company form of organizational structure, whereby Activision Holdings, Inc., a Delaware corporation ("Activision Holdings"), became the holding company for Activision and its subsidiaries. The new holding company organizational structure will allow Activision to manage its entire organization more effectively and broadens the alternatives for future financings.

The holding company organizational structure was effected by a merger conducted pursuant to Section 251 (g) of the General Corporation Law of the State of Delaware, which provides for the formation of a holding company structure without a vote of the stockholders of the constituent corporations. In the merger, ATVI Merger Sub, Inc., a Delaware corporation, organized for the purpose of implementing the holding company organizational structure, (the "Merger Sub"), merged with and into Activision with Activision as the surviving corporation (the "Surviving Corporation"). Prior to the merger, Activision Holdings was a direct, wholly-owned subsidiary of Activision and Merger Sub was a direct, wholly-owned subsidiary of Activision Holdings. Pursuant to the merger, (i) each issued and outstanding share of common stock of Activision (including treasury shares) was converted into one share of common stock of Activision Holdings, (ii) each issued and outstanding share of Merger Sub was converted into one share of the Surviving Corporation's common stock, and Merger Sub's corporate existence ceased, and (iii) all of the issued and outstanding shares of Activision Holdings owned by Activision were automatically canceled and retired. As a result of the merger, Activision became a direct, wholly-owned subsidiary of Activision Holdings.

Immediately following the merger, Activision changed its name to "Activision Publishing, Inc." and Activision Holdings changed its name to "Activision, Inc." The holding company's common stock will continue to trade on The Nasdaq National Market under the symbol ATVI.

The conversion of shares of Activision's common stock in the merger occurred without an exchange of certificates. Accordingly, certificates formerly representing shares of outstanding common stock of Activision are deemed to represent the same number of shares of common stock of Activision Holdings. The change to the holding company structure was tax free for federal income tax purposes for stockholders.

These transactions had no impact on the Company's consolidated financial statements.

### 17. Subsequent Events—Unaudited

Subsequent to March 31, 2001, the Company called for the redemption of its \$60.0 million convertible subordinated notes due 2005. In connection with that call, as of June 20, 2001, holders have converted into common stock approximately \$60.0 million aggregate principal amount of their convertible subordinated notes.

In May 2001, the Company repaid in full the remaining \$8.5 million balance of the term loan portion of the U.S. Facility. In conjunction with the accelerated repayment of the term loan, the Company amended the U.S. Facility effective May 7, 2001. The amended and restated U.S. Facility eliminates the term loan, reduces the revolver to \$78.0 million, reduces the interest rate to Prime plus 1.25% or LIBOR plus 2.25%, eliminates certain covenants, increases the advance rates and reduces the fee paid for maintenance of the facility.

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## SCHEDULE II

### ACTIVISION, INC. AND SUBSIDIARIES

#### VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

(In thousands)

Col. A	Col. B	Col. C	Col. D	Col. E
Description	Balance at Beginning of Period	Additions(A)	Deductions(B)	Balance at End of Period
<b>Year ended March 31, 2001</b>				
Allowance for sales returns, price protection and doubtful accounts	31,521	79,454	(82,514)	28,461
Deferred tax valuation allowance	13,041	—	(3,146)	9,895
<b>Year ended March 31, 2000</b>				
Allowance for sales returns, price protection and doubtful accounts	14,979	97,362	(80,820)	31,521
Deferred tax valuation allowance	6,916	6,125	—	13,041
<b>Year ended March 31, 1999 (Restated)</b>				
Allowance for sales returns, price protection and doubtful accounts	15,582	53,773	(54,376)	14,979
Deferred tax valuation allowance	8,107	1,239	(2,430)	6,916

(A) Includes increases in allowance for sales returns, price protection and doubtful accounts due to normal reserving terms and allowance accounts acquired in conjunction with acquisitions.

(B) Includes actual write-offs of uncollectible accounts receivable or sales returns and price protection, recoveries of previously written off receivables and foreign currency translation adjustments.

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### EXHIBIT INDEX

Exhibit Number	Exhibit
2.1	Agreement and Plan of Merger dated as of June 9, 2000 among Activision, Inc., Activision Holdings, Inc. and ATVI Merger Sub, Inc. (incorporated by reference to Exhibit 2.4 of the Company's Form 8-K filed June 16, 2000).
3.1	Amended and Restated Certificate of Incorporation of Activision Holdings, dated June 1, 2000 (incorporated by reference to Exhibit 2.5 of the Company's Form 8-K, filed on June 16, 2000).

- 3.2 Amended and Restated Bylaws of Activision Holdings (incorporated by reference to Exhibit 2.6 of the Company's Form 8-K, filed on June 16, 2000).
- 3.3 Certificate of Amendment of Amended and Restated Certificate of Incorporation of Activision Holdings dated as of June 9, 2000 (incorporated by reference to Exhibit 2.7 of the Company's Form 8-K, filed on June 16, 2000).
- 4.1 Rights Agreement dated as of April 18, 2000, between the Company and Continental Stock Transfer & Trust Company, which includes as exhibits the form of Right Certificates as Exhibit A, the Summary of Rights to Purchase Series A Junior Preferred Stock as Exhibit B and the form of Certificate of Designation of Series A Junior Preferred Stock of the Company as Exhibit C, (incorporated by reference to the Company's Registration Statement on Form 8-A, Registration No. 001-15839, filed April 19, 2000).
- 10.1 Mediagenic 1991 Stock Option and Stock Award Plan, as amended (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-8, Registration No. 33-63638, filed on December 8, 1995).
- 10.2 Mediagenic 1991 Director Warrant Plan, as amended (incorporated by reference to Exhibit 28.2 to the Company's Registration Statement on Form S-8, Registration No. 33-63638, filed on June 1, 1993).
- 10.3 Activision, Inc. Employee Stock Purchase Plan, as amended, (incorporated by reference to Exhibit 4.1 of the Company's Form S-8, Registration No. 333-36272 filed on May 4, 2000).
- 10.4 Activision, Inc. 1998 Incentive Plan (incorporated by reference to Appendix I of the Company's 1998 Proxy Statement).
- 10.5 Activision, Inc. 1999 Incentive Plan (incorporated by reference to Exhibit 10.5 of the Company's Form 10-K for the year ending March 31, 2000)
- 10.6 Lease Agreement dated as of December 20, 1996, between the Company and Barclay Curci Investment Company (incorporated by reference to Exhibit 10.14 of the Company's Form 10-Q for the quarter ended December 31, 1996).
- 10.7 Share Exchange Agreement dated November 23, 1997, among the Company and the holders of all of the issued and outstanding capital stock of Combined Distribution (Holdings) Limited (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed December 5, 1997).
- 10.8 Purchase Agreement dated as of December 16, 1997, among the Company and Credit Suisse First Boston Corporation, Piper Jaffray, Inc. and UBS Securities LLC (the "Initial Purchasers") (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed December 23, 1997).
- 10.9 Registration Rights Agreement dated as of December 16, 1997, among the Company and the Initial Purchasers (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed December 23, 1997).

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- 10.10 Indenture dated as of December 22, 1997, between the Company and State Street Bank and Trust Company of California, N.A., as Trustee (incorporated by reference to Exhibit 10.3 of the Company's Form 8-K filed December 23, 1997).
- 10.11 Amended and restated employment agreement dated May 22, 2000 between the Company and Robert A. Kotick (incorporated by reference to Exhibit 10.1 of the Company's Form 10-Q for the quarter ended September 30, 2000)
- 10.12 Employment agreement dated October 19, 1998 between the Company and Ronald Doornink (incorporated by reference to Exhibit 10.12 of the Company's Form 10-K for the year ending March 31, 1999).
- 10.13 Employment agreement dated April 1, 2000 between the Company and Lawrence Goldberg (incorporated by reference to Exhibit 10.1 of the Company's Form 10-Q for the quarter ending June 30, 2000).
- 10.14 Employment agreement dated July 18, 2000 between the Company and William J. Chardavoyne (incorporated by reference to Exhibit 10.2 of the Company's Form 10-Q for the quarter ending June 30, 2000).
- 10.15 Stock option agreement dated May 22, 2000 between the Company and Robert A. Kotick (incorporated by reference to the Company's Form 10-Q for the quarter ending September 30, 2000).
- 10.16 Service Agreement dated November 24, 1997 between Combined Distribution (Holdings) Limited and Richard Andrew Steele (incorporated by reference to Exhibit 10.17 of the Company's Form 10-K for the year ending March 31, 1999).
- 10.17 Amended and restated employment agreement dated May 22, 2000 between the Company and Brian G. Kelly (incorporated by reference to Exhibit 10.3 of the Company's Form 10-Q for the quarter ending September 30, 2000).
- 10.18 Articles of Merger dated June 30, 1998 between S.B.F. Acquisition Corp., a wholly owned subsidiary of the Company, and S.B.F. Services, Limited dba Head Games Publishing (incorporated by reference to Exhibit 2.1 of the Company's Form 8-K, filed on July 2, 1998).
- 10.19 Share Exchange Agreement dated September 29, 1998 by and between the Company and Mr. Frank d'Oleire, Mrs. Christa d'Oleire, Ms. Fiona d'Oleire, Ms. Alexa d'Oleire acting as Dr. d'Oleire Beteiligungsgesellschaft bR, Mr. Martinus J.C. Bubbert, and Mr. Dennis W. Buis (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K, filed on October 8, 1998).



- 10.20 Amended and Restated Agreement and Plan of Merger dated April 19, 1999 by and among the Company, Expert Acquisition Corp. and Expert Software, Inc. (incorporated by reference to Exhibit 2.1 of the Form 8-K of Expert Software, Inc., filed April 29, 1999).
- 10.21 Credit Agreement dated as of June 21, 1999 among the Company, Head Games Publishing, Inc., Expert Software, Inc., various financial institutions, PNC Bank, National Association, as issuing bank, administrative agent and collateral agent for such financial institutions, and Credit Suisse First Boston, as syndication agent (incorporated by reference to Exhibit 10.22 of the Company's Form 10-K for the year ending March 31, 1999).
- 10.22 Share Exchange Agreement dated as of June 29, 1999, among the Company, Jill G. Mark and Robert N. Herrick (incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-3, Registration No. 333-85385, filed August 17, 1999).

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- 10.23 Agreement and Plan of Reorganization dated as of September 30, 1999, among the Company, Neversoft Entertainment, Inc., JCM Productions, Inc., Joel Jewett, Michael West and Christopher Ward (incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-3, Registration No. 333-94509, filed January 12, 2000).
- 10.24 Employment agreement dated July 12, 1999, between the Company and Mr. Michael Rowe (incorporated by reference to Exhibit 6.1 of the Company's Form 10-Q for the quarter ending June 30, 1999).
- 10.25 Employment agreement dated July 12, 1999, between the Company and Ms. Kathy Vrabek (incorporated by reference to Exhibit 6.2 of the Company's Form 10-Q for the quarter ending June 30, 1999).
- 10.26 Amendment to Employment Agreement between Mr. Ronald Doornink and the Company, dated April 30, 1999 (incorporated by reference to Exhibit 6.1 of the Company's Form 10-Q for the quarter ending December 31, 1999).
- 10.27 Stock option agreement dated May 22, 2000 between the Company and Brian G. Kelly (incorporated by reference to the Company's Form 10-Q for the quarter ending September 30, 2000).
- 10.28 First Amendment effective as of June 8, 2000 to the Credit Agreement dated June 21, 1999 among the Company, Head Games Publishing, Inc., Expert Software, Inc., various financial institutions, PNC Bank, National Association as issuing bank, administrative agent and collateral agent for such lenders and Credit Suisse First Boston, as syndication agent (incorporated by reference to Exhibit 10.28 of the Company's Form 10-K for the year ending March 31, 2000).
- 10.29 Amended and Restated Credit Agreement dated as of May 7, 2001, among Activision Publishing, Inc., a Delaware corporation, Activision, Inc., a Delaware corporation, Activision Value Publishing, Inc., a Minnesota corporation (formerly Head Games Publishing, Inc.) and Expert Software, Inc., a Delaware corporation, various financial institutions and PNC Bank, National Association, a national banking association, as issuing bank, administrative agent and collateral agent for such lenders.
- 16.1 Letter from KPMG, LLP pursuant to Item 304(a)(3) of Regulation S-K (incorporated by reference to Exhibit 16.1 of the Company's Form 8-K/A filed March 23, 2001).
- 21.1 Principal subsidiaries of the Company.
- 23.1 Independent Auditors' Consent.
- 23.2 Independent Auditors' Consent.

(b)

Reports on Form 8-K. There have been no reports on Form 8-K that have been filed by the Company during the first quarter of the fiscal year ending March 31, 2002. The following reports on Form 8-K have been filed by the Company during the last quarter of the fiscal year ending March 31, 2001:

- 1.1 The Company filed a Form 8-K on March 20, 2001, reporting under "Item 4. Changes in the Registrant's Certified Accountant" the change in the Company's principal accountant from KPMG LLP to PricewaterhouseCoopers LLP.
- 1.2 The Company filed a Form 8-K/A on March 23, 2001 reporting under "Item 4. Changes in the Registrant's Certified Accountant" the change in the Company's principal accountant from KPMG LLP to PricewaterhouseCoopers LLP.

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[EXHIBIT INDEX](#)

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of May 7, 2001,

among

ACTIVISION, INC.,  
and certain of its Domestic Subsidiaries

THE LENDERS NAMED HEREIN,

and

PNC BANK, NATIONAL ASSOCIATION,  
as Administrative Agent, Collateral Agent and Issuing Bank

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## AMENDED AND RESTATED CREDIT AGREEMENT

**AMENDED AND RESTATED CREDIT AGREEMENT** dated as of May 7, 2001, among ACTIVISION PUBLISHING, INC., a Delaware corporation ("*Activision*"), ACTIVISION, INC., a Delaware corporation ("*Activision Holdings*"), ACTIVISION VALUE PUBLISHING, INC., a Minnesota corporation (formerly Head Games Publishing, Inc.) ("*Value*") and EXPERT SOFTWARE, INC., a Delaware corporation ("*Expert*"; each of Activision, Activision Holdings, Value and Expert, a "*Borrower*" and collectively, "*Borrowers*"), the Lenders (as defined in Article I), PNC BANK, NATIONAL ASSOCIATION, a national banking association, as issuing bank (in such capacity, the "*Issuing Bank*"), and as administrative agent (in such capacity, the "*Administrative Agent*") and collateral agent (in such capacity, the "*Collateral Agent*") for the Lenders.

WHEREAS, the Borrowers, certain financial institutions, including the Lenders, and the Administrative Agent are parties to the Existing Credit Agreement (such term and each other capitalized term used but not defined herein having the meaning given it in Article I), and wish to amend and restate the Existing Credit Agreement on the terms set forth herein;

WHEREAS, in connection with such amendment and restatement, certain lenders under the Existing Credit Agreement and the Syndication Agent (as defined in the Existing Credit Agreement) will cease to be lenders to the Borrowers, the Term Loans (under and as defined in the Existing Credit Agreement) will be repaid in full, and the Total Revolving Credit Commitment will be reduced on the Restatement Effective Date.

Accordingly, the parties hereto agree as follows:

### ARTICLE I

#### *Definitions*

SECTION 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings specified below:

"*ABR Borrowing*" shall mean a Borrowing comprised of ABR Loans.

"*ABR Loan*" shall mean any Revolving Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

"*Acquired Debt*" shall mean Indebtedness of an Acquired Entity existing at the time of a Permitted Acquisition which was not incurred in contemplation of such Permitted Acquisition, is Indebtedness permitted under Section 6.01 and, if owed by a Domestic Subsidiary, the terms of such Indebtedness permit the Domestic Subsidiary to become a party to the Subsidiary Guarantee Agreement, the Pledge Agreement and the Security Agreement, to grant to the Collateral Agent a first priority Lien on its assets and to make loans, dividends and other distributions to Activision and, if owed by a Foreign Subsidiary, is not Guaranteed by any Loan Party.

"*Acquired Entity*" shall have the meaning set forth in Section 6.04(h).

"*Activision*" shall mean Activision Publishing, Inc., a Delaware corporation, formerly known as Activision, Inc.

"*Activision Holdings*" shall mean Activision, Inc., a Delaware corporation, formerly known as Activision Holdings, Inc.

"*Adjusted EBITDA*" of a person for any period shall mean (a) EBITDA for such period *plus* (b) the aggregate amortization with respect to Development Costs for such period which are not otherwise included as amortization expenses in calculating EBITDA in accordance with GAAP, *minus* (c) the principal amount of loans made during such period to officers and employees permitted under Section 6.04(n), to the extent not included in calculating EBITDA in accordance with GAAP.

"*Adjusted LIBO Rate*" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next  $\frac{1}{100}$  of 1%) equal to the product of (a) the LIBO Rate in effect for such Interest Period and (b) Statutory Reserves.

"*Administrative Questionnaire*" shall mean an Administrative Questionnaire in such form as may be supplied from time to time by the Administrative Agent.

"*Advance Rates*" shall have the meaning assigned to such term in Section 2.01(a).

"*Affiliate*" shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified; *provided, however*, that for purposes of Section 6.07, the term "*Affiliate*" shall also include any person that directly or indirectly owns 5% or more of any class of Equity Interests of the person specified or that is an officer or director of the person specified.

"*Agent Fees*" shall have the meaning assigned to such term in Section 2.08(b).

"*Aggregate Revolving Credit Exposure*" shall mean the aggregate amount of the Lenders' Revolving Credit Exposures.

"*Alternate Base Rate*" shall mean, for any day, a rate per annum (rounded upwards, if necessary, to the next  $\frac{1}{16}$  of 1%) equal to the greater of (a) the Base Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus  $\frac{1}{2}$  of 1%. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate or the Federal Funds Rate shall be effective on the effective date of such change in the Base Rate or the Federal Funds Rate, respectively. The term "*Base Rate*" shall mean the base commercial lending rate of PNC as publicly announced to be in effect from time to time, such rate to be adjusted automatically, without notice, on the effective date of any change in such rate. This rate of interest is determined from time to time by PNC as a means of pricing some loans to its customers and is neither tied to any external rate of interest or index nor does it necessarily reflect the lowest rate of interest actually charged by PNC to any particular class or category of customers of PNC.

"*Asset Sale*" shall mean the sale, transfer or other disposition (by way of merger or otherwise, and including any casualty event or condemnation that results in the receipt of any insurance or condemnation proceeds) by any Borrower or any of the Subsidiaries to any person other than a Borrower or any Subsidiary Guarantor of (a) any Equity Interests of any of the Subsidiaries or (b) any other assets of a Borrower or any of its Subsidiaries (other than (i) inventory, excess, damaged, obsolete or worn out assets, scrap and Permitted Investments, in each case disposed of in the ordinary course of business, (ii) assets transferred for an aggregate purchase price not exceeding \$1,000,000 in any four consecutive fiscal quarters of the Borrowers, (iii) dispositions between or among Foreign Subsidiaries or (iv) license, distribution or development agreements entered into in the ordinary course of business which do not transfer all or substantially all of the rights owned by a Borrower or its Subsidiary), *provided* that any asset sale or series of related asset sales described in clause (b) above having a value not in excess of \$250,000 shall be deemed not to be an "Asset Sale" for purposes of this Agreement.

"*Assignment and Acceptance*" shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent, in the form approved by the Administrative Agent.

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"*Board*" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"*Blocked Accounts*" shall have the meaning set forth in Section 5.15.

"*Borrower Guarantee Agreement*" shall mean the Borrower Guarantee Agreement substantially in the form of Exhibit M to the Existing Credit Agreement, made by the Borrowers in favor of the Collateral Agent for the benefit of the Secured Parties.

"*Borrowers*" shall mean Activision Holdings, Activision, Value, Expert and any other Subsidiary of Activision Holdings which becomes a Borrower hereunder.

"*Borrowers' Account*" shall have the meaning given such term in Section 2.07.

"*Borrowing*" shall mean a group of Loans of a single Type made by the Lenders on a single date and as to which a single Interest Period is in effect.

"*Borrowing Agent*" shall mean Activision.

"*Borrowing Base Availability*" shall mean that amount determined under clauses (i) and (ii)(A) of the definition of Formula Amount contained in Section 2.01(a).

"*Borrowing Request*" shall mean a request by the Borrowing Agent on behalf of a Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C to the Existing Credit Agreement, or such other form as shall be approved by the Administrative Agent.

"*Business Day*" shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term "*Business Day*" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London and New York interbank markets.

"*Capital Expenditures*" shall mean, for any period and with respect to any person, the aggregate amount of all expenditures during such period by such person that (a) would be classified as capital expenditures in accordance with GAAP or are made in property that is the subject of a synthetic lease to which such person becomes a lessee party during such period but excluding any such expenditure made (i) to restore, replace or rebuild property to the condition of such property immediately prior to any damage, loss, destruction or condemnation of such property, to the extent such expenditure is made with insurance proceeds or condemnation awards relating to any such damage, loss, destruction or condemnation, (ii) with proceeds from the sale or exchange of property to the extent utilized to purchase functionally equivalent property or equipment or (iii) as the purchase price of any Permitted Acquisition; and (b) constitute Development Costs.

"*Capital Lease Obligations*" of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"*Cash Collateral*" shall mean money or Permitted Investments in the possession of the Collateral Agent (including in the Investment Account) as collateral hereunder or under any other Loan Document and in which the Collateral Agent has a first priority perfected Lien.

"*Cash Components*" shall mean, with respect to any Permitted Acquisition, the cash expenditures and (without duplication) Indebtedness (including Acquired Indebtedness) incurred in connection therewith.

"*Casualty*" shall have the meaning set forth in each of the Mortgages.

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"Casualty Proceeds" shall have the meaning set forth in each of the Mortgages.

"Change in Control" shall be deemed to have occurred if (a) any person or group (within the meaning of Rule 13d-5 of the Securities Exchange Act of 1934, as amended, as in effect on the date hereof) shall own directly or indirectly, beneficially or of record, shares representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of Activision Holdings, (b) a majority of the seats (other than vacant seats) on the board of directors of Activision Holdings shall at any time be occupied by persons who were neither (i) nominated by the board of directors of Activision Holdings, nor (ii) appointed by directors so nominated, or (c) any change in control (or similar event, however denominated) with respect to Activision Holdings or any of its Subsidiaries shall occur under and as defined in any indenture or agreement in respect of Indebtedness in an aggregate principal amount in excess of \$2,000,000 to which Activision Holdings or any of its Subsidiaries is a party, or (d) Activision ceases to be a wholly-owned Subsidiary of Activision Holdings, or (e) any Subsidiary of Activision which is a Borrower or UK Sub ceases to be a wholly-owned Subsidiary of Activision.

"Change in Law" shall mean (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15, by any lending office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"Closing Date" shall mean June 22, 1999.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall mean all the "Collateral" as defined in any Security Document and shall also include any Mortgaged Properties, but shall exclude "Margin Stock" (as defined in Regulation U of the Board).

"Commitment" shall mean, with respect to any Lender, such Lender's Revolving Credit Commitment.

"Commitment Fee" shall have the meaning assigned to such term in Section 2.08(a).

"Commitment Increase" shall have the meaning assigned to such term in Section 2.30.

"Condemnation" shall have the meaning set forth in each of the Mortgages.

"Condemnation Proceeds" shall have the meaning set forth in each of the Mortgages.

"Confidential Information Memorandum" shall mean the Confidential Information Memorandum of Activision dated April 1999.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms "Controlling" and "Controlled" shall have meanings correlative thereto.

"Convertible Subordinated Note Documents" shall mean the Convertible Subordinated Notes, the Convertible Subordinated Note Indenture and all other documents executed and delivered with respect to the Convertible Subordinated Notes or the Convertible Subordinated Note Indenture.

"Convertible Subordinated Note Indenture" shall mean the Indenture dated as of December 22, 1997, between Activision and State Street Bank and Trust Company of California, N.A., as trustee, as

in effect on the Closing Date and as thereafter amended from time to time in accordance with the requirements hereof and thereof.

"Convertible Subordinated Notes" shall mean Activision's 6<sup>3</sup>/<sub>4</sub>% Convertible Subordinated Notes due 2005 issued pursuant to the Convertible Subordinated Note Indenture.

"Credit Event" shall have the meaning assigned to such term in Section 4.01.

"Default" shall mean any event or condition which upon notice, lapse of time or both would constitute an Event of Default.

"Default Rate" shall have the meaning set forth in Section 2.10.

"Defaulting Lender" shall have the meaning set forth in Section 2.25(a).

"Depository Accounts" shall have the meaning set forth in Section 5.15.

"Development Costs" shall mean prepaid or guaranteed royalties paid to independent software developers, license fees paid to holders of intellectual property rights and expenses incurred for product development, in each case to the extent such amounts are capitalized in accordance with the Statement of Financial Accounting Standards No. 86, "Accounting for the Costs of Computer Software to be Sold, Leased or Otherwise Marketed".

"Dilution Reserve" shall mean the percentage of dilution of Receivables for the most recent 12 months as determined in the most recent audit by the Administrative Agent less 5% multiplied by the amount of Eligible Receivables.

"Dollars" or "\$" shall mean lawful money of the United States of America.

"Domestic Subsidiaries" shall mean all Subsidiaries incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

"*EBITDA*" for any person for any period shall mean the Net Income of such person for such period, to which shall be added back, to the extent deducted in calculating Net Income for such period (a) the Interest Expense of such person for such period, (b) all charges against income for foreign, Federal, state and local income taxes of such person for such period, (c) the aggregate depreciation expense of such person for such period, and (d) the aggregate amortization expense of such person for such period, each such component determined in accordance with GAAP.

"*Eligible Inventory*" shall mean and include, with respect to each Borrower, Inventory owned by such Borrower (excluding (a) work in process, (b) Inventory not located at a facility owned or leased by a Borrower in the U.S. or a warehouse located in the U.S., (c) Inventory on consignment and (d) components), valued at the lower of cost or market value, determined on a first-in-first-out basis, which is not, in the Administrative Agent's Permitted Discretion, obsolete, slow moving or unmerchantable and which the Administrative Agent, in its Permitted Discretion, shall not deem ineligible Inventory, based on such considerations as the Administrative Agent may from time to time in its Permitted Discretion deem appropriate, including, without limitation, whether the Inventory is subject to a perfected, first priority security interest in favor of the Collateral Agent, subject to no other Lien, and whether the Inventory conforms to all standards imposed by any governmental agency, division or department thereof which has regulatory authority over such goods or the use or sale thereof applicable. Eligible Inventory shall include all Inventory in-transit for which title has passed to the Borrower, which is insured to the full value thereof, under policies for which the Collateral Agent is a loss payee and for which the Administrative Agent shall have in its possession (a) all negotiable bills of lading properly endorsed and (b) all non-negotiable bills of lading issued in the Administrative Agent's name.

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"*Eligible Receivables*" shall mean and include with respect to each Borrower each Receivable of such Borrower arising in the ordinary course of such Borrower's business and which the Administrative Agent, in its Permitted Discretion, shall deem to be an Eligible Receivable, based on such considerations as the Administrative Agent may from time to time in its Permitted Discretion deem appropriate. A Receivable shall not be deemed eligible unless such Receivable is subject to the Collateral Agent's first priority perfected security interest and no other Lien (other than a Permitted Lien on terms acceptable to the Administrative Agent in its Permitted Discretion and for which adequate reserves have been established), and is evidenced by an invoice or other documentary evidence satisfactory to the Administrative Agent. In addition, no Receivable shall be an Eligible Receivable if:

- (a) it arises out of a sale made by a Borrower to an Affiliate of such Borrower or to a Person controlled by an Affiliate of such Borrower;
- (b) it is due or unpaid more than one hundred twenty (120) days after the original invoice date or more than sixty (60) days after the due date;
- (c) fifty percent (50%) or more of the Receivables from such Customer are not deemed Eligible Receivables hereunder;
- (d) any covenant, representation or warranty contained in this Agreement or the Security Agreement with respect to such Receivable has been breached in any material respect;
- (e) the Customer shall (i) apply for, suffer, or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property or call a meeting of its creditors, (ii) admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (iii) make a general assignment for the benefit of creditors, (iv) commence a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (v) be adjudicated a bankrupt or insolvent, (vi) file a petition seeking to take advantage of any other law providing for the relief of debtors, (vii) acquiesce to, or fail to have dismissed, any petition which is filed against it in any involuntary case under such bankruptcy laws, or (viii) take any action for the purpose of effecting any of the foregoing;
- (f) the sale is to a Customer not domiciled in the United States of America or Canada unless the sale is on letter of credit, guaranty or acceptance terms, or backed by credit insurance, in each case acceptable to the Administrative Agent in its Permitted Discretion;
- (g) the sale to the Customer is on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other similar repurchase or return basis (other than return rights customary in the Borrower's business) or is evidenced by chattel paper;
- (h) the Administrative Agent believes, in its Permitted Discretion, that collection of such Receivable is insecure or that such Receivable may not be paid by reason of the Customer's financial inability to pay;
- (i) the Customer is the United States of America or Canada, any state or province or any department, agency or instrumentality of any of them, unless the Borrower assigns its right to payment of such Receivable to the Administrative Agent pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. Sub-Section 3727 *et seq.* and 41 U.S.C. Sub-Section 15 *et seq.*) or has otherwise complied with other applicable statutes or ordinances;
- (j) the goods giving rise to such Receivable have not been shipped and delivered to the Customer or the services giving rise to such Receivable have not been fully performed by the Borrower or the Receivable otherwise does not represent a final sale;

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- (k) the Receivables of the Customer exceed a credit limit determined by the Administrative Agent, in its Permitted Discretion, to the extent such Receivable exceeds such limit;
  - (l) the Receivable is subject to any unwaived offset, deduction, defense, dispute, or counterclaim, the Customer is also a creditor or supplier of a Borrower or the Receivable is contingent in any respect or for any reason;
  - (m) the Borrower has made any agreement with the Customer for any deduction therefrom, except for discounts or allowances made in the ordinary course of business, all of which discounts or allowances are reflected in the calculation of the face value of each respective invoice related thereto;



(n) any return, rejection or repossession of the merchandise has occurred but only to the extent of the portion of the Receivable relating to the returned, rejected or repossessed goods;

(o) such Receivable is not payable to a Borrower;

(p) such Receivable is not otherwise satisfactory to the Administrative Agent in its Permitted Discretion;

(q) the Borrower has not observed and complied with all laws of the jurisdiction in which the Customer or the Receivable is located which, if not observed or complied with, would deny the Borrower access to the courts of such jurisdiction;

(r) the Receivable arises out of sales of Inventory for which the Borrower acts solely as a collection agent;

(s) Receivables from original equipment manufacturers or licensees unless such Receivables arise out of an invoice issued for shipment of goods on normal trade terms; or

(t) the Receivable is owed by Kaboom.

"*environment*" shall mean ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, the workplace or as otherwise defined in any Environmental Law.

"*Environmental Claim*" shall mean any written accusation, allegation, notice of violation, claim, demand, order, directive, cost recovery action or other cause of action by, or on behalf of, any Governmental Authority or any person for damages, injunctive or equitable relief, personal injury (including sickness, disease or death), Remedial Action costs, tangible or intangible property damage, natural resource damages, nuisance, pollution, any adverse effect on the environment caused by any Hazardous Material, or for fines, penalties or restrictions, resulting from or based upon (a) the existence, or the continuation of the existence, of a Release (including sudden or non-sudden, accidental or non-accidental Releases), (b) exposure to any Hazardous Material, (c) the presence, use, handling, transportation, storage, treatment or disposal of any Hazardous Material or (d) the violation or alleged violation of any Environmental Law or Environmental Permit.

"*Environmental Law*" shall mean any and all applicable present and future treaties, laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.* (collectively "CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act

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of 1970, as amended 42 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601 *et seq.*, the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. § 651 *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 *et seq.*, the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300(f) *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*, and any similar or implementing state, local or foreign law, and all amendments or regulations promulgated under any of the foregoing.

"*Environmental Permit*" shall mean any permit, approval, authorization, certificate, license, variance, filing or permission required by or from any Governmental Authority pursuant to any Environmental Law.

"*Equity Interests*" shall mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a person.

"*Equity Issuance*" shall mean any issuance or sale by Activision Holdings or any Subsidiary of any Equity Interests of Activision Holdings or any Subsidiary, as applicable, or any obligations convertible into or exchangeable for, or giving any Person a right, option or warrant to acquire, such Equity Interests or such convertible or exchangeable obligations, except in each case for (a) any issuance or sale to a Borrower or any Subsidiary, (b) any issuance of directors' qualifying shares, (c) sales or issuances of common stock of Activision Holdings to management or key employees of Activision Holdings or any Subsidiary or Kaboom under any employee stock option or stock purchase plan or employee benefit plan in existence from time to time or other stock options from time to time granted to employees or directors, or in connection with license, distribution or development or other similar agreements, (d) conversion of the Convertible Subordinated Notes into common stock of Activision Holdings, (e) issuance of common stock (or options or warrants to purchase common stock) of Activision Holdings as consideration for any Permitted Acquisition, and (f) other issuances of Equity Interests for non-cash or no consideration.

"*ERISA*" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"*ERISA Affiliate*" shall mean any trade or business (whether or not incorporated) that, together with any Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"*ERISA Event*" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by a Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (g) the receipt by a Borrower or any of its ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from a Borrower or any of its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; or (h) any

Foreign Benefit Event.

"Eurodollar Borrowing" shall mean a Borrowing comprised of Eurodollar Loans.

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"Eurodollar Loan" shall mean any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II.

"European Distribution Subsidiaries" shall mean Combined Distribution (Holdings) Limited, PDQ Distribution Limited, CentreSoft Limited, NBG EDV Handels und Verlags GmbH & Co. KG, Target Software Vertriebs GmbH, CD Contact Data GmbH, Contact Data N.V., and Contact Data Belgium NV and their respective successors and assignors and any other Foreign Subsidiary engaged primarily in the business of distributing a Borrower's and other persons' products in Europe.

"Event of Default" shall have the meaning assigned to such term in Article VII.

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of a Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which a Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrowers under Section 2.24(a)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure to comply with Section 2.23(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to Section 2.23(a).

"Existing Credit Agreement" shall mean the Credit Agreement dated as of June 21, 1999, among the Borrowers, the lenders party thereto, Credit Suisse First Boston, acting through its New York Branch, as Syndication Agent, and PNC Bank, National Association, as Administrative Agent and Collateral Agent, as amended or otherwise modified from time to time prior to the Restatement Effective Date.

"Existing Letter of Credit" shall mean each letter of credit previously issued for the account of Activision or its Domestic Subsidiaries pursuant to the Existing Credit Agreement that is outstanding on the Restatement Effective Date.

"Expert" shall mean Expert Software, Inc., a Delaware corporation.

"Federal Funds Rate" shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or if such rate is not so published for any day which is a Business Day, the average of quotations for such day on such transactions received by PNC from three Federal funds brokers of recognized standing selected by PNC.

"Fee Letter" shall mean the Fee Letter dated concurrently herewith, between Activision, the Administrative Agent and the Collateral Agent.

"Fees" shall mean the Commitment Fees, the Agent Fees, the L/C Participation Fees and the Issuing Bank Fees.

"Financial Officer" of any corporation shall mean the chief financial officer, principal accounting officer, Treasurer or Controller of such corporation.

"Fixed Charge Coverage Ratio" with respect to any person for any period shall mean the ratio of (a) Adjusted EBITDA of such person *plus*, in the case of any Borrower (and without duplication of any amounts included in the Borrowers' Net Income) the amount of dividends or loans or repayments of

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loans actually received from its Foreign Subsidiaries during such period *less* the amount of loans or capital contributions made to the Foreign Subsidiaries during such period to (b) Fixed Charges for such period.

"Fixed Charges" with respect to any person for any period shall mean, without duplication, the sum of (a) Interest Expense for such period, *plus* (b) payments on long term Indebtedness (including Capital Lease Obligations) of such person for such period, *plus* (c) Capital Expenditures made by such person during such period, *plus* (d) taxes paid in cash by such person during such period.

"Foreign Benefit Event" shall mean, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments, (c) the receipt of a notice by a Governmental Authority relating to the intention to terminate any such Foreign Pension Plan or to appoint a trustee or similar official to administer any such Foreign Pension Plan, or alleging the insolvency of any such Foreign Pension Plan and (d) the incurrence of any liability in excess of \$2,000,000 (or the Dollar equivalent thereof in another currency) by a Borrower or any of its Subsidiaries under applicable law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable law and could reasonably be expected to result in the incurrence of any liability by the Borrower or any of its Subsidiaries, or the imposition on a Borrower or any of its Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any applicable law, in each case in excess of \$2,000,000 (or the Dollar equivalent thereof in another currency).

"Foreign Lender" shall mean any Lender that is organized under the laws of a jurisdiction other than that in which a Borrower is located. For

purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"*Foreign Pension Plan*" shall mean any plan, fund (including any super annuating fund) or other similar program established or maintained outside the United States by a Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of such Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"*Foreign Subsidiary*" shall mean any Subsidiary that is not a Domestic Subsidiary.

"*Formula Amount*" shall have the meaning set forth in Section 2.01(a).

"*GAAP*" shall mean generally accepted accounting principles in the United States applied on a consistent basis.

"*Governmental Authority*" shall mean any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

"*Granting Lender*" shall have the meaning specified in Section 9.04(i).

"*Guarantee*" of or by any person shall mean any obligation, contingent or otherwise, of such person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other person (the "*primary obligor*") in any manner, whether directly or indirectly, and including any obligation of such person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment of such Indebtedness or other

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obligation or (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation; *provided, however*, that the term "*Guarantee*" shall not include endorsements for collection or deposit in the ordinary course of business.

"*Hazardous Materials*" shall mean all explosive or radioactive substances or wastes, hazardous or toxic substances or wastes, pollutants, solid, liquid or gaseous wastes, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls ("*PCBs*") or PCB-containing materials or equipment, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"*Hedging Agreement*" shall mean any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect against fluctuations in interest or currency exchange rates and not entered into for speculation.

"*Indebtedness*" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person upon which interest charges are customarily paid, (d) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, (g) all Guarantees by such person of Indebtedness of others, (h) all Capital Lease Obligations of such person, (i) all obligations of such person in respect of Hedging Agreements and (j) all obligations of such person as an account party in respect of letters of credit and bankers' acceptances. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner. Prepaid or guaranteed royalties to independent software developers, license fees paid or guaranteed to holders of intellectual property rights and expenses incurred for product development, whether or not capitalized, are not Indebtedness hereunder.

"*Indemnified Taxes*" shall mean Taxes other than Excluded Taxes.

"*Indemnity, Subrogation and Contribution Agreement*" shall mean the Indemnity, Subrogation and Contribution Agreement, substantially in the form of Exhibit D to the Existing Credit Agreement, among the Borrowers, the Subsidiary Guarantors and the Collateral Agent.

"*Individual Formula Amount*" shall mean, at the date of determination thereof, with respect to each Borrower an amount equal to: (a) up to the Receivables Advance Rate of the sum of Eligible Receivables of such Borrower *less* its Dilution Reserve, *plus* (b) up to the Inventory Advance Rate of the value of Eligible Inventory of such Borrower; *plus* (c) the product of (i) the aggregate amount of outstanding Trade L/C Exposure of such Borrower *times* (ii) the Inventory Advance Rate, *plus* (d) Cash Collateral of such Borrower, *minus* (e) such other reserves as the Administrative Agent in its Permitted Discretion deems proper and necessary from time to time.

"*Intercompany Note*" shall mean the demand promissory note in the original principal amount of approximately \$23,000,000 from UK Sub to Activision evidencing the obligations of UK Sub to Activision, which is secured by the UK Charge Documents.

"*Interest Coverage Ratio*" with respect to any person for any period shall mean the ratio of Adjusted EBITDA of such person for such period to the Interest Expense of such person for such period.

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"*Interest Expense*" with respect to any person for any period shall mean the total cash interest expense of such person (including amortization

of deferred financing fees, premiums or interest rate protection agreements and original issue discounts) for such period determined in accordance with GAAP.

"*Interest Payment Date*" shall mean (a) with respect to any ABR Loan, the last Business Day of each month, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such Borrowing, and, in addition, the date of any prepayment of a Eurodollar Borrowing or conversion of a Eurodollar Borrowing to an ABR Borrowing.

"*Interest Period*" shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is 1, 2, 3 or 6 months thereafter, as the Borrowing Agent may elect (or such other period thereafter as the Borrowing Agent may request and all the Lenders with Loans included in such Borrowing may agree); *provided, however*, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"*Investment Account*" shall mean a cash collateral account maintained by the Collateral Agent invested in Permitted Investments and under the control of the Collateral Agent.

"*Inventories*" with respect to any person shall mean and include all of its now owned or hereafter acquired goods, merchandise and other personal property, wherever located, to be furnished under any contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in its business or used in selling or furnishing such goods, merchandise and other personal property, and all documents of title or other documents representing them.

"*Inventories Advance Rate*" shall have the meaning set forth in Section 2.01(a)(ii) hereof.

"*Issuing Bank*" shall mean as the context may require, (a) PNC Bank, National Association, with respect to Letters of Credit issued by it, (b) with respect to each Existing Letter of Credit, the Lender that issued such Existing Letter of Credit, (c) any other Lender that may become an Issuing Bank pursuant to Section 2.26(h) or (j), with respect to Letters of Credit issued by such Lender, or (d) collectively, all the foregoing.

"*Issuing Bank Fees*" shall have the meaning assigned to such term in Section 2.08(c).

"*Joinder Agreement*" shall mean a Borrower Joinder Agreement substantially in the form attached hereto as Exhibit E to the Existing Credit Agreement executed by Activision Holdings or any Domestic Subsidiary which becomes a Borrower hereunder.

"*Kaboom*" shall mean Kaboom.com, Inc., a Delaware corporation, and a wholly-owned subsidiary of Activision Holdings.

"*L/C Commitment*" shall mean the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.26.

"*L/C Disbursement*" shall mean a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.

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"*L/C Exposure*" shall mean at any time of determination, the sum of (a) the Trade L/C Exposure and (b) the Standby L/C Exposure and "L/C Exposure" of a Borrower shall mean the sum of (a) the Trade L/C Exposure with respect to Trade Letters of Credit issued for the account of such Borrower and the Standby L/C Exposure with respect to Standby Letters of Credit issued for the account of such Borrower.

"*L/C Participation Fee*" shall have the meaning assigned to such term in Section 2.06(c).

"*Lenders*" shall mean (a) the financial institutions listed on Schedule 2.01 (other than any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any financial institution that has become a party hereto pursuant to an Assignment and Acceptance.

"*Letter of Credit*" shall mean Trade Letters of Credit, Standby Letters of Credit and any Existing Letter of Credit.

"*LIBO Rate*" shall mean for any Eurodollar Borrowing for the then current Interest Period relating thereto the interest rate per annum determined by PNC by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (i) the rate of interest determined by PNC in accordance with its usual procedures (which determination shall be conclusive absent manifest error) to be the eurodollar rate two (2) Business Days prior to the first day of such Interest Period for an amount comparable to such Eurodollar Borrowing and having a borrowing date and a maturity comparable to such Interest Period by (ii) a number equal to 1.00 minus the Reserve Percentage.

"*Lien*" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"*Loan Documents*" shall mean this Agreement, the Letters of Credit, the Borrower Guarantee Agreement, the Subsidiary Guarantee Agreement, the Security Documents, the Indemnity, Subrogation and Contribution Agreement, any Joinder Agreement and any and all agreements, instruments and documents now or hereafter executed by a Borrower or a Subsidiary Guarantor and delivered to the Administrative Agent, the Issuing Bank or any Lender in connection with this Agreement or the Existing Credit Agreement.

"*Loan Parties*" shall mean the Borrowers and the Subsidiary Guarantors.

"*Loans*" shall mean the Revolving Loans.

"*Margin Stock*" shall have the meaning assigned to such term in Regulation U.

"Master Note" shall mean any demand promissory note evidencing loans from a Loan Party to a Foreign Subsidiary.

"Material Adverse Effect" shall mean a material adverse effect on (a) the condition, operations, assets, business or prospects of the Loan Parties, taken as a whole, or on Activision Holdings and its Subsidiaries, taken as a whole; (b) the ability of the Loan Parties taken as a whole to pay or perform the Obligations in accordance with the terms thereof; (c) the value of the Collateral or the Collateral Agent's Liens on the Collateral or the priority of such Liens; (d) the validity or enforceability of any Loan Document (other than with respect to a Subsidiary which is not a Material Subsidiary) or (e) the practical realization of the benefits of the Administrative Agent's, the Collateral Agent's and each Lender's rights and remedies under this Agreement and the other Loan Documents.

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"Material Contract" shall mean any and all contracts or agreements of a Borrower or any Domestic Subsidiary involving amounts remaining to be paid in excess of \$1,000,000.

"Material Subsidiary" shall mean any Subsidiary which has assets with a book value in excess of \$5,000 as of the date of determination.

"Merger Agreement" shall mean the Amended and Restated Agreement and Plan of Merger dated as of April 19, 1999, by and among Activision, Sub and Expert, as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Mortgaged Properties" shall mean the owned real properties and leasehold and subleasehold interests of the Loan Parties at the time subject to the Mortgages.

"Mortgages" shall mean the mortgages, deeds of trust, leasehold mortgages, assignments of leases and rents, modifications and other security documents delivered pursuant to Section 5.12, each in form and substance satisfactory to the Administrative Agent.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Cash Proceeds" shall mean (a) with respect to any Asset Sale, the cash proceeds (including cash proceeds subsequently received (as and when received) in respect of noncash consideration initially received), net of (i) selling expenses (including reasonable broker's fees or commissions, legal fees, transfer and similar taxes and the Borrowers' good faith estimate of income taxes paid or payable in connection with such sale), (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated with such Asset Sale (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds) and (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by the asset sold in such Asset Sale and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset or repayments of the Revolving Loans) and (b) with respect to any issuance or disposition of Indebtedness or any Equity Issuance, the cash proceeds thereof, net of all taxes and customary fees, commissions, costs and other expenses incurred in connection therewith. Notwithstanding the foregoing, Net Cash Proceeds shall not include any amounts received by the Borrowers or any Subsidiary in respect of any casualty or condemnation to the extent Borrower or such Subsidiary uses the amounts so received within 180 days of the receipt thereof to rebuild, restore or replace the property subject to such casualty or condemnation.

"Net Income" shall mean, for any period, net income or loss of the Loan Parties for such period determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by the Subsidiary of that income is prohibited by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to the Subsidiary except to the extent that dividends or distributions are actually paid in compliance therewith, (b) the income (or loss) of any person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with a Loan Party or the date that person's assets are acquired by a Loan Party, and (c) the income of any Subsidiary which is not a wholly owned Subsidiary except to the extent that dividends or distributions are actually paid to a Loan Party.

"New Lenders" shall have the meaning assigned to such term in Section 2.30.

"Obligations" shall mean and include any and all of each Borrower's Indebtedness and/or liabilities to the Administrative Agent, the Collateral Agent, the Issuing Bank or Lenders or any corporation that directly or indirectly controls or is controlled by or is under common control with the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender of every kind, nature and description, direct or indirect, secured or unsecured, joint, several, joint and several, absolute or contingent, due or

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to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, regardless of how such indebtedness or liabilities arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument, including, but not limited to, any and all of any Borrower's Indebtedness and/or liabilities under this Agreement, the other Loan Documents or under any other agreement between the Administrative Agent, the Collateral Agent, the Issuing Bank or Lenders and any Borrower and all obligations of any Borrower to the Administrative Agent, the Collateral Agent, the Issuing Bank or Lenders to perform acts or refrain from taking any action.

"Other Taxes" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

"Payment Office" shall mean initially Two Tower Center Boulevard, East Brunswick, New Jersey 08816; thereafter, such other office of the Administrative Agent, if any, which it may designate by notice to the Borrowing Agent and to each Lender to be the Payment Office.

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"PNC" shall mean PNC Bank, National Association.

"Perfection Certificate" shall mean the Perfection Certificate substantially in the form of Annex 2 to the Security Agreement.

"Permitted Acquisition" shall have the meaning assigned to such term in Section 6.04(h).

"Permitted Discretion" means the Administrative Agent's reasonable and good faith judgment based upon any factor which the Administrative Agent believes in good faith (a) could reasonably be expected to adversely affect the value of any Collateral, the enforceability or priority of the Collateral Agent's Liens or the amount that the Lenders would be likely to receive upon a liquidation of the Collateral; (b) suggests that any report of Collateral or financial information is incomplete, inaccurate or misleading in any material respect; (c) could reasonably be expected to create a Default or Event of Default or increase the likelihood of an insolvency or bankruptcy proceeding. In exercising such judgment with respect to matters relating to the determination of Eligible Inventory and Eligible Receivables, changes in advance rates or the imposition, increase or reduction of reserves, the Administrative Agent may reasonably take into account factors included in the definitions of Eligible Inventory and Eligible Receivables, as well as changes in concentration of risk of Receivables, changes in collection history and dilution, changes in demand for and pricing of Inventory, and other changes in the value of the Inventory or Receivables that tend to increase the credit risk of lending to the Borrowers on the security of Inventory or Receivables. The burden of establishing lack of good faith shall be on the Borrowers.

"Permitted Investments" shall mean any of the following:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 180 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from Standard & Poor's Ratings Service or from Moody's Investors Service, Inc.;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank

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organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria of clause (c) above; and

(e) such other investments that are acceptable to the Administrative Agent.

"person" shall mean any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership or government, or any agency or political subdivision thereof.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 307 of ERISA, and in respect of which the Borrowers or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pledge Agreement" shall mean the Pledge Agreement, substantially in the form of Exhibit F to the Existing Credit Agreement, between the Borrowers, the Subsidiaries party thereto and the Collateral Agent for the benefit of the Secured Parties, together with any pledge or similar agreement required or advisable under the laws of any foreign jurisdiction to perfect the pledge the stock of the Foreign Subsidiaries.

"Pro Rata Percentage" of any Revolving Credit Lender at any time shall mean the percentage of the Total Revolving Credit Commitment represented by such Lender's Revolving Credit Commitment.

"Receivables" of a person shall mean and include all of its accounts, contract rights, instruments (including those evidencing indebtedness owed to it by its Affiliates), documents, chattel paper, general intangibles relating to accounts, drafts and acceptances, and all other forms of obligations owing to such person arising out of or in connection with the sale or lease of Inventory or the rendition of services, all guarantees and other security therefor, whether secured or unsecured, now existing or hereafter created, and whether or not specifically sold or assigned to the Administrative Agent or Collateral Agent hereunder.

"Receivables Advance Rate" shall have the meaning set forth in Section 2.01(a)(i) hereof.

"Register" shall have the meaning given such term in Section 9.04(d).

"Regulation T" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Related Fund" shall mean, with respect to any Lender that is a fund that invests in bank loans, any other fund that invests in bank loans and is advised or managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the environment.

"Remedial Action" shall mean (a) "remedial action" as such term is defined in CERCLA, 42 U.S.C. Section 9601(24), and (b) all other actions required by any Governmental Authority or voluntarily

undertaken to: (i) cleanup, remove, treat, abate or in any other way address any Hazardous Material in the environment; (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Material so it does not migrate or endanger or threaten to endanger public health, welfare or the environment; or (iii) perform studies and investigations in connection with, or as a precondition to, (i) or (ii) above.

"*Repayment Date*" shall have the meaning given such term in Section 2.12.

"*Repurchase Amount*" shall mean an amount equal to the sum of (i) the net cash proceeds received by Activision Holdings from the exercise of stock options or warrants since June 8, 2000 *plus* (ii) the net cash proceeds received by Activision Holdings since June 8, 2000 from any other Equity Issuances *plus* (iii) the value of the common stock of Activision Holdings issued since the Restatement Effective Date, or additional paid in capital since such date, as a result of the conversion of any Convertible Subordinated Notes *less* (iv) payments made since June 8, 2000 in connection with any repurchase or redemption of Convertible Subordinated Notes or capital stock; *provided* that no more than \$10,000,000 of Revolving Loans may be used to fund the Repurchase Amount.

"*Required Lenders*" shall mean, at any time, Lenders having Loans, L/C Exposure and unused Revolving Credit Commitments representing at least a majority of the sum of all Loans outstanding, L/C Exposure and unused Revolving Credit Commitments at such time, subject, however, to the provisions of Section 2.25 with respect to Defaulting Lenders.

"*Responsible Officer*" of any corporation shall mean any executive officer or Financial Officer of such corporation and any other officer or similar official thereof responsible for the administration of the obligations of such corporation in respect of this Agreement.

"*Restatement Effective Date*" shall mean the date on which this Agreement becomes effective in accordance with its terms.

"*Restructure Date*" shall mean May 7, 2001.

"*Revolving Credit Borrowing*" shall mean a Borrowing comprised of Revolving Loans.

"*Revolving Credit Commitment*" shall mean, with respect to each Lender, the commitment of such Lender to make Revolving Loans hereunder as set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender assumed its Revolving Credit Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.11 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 2.30 or 9.04.

"*Revolving Credit Exposure*" shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender's L/C Exposure.

"*Revolving Credit Lender*" shall mean a Lender with a Revolving Credit Commitment.

"*Revolving Credit Maturity Date*" shall mean June 21, 2002.

"*Revolving Loans*" shall mean the revolving loans made by the Lenders to the Borrowers pursuant to Section 2.01. Each Revolving Loan shall be a Eurodollar Loan or an ABR Loan.

"*Schedule of Receivables*" shall mean, as to each Borrower, a detailed aged trial balance of all then existing Receivables of such Borrower in form and substance satisfactory to the Administrative Agent, specifying in each case the names, addresses, face amount and dates of invoice(s) for each Customer obligated on a Receivable so listed and, if requested by the Administrative Agent, copies of proof of delivery and customer statements and the original copy of all documents, including, without limitation, repayment histories and present status reports, and such other matters and information relating to the status of the Receivables and/or the Customers so scheduled as the Administrative Agent may from time to time reasonably request.

"*Schedule of Payables*" shall mean, as to each Borrower, a detailed aged listing of such Borrower's existing accounts payable, specifying the names of each creditor and the amount owed to such creditor and such matters and information relating to the status of such Borrower's accounts payable so scheduled as the Administrative Agent may from time to time reasonably request.

"*Seasonal Advance*" shall have the meaning set forth in Section 2.01.

"*Secured Parties*" shall have the meaning assigned to such term in the Security Agreement.

"*Security Agreement*" shall mean the Security Agreement, substantially in the form of Exhibit G to the Existing Credit Agreement, among the Borrowers, the Subsidiaries party thereto and the Collateral Agent for the benefit of the Secured Parties.

"*Security Documents*" shall mean the Mortgages, the Security Agreement, the Pledge Agreement and each of the security agreements, mortgages and other instruments and documents executed and delivered pursuant to any of the foregoing or pursuant to Section 5.12.

"*Settlement Date*" shall mean the Restatement Effective Date and thereafter Wednesday of each Week unless such day is not a Business Day in which case it shall be the next succeeding Business Day.

"*SPC*" shall have the meaning specified in Section 9.04(i).

"*Standby L/C Exposure*" shall mean, at any time of determination, the sum of (a) the aggregate undrawn amount of all outstanding Standby Letters of Credit and (b) the aggregate amount that has been drawn under any Standby Letter of Credit but for which the Issuing Bank or the Lenders, as the case may be, have not been reimbursed by the Borrowers at such time.

"*Standby Letter of Credit*" shall mean (a) each irrevocable letter of credit issued pursuant to Section 2.26(a) under which the Issuing Bank agrees to make payments for the account of a Borrower, on behalf of such Borrower, in respect of obligations of such Borrower incurred pursuant to contracts made or performances undertaken or to be undertaken or like matters relating to contracts to which a Borrower is or proposes to become a party in the ordinary course of such Borrower's business and (b) each Existing Letter of Credit.

"*Statutory Reserves*" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate, or other fronting office making or holding a Loan) is subject with respect to the Adjusted LIBO Rate, for Eurocurrency Liabilities (as defined in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute Eurocurrency Liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"*Sub*" shall mean Expert Acquisition Corp., a Delaware corporation.

"*Subordinated Debt*" shall mean unsecured Indebtedness of Activision which has a maturity date at least one year after the Revolving Credit Maturity Date, no principal payments due prior to one year after the Revolving Credit Maturity Date and is otherwise on terms and conditions set forth on Exhibit K to the Existing Credit Agreement.

"*subsidiary*" shall mean, with respect to any person (herein referred to as the "*parent*"), any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made,

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owned, controlled or held, or (b) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent and that is consolidated with such person in accordance with GAAP.

"*Subsidiary*" shall mean any subsidiary of Activision Holdings, *excluding, however,* Kaboom and any of its subsidiaries.

"*Subsidiary Guarantee Agreement*" shall mean the Subsidiary Guarantee Agreement, substantially in the form of Exhibit H to the Existing Credit Agreement, made by the Subsidiary Guarantors in favor of the Collateral Agent for the benefit of the Secured Parties.

"*Subsidiary Guarantor*" shall mean each Subsidiary listed on Schedule 1.01(a), and each other Subsidiary that is or becomes a party to the Subsidiary Guarantee Agreement.

"*Tangible Net Worth*" for any person shall mean, at a particular date (a) the aggregate amount of all assets of such person as may be properly classified as such in accordance with GAAP consistently applied, excluding such assets as are properly classified as intangible assets under GAAP and assets evidencing any receivable from or investments in any Affiliate *less* (b) the sum of (i) the aggregate amount of all liabilities of such person and (ii) the sum of Development Costs and the value of warrants issued by Activision Holdings, to the extent that such amount exceeds \$40,000,000.

"*Taxes*" shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"*Terminating Lender*" shall mean a party that is a "Lender" under the Existing Credit Agreement as of the Restatement Effective Date but not a Lender hereunder.

"*Total Debt*" at any time and with respect to any person shall mean the total Indebtedness of such person at such time (excluding Indebtedness of the type described in clause (i) of the definition of such term).

"*Total Revolving Credit Commitment*" shall mean, at any time, the aggregate amount of the Revolving Credit Commitments, as in effect at such time.

"*Trade L/C Exposure*" shall mean, at any time of determination, the sum of (a) the aggregate undrawn amount of all outstanding Trade Letters of Credit, (b) the aggregate unpaid amount of all accepted usance drafts drawn under Letters of Credit and (c) the aggregate amount that has been drawn under any Trade Letter of Credit but for which the Issuing Bank or the Lenders, as the case may be, have not been reimbursed by the Borrowers at such time.

"*Trade Letter of Credit*" shall mean each sight or usance commercial documentary letter of credit issued by the Issuing Bank for the account of a Borrower pursuant to Section 2.26(a) for the purchase of goods in the ordinary course of business.

"*Transactions*" shall have the meaning assigned to such term in Section 3.02.

"*Type*", when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "*Rate*" shall include the Adjusted LIBO Rate and the Alternate Base Rate.

"*UK Sub*" shall mean Activision UK, Ltd., a corporation organized under the laws of England and Wales.

"*UK Charge Documents*" shall mean the various pledge and security agreements securing the Intercompany Note.

"*Undrawn Availability*" at a particular date shall mean an amount equal to (a) the lesser of (i) the Formula Amount or (ii) the Total Revolving Credit Commitment *minus* (b) the sum of (i) the

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Aggregate Revolving Credit Exposure, *plus* (ii) all amounts due and owing to the Loan Parties' trade creditors which are outstanding more than 60 days after the due date, *plus* (iii) fees and expenses for which Borrowers are liable but which have not been paid or charged to Borrowers' Account.

"Week" shall mean the time period commencing with the opening of business on a Wednesday and ending on the end of business the following Tuesday.

"wholly owned subsidiary" of any person shall mean a subsidiary of such person of which securities (except for directors' qualifying shares) or other ownership interests representing 100% of the equity or 100% of the ordinary voting power or 100% of the general partnership interests are, at the time any determination is being made, owned, controlled or held by such person or one or more wholly owned subsidiaries of such person or by such person and one or more wholly owned subsidiaries of such person.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. *Terms Generally.* The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, (a) any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time and (b) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided, however*, that if the Borrowing Agent notifies the Administrative Agent that the Borrowers wish to amend any covenant in Article VI or any related definition to eliminate the effect of any change in GAAP occurring after the date of this Agreement on the operation of such covenant (or if the Administrative Agent notifies the Borrowing Agent that the Required Lenders wish to amend Article VI or any related definition for such purpose), then the Borrowers' compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrowers and the Required Lenders.

## ARTICLE II

### *The Credits*

SECTION 2.01. *Commitments; Formula Amount.* (a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, to make Revolving Loans to the Borrowers, at any time and from time to time on or after the Restatement Effective Date and until the earlier of the Revolving Credit Maturity Date and the termination of the Revolving Credit Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in such Lender's Revolving Credit Exposure exceeding the lesser of (x) such Lender's Revolving Credit Commitment and (y) such Lender's Pro Rata Percentage of an amount equal to the sum of the following (the "*Formula Amount*"):

(i) up to 85%, subject to the provisions of Section 2.01(c) hereof ("*Receivables Advance Rate*"), of the sum of (A) Eligible Receivables of the Borrowers *less* (B) the Dilution Reserve, *plus*

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(ii) up to the lesser of (A) the sum of (a) the lesser of (x) 50%, subject to the provisions of Section 2.01(c) hereof, of the value of Eligible Inventory of the Borrowers and (y) 85%, subject to the provisions of Section 2.01(c) hereof, of the orderly liquidation value of Eligible Inventory of Borrowers, as determined by appraisals satisfactory to Administrative Agent (in either case, the "*Inventory Advance Rate*" and together with the Receivables Advance Rate, the "*Advance Rates*") and (b) the product of (x) the Trade L/C Exposure for Inventory for which title has not yet passed to the Borrower times (y) the Inventory Advance Rate, or (B) the greater of (a) \$15,000,000 or (b) forty percent (40%) of the Borrowing Base Availability in the aggregate at any one time, *minus*

(iii) the L/C Exposure, *plus*

(iv) from August 15 to November 15, an amount not in excess of \$5,000,000 (*any Revolving Loan under this clause (iv), a "Seasonal Advance"*); *plus*

(v) Cash Collateral; *minus*

(vi) such other reserves as the Administrative Agent may deem proper and necessary from time to time in its Permitted Discretion.

(b) Each Revolving Credit Lender agrees, severally and not jointly, to make Revolving Loans to each Borrower in aggregate amounts outstanding at any time not greater than such Lender's Pro Rata Percentage of such Borrower's Individual Formula Amount less such Borrower's L/C Exposure.

(c) The Advance Rates may be increased (subject to consents required by Section 9.08) or decreased by the Administrative Agent at any time and from time to time in the exercise of its Permitted Discretion; *provided, however*, that (i) any decrease in any Advance Rate shall only be effective on the fifth day after the Administrative Agent has given the Borrowing Agent notice of such decrease and (ii) any increase or decrease in the Receivables Advance Rate shall only apply to Eligible Receivables created and assigned to the Administrative Agent after such change in Advance Rate becomes effective, but any increase or decrease in the Inventory Advance Rate shall apply to all Eligible Inventory whether then owned or thereafter acquired. Each Borrower consents to any such increases or decreases and acknowledges that decreasing the Advance Rates or increasing the reserves may limit or restrict Revolving Loans or Letters of Credit requested by the Borrowing Agent.

(d) For purposes of calculating the Formula Amount, Individual Formula Amount, Eligible Inventory, and Eligible Receivables, the

Receivables and Inventory acquired in any Permitted Acquisition shall not be included until such time as the Administrative Agent has performed an audit with results satisfactory to it in its Permitted Discretion.

SECTION 2.02. *Loans.* (a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; *provided, however*, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.03(a), the Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$1,000,000 or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Sections 2.15 and 2.17, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrowing Agent may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not

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affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided, however*, that the Borrowers shall not be entitled to request any Borrowing that, if made, would result in more than five Eurodollar Borrowings outstanding hereunder at any time. For purposes of the foregoing, Borrowings made by a Borrower having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Notwithstanding any other provision of this Agreement, the Borrowing Agent shall not be entitled to request any Revolving Credit Borrowing if the Interest Period requested with respect thereto would end after the Revolving Credit Maturity Date.

SECTION 2.03. *Procedure for Revolving Credit Borrowings.* (a) The Borrowing Agent on behalf of any Borrower may notify the Administrative Agent prior to 1:00 p.m., New York time, on a Business Day of a Borrower's request to make, on that day, a Revolving Credit Borrowing hereunder. Should any amount required to be paid as interest hereunder, or as fees or other charges under this Agreement or any other agreement with the Administrative Agent, the Collateral Agent or Lenders, or any L/C Disbursement, or with respect to any other Obligation, become due, same shall be deemed a request for a Revolving Credit Borrowing as of the date such payment is due, in the amount required to pay in full such interest, fee, charge or Obligation under this Agreement or any other agreement with the Administrative Agent, the Collateral Agent or Lenders, and such request shall be irrevocable. The Administrative Agent is hereby irrevocably authorized, in its sole discretion, to make Revolving Loans from time to time, or to charge Borrowers' Account, to pay any interest, fees or other amounts (including any L/C Disbursement) for which payment is due under this Agreement, or at any time after the occurrence of an Event of Default to cash collateralize the L/C Exposure.

(b) Notwithstanding the provisions of Section 2.03(a) above, in the event a Borrower desires to make a Eurodollar Borrowing, the Borrowing Agent shall give the Administrative Agent at least three (3) Business Days' prior written notice, specifying (i) the date of the proposed Borrowing (which shall be a Business Day), (ii) the amount on the date of such Revolving Credit Borrowing, which amount shall be an integral multiple of \$1,000,000, and (iii) the duration of the first Interest Period therefor. No Eurodollar Borrowing shall be made available to the Borrowers during the continuance of a Default or an Event of Default.

(c) The Borrowing Agent shall elect the initial Interest Period applicable to a Eurodollar Borrowing by its notice of borrowing given to the Administrative Agent pursuant to Section 2.03 (a) or by its notice of conversion given to the Administrative Agent pursuant to Section 2.03(d), as the case may be. The Borrowing Agent shall elect the duration of each succeeding Interest Period by giving irrevocable written notice to the Administrative Agent of such duration not less than three (3) Business Days prior to the last day of the then current Interest Period applicable to such Eurodollar Borrowing. If the Administrative Agent does not receive timely notice of the Interest Period elected by the Borrowing Agent, the applicable Borrower shall be deemed to have elected to convert to an ABR Loan, subject to Section 2.03(d) hereinbelow.

(d) Provided that no Default or Event of Default shall have occurred and be continuing, the Borrowing Agent may, on the last Business Day of the then current Interest Period applicable to any outstanding Eurodollar Loan, or on any Business Day with respect to ABR Loans, convert any such Loan into a Loan of another type in the same aggregate principal amount; *provided* that any conversion of a Eurodollar Loan shall be made only on the last Business Day of the then current Interest Period applicable to such Eurodollar Loan. If a Borrower desires to convert a Loan, the Borrowing Agent shall give the Administrative Agent not less than three (3) Business Days' prior written notice to convert from an ABR Loan to a Eurodollar Loan or one (1) Business Day's prior written notice to convert from a Eurodollar Loan to an ABR Loan, specifying the date of such conversion, the Loans to be converted and if the conversion is from an ABR Loan to a Eurodollar

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Loan, the duration of the first Interest Period therefor. After giving effect to each such conversion, there shall not be outstanding more than five (5) Eurodollar Borrowings, in the aggregate.

SECTION 2.04. *Disbursement of Loans.* All Loans shall be disbursed from whichever office or other place the Administrative Agent may designate from time to time and, together with any and all other Obligations of the Borrowers to the Administrative Agent, the Collateral Agent or Lenders, shall be charged to the Borrowers' Account on the Administrative Agent's books. The Borrowers may use the Revolving Loans by borrowing, prepaying and reborrowing, all in accordance with the terms and conditions hereof. The proceeds of each Revolving Credit Borrowing requested by a Borrower or deemed to have been requested by or on behalf of a Borrower under Section 2.03(a) hereof shall, with respect to requested Revolving Credit Borrowings to the extent Lenders make such Revolving Credit Borrowings, be made available to such Borrower on the day so requested by way of credit to such Borrower's operating account at PNC, in immediately available federal funds or other immediately available funds or, with respect to Revolving Credit Borrowings deemed to have been requested by the Borrowers, be disbursed to the Administrative Agent to be applied to the outstanding Obligations giving rise to such deemed request.

SECTION 2.05. *Manner of Borrowing and Payment.* (a) Each Revolving Credit Borrowing shall be advanced according to the applicable Pro Rata Percentages of the Revolving Credit Lenders.

(b) Each payment (including each prepayment) by a Borrower on account of the principal of and interest on the Revolving Loans shall be applied to the Revolving Loans of such Borrower according to the applicable Pro Rata Percentages of the Revolving Credit Lenders. Except as expressly provided herein, all payments (including prepayments) to be made by the Borrowers on account of principal, interest and fees shall be made without set off or counterclaim and shall be made to the Administrative Agent on behalf of the Lenders to the Payment Office, in each case on or prior to 1:00 P.M., New York time, in Dollars and in immediately available funds.

(c) (i) Notwithstanding anything to the contrary contained in Sections 2.03 or 2.05 (a) and (b) hereof, commencing with the first Business Day following the Restatement Effective Date, each Revolving Loan shall be advanced by the Administrative Agent and each payment by the Borrowers on account of Revolving Loans shall be applied first to those Revolving Loans advanced by the Administrative Agent. On or before 1:00 P.M., New York time, on each Settlement Date commencing with the first Settlement Date following the Restatement Effective Date, the Administrative Agent and Lenders shall make certain payments as follows: (I) if the aggregate amount of new Revolving Loans made by the Administrative Agent during the preceding Week (if any) exceeds the aggregate amount of repayments applied to outstanding Revolving Loans during such preceding Week, then each Lender shall provide the Administrative Agent with immediately available funds in an amount equal to its applicable Pro Rata Percentage of the difference between (w) such Revolving Loans and (x) such repayments and (II) if the aggregate amount of repayments applied to outstanding Revolving Loans during such Week exceeds the aggregate amount of new Revolving Credit Loans made during such Week, then the Administrative Agent shall provide each Lender with immediately available funds in an amount equal to its applicable Pro Rata Percentage of the difference between (y) such repayments and (z) such Revolving Loans.

(ii) Each Lender shall be entitled to earn interest at the rate applicable to the rate on the outstanding Revolving Loans which it has funded.

(iii) Promptly following each Settlement Date, the Administrative Agent shall submit to each Lender a certificate with respect to payments received and Revolving Loans made during the Week immediately preceding such Settlement Date. Such certificate of the Administrative Agent shall be conclusive in the absence of manifest error.

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(d) Unless the Administrative Agent shall have been notified by telephone, confirmed in writing, by any Lender that such Lender will not make the amount which would constitute its applicable Pro Rata Percentage of the Revolving Loans available to the Administrative Agent, the Administrative Agent may (but shall not be obligated to) assume that such Lender shall make such amount available to the Administrative Agent on the next Settlement Date and, in reliance upon such assumption, make available to the Borrowers a corresponding amount. The Administrative Agent will promptly notify the Borrowing Agent of its receipt of any such notice from a Lender. If such amount is made available to the Administrative Agent on a date after such next Settlement Date, such Lender shall pay to the Administrative Agent on demand an amount equal to the product of (i) the daily average Federal Funds Rate (computed on the basis of a year of 360 days) during such period as quoted by the Administrative Agent, times (ii) such amount, times (iii) the number of days from and including such Settlement Date to the date on which such amount becomes immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive, in the absence of manifest error. If such amount is not in fact made available to the Administrative Agent by such Lender within three (3) Business Days after such Settlement Date, the Administrative Agent shall be entitled to recover such an amount, with interest thereon at the rate per annum then applicable to such Revolving Loans hereunder, on demand from the applicable Borrower; *provided, however*, that the Administrative Agent's right to such recovery shall not prejudice or otherwise adversely affect the Borrower's rights (if any) against such Lender.

SECTION 2.06. *Evidence of Debt.* (a) Each Borrower hereby unconditionally and jointly and severally promises to pay to the Administrative Agent on the Revolving Credit Maturity Date (or earlier termination of the Revolving Credit Commitments) for the account of each Revolving Credit Lender, the then unpaid principal amount of each Revolving Loan made by such Lender to Borrowers.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrowers or any Subsidiary Guarantor and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrowers to repay the Loans in accordance with their terms.

(e) Any Lender may request that Loans made by it hereunder be evidenced by a promissory note. In such event, the Borrowers shall execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in a form and substance reasonably acceptable to the Administrative Agent and the Borrowers. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive such a promissory note, the interests represented by such note shall at all times (including after any assignment of all or part of such interests pursuant to Section 9.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns.

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SECTION 2.07. *Statement of Account.* (a) The Administrative Agent shall maintain, in accordance with its customary procedures, a loan account ("*Borrowers' Account*") in the name of the Borrowers in which shall be recorded the date and amount of each Borrowing, each L/C Disbursement and the date and amount of each payment in respect thereof; *provided, however*, the failure by the Administrative Agent to record the date and amount of any Borrowing or L/C Disbursement shall not adversely affect the Administrative Agent or any Lender. Each month, the

Administrative Agent shall send to the Borrowing Agent a statement showing the accounting for the Borrowings made, payments made or credited in respect thereof, and other transactions between the Administrative Agent and the Borrowers during such month. The monthly statements shall be deemed correct and binding upon the Borrowers in the absence of manifest error and shall constitute an account stated between Lenders and Borrowers unless the Administrative Agent receives a written statement of the Borrowers' specific exceptions thereto within thirty (30) days after such statement is received by the Borrowers. The records of the Administrative Agent with respect to Borrowers' Account shall be conclusive evidence absent manifest error of the amounts of Loans and other charges thereto and of payments applicable thereto.

(b) Any sums expended by the Administrative Agent or any Lender due to a Borrower's failure to perform or comply with its obligations under this Agreement or any Loan Document may be charged to Borrowers' Account as a Revolving Loan and added to the Obligations.

SECTION 2.08. *Fees.* (a) The Borrowers jointly and severally agree to pay to each Lender, through the Administrative Agent, on the last day of March, June, September and December in each year and on each date on which any Commitment of such Lender shall expire or be terminated as provided herein, a commitment fee (a "*Commitment Fee*") equal to  $\frac{1}{4}$  of 1% per annum on the daily unused amount of the Commitments of such Lender during the preceding quarter (or other period commencing with the date hereof or ending with the Revolving Credit Maturity Date or the date on which the Commitments of such Lender shall expire or be terminated). All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Commitment Fee due to each Lender shall commence to accrue on the date hereof and shall cease to accrue on the date on which the Commitment of such Lender shall expire or be terminated as provided herein.

(b) The Borrowers jointly and severally agree to pay to the Administrative Agent and Collateral Agent, for its own account, the fees set forth in the Fee Letter at the times and in the amounts specified therein (the "*Agent Fees*").

(c) The Borrowers jointly and severally agree to pay (i) to each Revolving Credit Lender, through the Administrative Agent, on the last Business Day of March, June, September and December of each year and on the date on which the Revolving Credit Commitment of such Lender shall be terminated as provided herein, a fee (an "*L/C Participation Fee*") calculated on such Lender's Pro Rata Percentage of the average daily aggregate L/C Exposure (excluding the portion thereof attributable to unreimbursed L/C Disbursements) during the preceding quarter (or shorter period commencing with the date hereof or ending with the Revolving Credit Maturity Date or the date on which all Letters of Credit have been canceled or have expired and the Revolving Credit Commitments of all Lenders shall have been terminated) at a rate equal to (x) in the case of the Standby L/C Exposure, 2.75% per annum, and (y) in the case of the Trade L/C Exposure, 1.375% per annum, and (ii) to the Issuing Bank with respect to each Letter of Credit a fronting, issuance and drawing fee equal to .25% per annum on the face amount of all outstanding Letters of Credit, payable quarterly in arrears and on the Revolving Credit Maturity Date or the date on which all Letters of Credit have been canceled or have expired and the Revolving Credit Commitments of all Lenders shall have been terminated (the "*Issuing Bank Fees*"). All L/C Participation Fees and Issuing Bank Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

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(d) On the Restatement Effective Date, the Borrowers jointly and severally agree to pay the Administrative Agent for the ratable benefit of the Lenders an accommodation fee of \$150,000.

(e) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that the Issuing Bank Fees shall be paid directly to the Issuing Bank. Once paid, none of the Fees shall be refundable under any circumstances.

SECTION 2.09. *Interest on Loans.* (a) Subject to the provisions of Section 2.10, the Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when the Alternate Base Rate is determined by reference to the Base Rate and over a year of 360 days at all other times and calculated from and including the date of such Borrowing to but excluding the date of repayment thereof) at a rate per annum equal to the Alternate Base Rate plus 1.25%.

(b) Subject to the provisions of Section 2.10, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus 2.25%.

(c) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(d) In no event whatsoever shall interest and other charges charged hereunder exceed the highest rate permissible under law. In the event interest and other charges as computed hereunder would otherwise exceed the highest rate permitted under law, such excess amount shall be first applied to any unpaid principal balance owed by the Borrowers, and if the then remaining excess amount is greater than the previously unpaid principal balance, Lenders shall promptly refund such excess amount to the Borrowers and the provisions hereof shall be deemed amended to provided for such permissible rate.

SECTION 2.10. *Default Interest.* Upon and after the occurrence of an Event of Default and during the continuation thereof, (i) the Obligations other than Eurodollar Loans shall bear interest at the rate otherwise applicable to ABR Loans plus two percent (2%) per annum and (ii) Eurodollar Loans shall bear interest at the rate otherwise applicable to Eurodollar Loans plus two percent (2%) per annum (as applicable, the "*Default Rate*").

SECTION 2.11. *Termination and Reduction of Commitments.* (a) The Revolving Credit Commitments, and the L/C Commitment shall automatically terminate on the Revolving Credit Maturity Date.

(b) Upon at least three Business Days' prior irrevocable written or telecopy notice to the Administrative Agent, the Borrowers may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Revolving Credit Commitments; *provided, however,* that (i) each partial reduction of the Revolving Credit Commitments shall be in an integral multiple of \$1,000,000 and (ii) the Total Revolving Credit Commitment shall not be reduced to an amount that is less than the sum of the Aggregate Revolving Credit Exposure at the time.

(c) Each reduction in the Revolving Credit Commitments hereunder shall be made ratably among the Lenders in accordance with their

respective applicable Commitments. The Borrowers shall pay to the Administrative Agent for the account of the applicable Lenders, on the date of each termination or reduction, the Commitment Fees on the amount of the Commitments so terminated or reduced accrued to but excluding the date of such termination or reduction.

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SECTION 2.12. *Repayment of Borrowings.* (a) The Revolving Loans shall be due and payable in full on the Revolving Credit Maturity Date subject to earlier repayment as herein provided.

(b) With respect to any deposits in any lockbox or Blocked Account, the Borrowers recognize that the amounts evidenced by checks, notes, drafts or any other items of payment relating to and/or proceeds of Collateral may not be collectible by the Administrative Agent on the date received. In consideration of the Administrative Agent's agreement to conditionally credit Borrowers' Account as of the Business Day on which the Administrative Agent receives those items of payment, the Borrowers agree that, in computing the charges under this Agreement, all items of payment shall be deemed applied by the Administrative Agent on account of the Obligations on the Business Day the Administrative Agent receives such payments via wire transfer or electronic depository check. The Administrative Agent is not, however, required to credit Borrowers' Account for the amount of any item of payment which is unsatisfactory to the Administrative Agent and the Administrative Agent may charge Borrowers' Account for the amount of any item of payment which is returned to the Administrative Agent unpaid.

(c) All payments of principal, interest and other amounts payable hereunder, or under any of the other Loan Documents, shall be made to the Administrative Agent at the Payment Office not later than 1:00 P.M. (New York Time) on the due date therefor in lawful money of the United States of America in federal funds or other funds immediately available to the Administrative Agent. The Administrative Agent shall have the right to effectuate payment on any and all Obligations due and owing hereunder by charging Borrowers' Account or by making Revolving Loans as provided in Section 2.02(a) hereof.

(d) Borrowers shall pay principal, interest, and all other amounts payable hereunder, or under any related agreement, without any deduction whatsoever, including, but not limited to, any deduction for any setoff or counterclaim.

SECTION 2.13. *Prepayment.* (a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon at least three Business Days' prior written or teletype notice (or telephone notice promptly confirmed by written or teletype notice) in the case of Eurodollar Loans, or written or teletype notice (or telephone notice promptly confirmed by written or teletype notice) on or prior to the date of prepayment in the case of ABR Loans, to the Administrative Agent before 1:00 p.m., New York City time; *provided, however*, that each partial prepayment shall be in an amount that is an integral multiple of \$1,000,000.

(b) Each notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid, shall be irrevocable and shall commit the Borrowers to prepay such Borrowing by the amount stated therein on the date stated therein. All prepayments under this Section 2.13 shall be subject to Section 2.19 but otherwise without premium or penalty. All prepayments under this Section 2.13 shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment.

SECTION 2.14. *Mandatory Prepayments.* (a) In the event of any termination of all the Revolving Credit Commitments in accordance with this Agreement, the Borrowers shall, on the effective date of such termination, repay or prepay all outstanding Revolving Credit Borrowings and replace all outstanding Letters of Credit and/or deposit an amount equal to 105% of the L/C Exposure in cash in a cash collateral account established with the Collateral Agent for the benefit of the Secured Parties and/or provide an irrevocable letter of credit in form and substance reasonably acceptable to the Administrative Agent from a bank reasonably acceptable to the Administrative Agent. In the event of any partial reduction of the Revolving Credit Commitments, then (i) at or prior to the effective date of such reduction, the Administrative Agent shall notify the Borrowers and the Revolving Credit Lenders of the Aggregate Revolving Credit Exposure after giving effect thereto and (ii) if the Aggregate Revolving Credit Exposure would exceed the Total Revolving Credit Commitment after

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giving effect to such reduction or termination, then the Borrowers shall, on the effective date of such reduction or termination, repay or prepay Revolving Credit Borrowings and/or replace or cash collateralize outstanding Letters of Credit in an amount sufficient to eliminate such excess.

(b) If on any date the Aggregate Revolving Credit Exposure shall exceed the Formula Amount, or the Revolving Loans to a Borrower plus the L/C Exposure of such Borrower shall exceed the Individual Formula Amount, the Borrowers shall on such date repay or prepay Revolving Credit Borrowings and/or replace or cash collateralize outstanding L/C Exposure in an amount sufficient to eliminate such excess. Any such excess amount shall constitute part of the Obligations and be secured by the Collateral.

(c) Without duplication of any prepayment or repayment required under Section 2.14(b), not later than the third Business Day following the completion of any Asset Sale, Activision shall repay or prepay the Revolving Credit Borrowings and/or cash collateralize outstanding L/C exposure in an amount equal to the lesser of (i) any prepayment required under Section 2.14(b) as a result of such Asset Sale and (ii) 50% of the Net Cash Proceeds of such Asset Sale, and the Revolving Credit Commitments shall be permanently reduced by any amount repaid or prepaid under this Section 2.14(c).

(d) The Borrowing Agent shall deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.14, (i) a certificate signed by a Financial Officer of the Borrowing Agent setting forth in reasonable detail the calculation of the amount of such prepayment and (ii) to the extent practicable, at least three days prior written notice of such prepayment. Each notice of prepayment shall specify the prepayment date, the Type of each Loan being prepaid and the principal amount of each Loan (or portion thereof) to be prepaid. All prepayments of Borrowings under this Section 2.14 shall be subject to Section 2.19, but shall otherwise be without premium or penalty.

SECTION 2.15. *Illegality.* Notwithstanding any other provision hereof, if any applicable law, treaty, regulation or directive, or any change therein or in the interpretation or application thereof, shall make it unlawful for any Lender (for purposes of this subsection (g), the term "Lender" shall include any Lender and the office or branch where any Lender or any corporation or bank controlling such Lender makes or maintains any Eurodollar Loans) to make or maintain its Eurodollar Loans, the obligation of Lenders to make Eurodollar Loans hereunder shall forthwith be

canceled and the Borrower shall, if any affected Eurodollar Loans are then outstanding, promptly upon request from the Administrative Agent, either pay all such affected Eurodollar Loans or convert such affected Eurodollar Loans into ABR Loans. If any such payment or conversion of any Eurodollar Loan is made on a day that is not the last day of the Interest Period applicable to such Eurodollar Loan, the Borrowers shall pay the Administrative Agent upon the Administrative Agent's request, such amount or amounts as may be necessary to compensate Lenders for any loss or expense sustained or incurred by Lenders in respect of such Eurodollar Loan as a result of such payment or conversion, including (but not limited to) any interest or other amounts payable by Lenders to lenders of funds obtained by Lenders in order to make or maintain such Eurodollar Loan. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by any Lender to the Borrowing Agent shall be conclusive absent manifest error.

SECTION 2.16. *Increased Costs.* In the event that any applicable law, treaty or governmental regulation, or any change therein or in the interpretation or application thereof, or compliance by any Lender (for purposes of this Section 3.7, the term "*Lender*" shall include the Administrative Agent or any Lender and any corporation or bank controlling the Administrative Agent or any Lender) and the office or branch where the Administrative Agent or any Lender (as so defined) makes or maintains any

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Eurodollar Loans with any request or directive (whether or not having the force of law) from any central bank or other financial, monetary or other authority, shall:

- (a) subject the Administrative Agent or any Lender to any tax of any kind whatsoever not currently applicable with respect to this Agreement or any Loan Document or change the basis of taxation of payments to the Administrative Agent or any Lender of principal, fees, interest or any other amount payable hereunder or under any Loan Documents (except for any imposition or changes in the rate of tax on the overall net income of the Administrative Agent or any Lender by the jurisdiction in which it maintains its principal office);
- (b) impose, modify or hold applicable any reserve, special deposit, assessment or similar requirement against assets held by, or deposits in or for the account of, Loans or loans by, or other credit extended by, any office of the Administrative Agent or any Lender, including (without limitation) pursuant to Regulation D of the Board of Governors of the Federal Reserve System; or
- (c) impose, modify or hold applicable on the Administrative Agent or any Lender or the London interbank Eurodollar market any other condition with respect to this Agreement or any Loan Document;

and the result of any of the foregoing is to increase the cost to the Administrative Agent or any Lender of making, renewing or maintaining its Loans hereunder by an amount that the Administrative Agent or such Lender reasonably deems to be material or to reduce the amount of any payment (whether of principal, interest or otherwise) in respect of any of the Loans by an amount that the Administrative Agent or such Lender reasonably deems to be material, then, in any case the Borrowers shall promptly pay the Administrative Agent or such Lender, upon its demand, such additional amount as will compensate the Administrative Agent or such Lender for such additional cost or such reduction, as the case may be, *provided* that the foregoing shall not apply to increased costs which are reflected in the Adjusted LIBO Rate. The Administrative Agent or such Lender shall certify the amount of such additional cost or reduced amount to the Borrowers, and such certification shall be conclusive absent manifest error.

SECTION 2.17. *Basis For Determining Interest Rate Inadequate or Unfair.* In the event that the Administrative Agent or any Lender shall have determined that:

- (a) reasonable means do not exist for ascertaining the LIBO Rate for any Interest Period; or
- (b) Dollar deposits in the relevant amount and for the relevant maturity are not available in the London interbank Eurodollar market, with respect to an outstanding Eurodollar Loan, a proposed Eurodollar Borrowing, or a proposed conversion of an ABR Loan into a Eurodollar Loan;

then the Administrative Agent shall give the Borrowing Agent prompt written, telephonic or telegraphic notice of such determination. If such notice is given, (i) any such requested Eurodollar Loan shall be made as an ABR Borrowing, unless the Borrowing Agent shall notify the Administrative Agent no later than 10:00 a.m. (New York City time) two (2) Business Days prior to the date of such proposed Borrowing, that its request for such Borrowing shall be canceled, (ii) any ABR Loan or Eurodollar Loan which was to have been converted to an affected type of Eurodollar Loan shall be continued as or converted into an ABR Loan, or, if the Borrowing Agent shall notify the Administrative Agent, no later than 10:00 a.m. (New York City time) two (2) Business Days prior to the proposed conversion, shall be maintained as an unaffected type of Eurodollar Loan and (iii) any outstanding affected Eurodollar Loans shall be converted into an ABR Loan, or, if Borrower shall notify the Administrative Agent, no later than 10:00 a.m. (New York City time) two (2) Business Days prior to the last Business Day of the then current Interest Period applicable to such affected Eurodollar Loan, shall be converted into an unaffected type of Eurodollar Loan on the last Business Day of the then current Interest Period for such affected Eurodollar Loans. Until such notice has been withdrawn,

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Lenders shall have no obligation to make an affected type of Eurodollar Loan or maintain outstanding affected Eurodollar Loans and the Borrowers shall not have the right to convert an ABR Loan or an unaffected type of Eurodollar Loan into an affected type of Eurodollar Loan.

SECTION 2.18. *Capital Adequacy.* In the event that the Administrative Agent or any Lender shall have determined that any applicable law, rule, regulation or guideline regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Administrative Agent or any Lender (for purposes of this Section 2.18, the term "*Lender*" shall include the Administrative Agent or any Lender and any corporation or bank controlling the Administrative Agent or any Lender) and the office or branch where the Administrative Agent or any Lender (as so defined) makes or maintains any Eurodollar Loans with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Administrative Agent or any Lender's capital as a consequence of its obligations hereunder to a level below that which the Administrative Agent or such Lender could have achieved but for such adoption, change or compliance (taking into consideration the Administrative Agent's and each Lender's policies

with respect to capital adequacy) by an amount deemed by the Administrative Agent or any Lender to be material, then, from time to time, the Borrowers shall pay upon demand to the Administrative Agent or such Lender such additional amount or amounts as will compensate the Administrative Agent or such Lender for such reduction. In determining such amount or amounts, the Administrative Agent or such Lender may use any reasonable averaging or attribution methods. The protection of this Section shall be available to the Administrative Agent and each Lender regardless of any possible contention of invalidity or inapplicability with respect to the applicable law, regulation or condition. A certificate of the Administrative Agent or a Lender setting forth such amount or amounts as shall be necessary to compensate the Administrative Agent or such Lender with respect to this Section 2.18 when delivered to the Borrowing Agent shall be conclusive absent manifest error.

SECTION 2.19. *Indemnity.* The Borrowers shall jointly and severally indemnify the Administrative Agent, the Collateral Agent and each Lender against any loss or expense that the Administrative Agent, the Collateral Agent and such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurodollar Loan prior to the end of the Interest Period in effect therefor, (ii) the conversion of any Eurodollar Loan to an ABR Loan, or the conversion of the Interest Period with respect to any Eurodollar Loan, in each case other than on the last day of the Interest Period in effect therefor, or (iii) any Eurodollar Loan to be made by such Lender (including any Eurodollar Loan to be made pursuant to a conversion or continuation under Section 2.10) not being made after notice of such Loan shall have been given by the Borrowing Agent hereunder (any of the events referred to in this clause (a) being called a "*Breakage Event*") or (b) any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurodollar Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this Section 2.19 shall be delivered to the Borrowers and shall be conclusive absent manifest error.

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SECTION 2.20. *Pro Rata Treatment.* Each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each payment of the Commitment Fees and L/C Participation Fees, each reduction of the Revolving Credit Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans). Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole dollar amount.

SECTION 2.21. *Sharing of Setoffs.* Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against any Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans or L/C Disbursement as a result of which the unpaid principal portion of its Revolving Loans and participations in L/C Disbursements shall be proportionately less than the unpaid principal portion of the Revolving Loans and participations in L/C Disbursements of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Revolving Loans and L/C Exposure, as the case may be of such other Lender, so that the aggregate unpaid principal amount of the Revolving Loans and L/C Exposure and participations in Revolving Loans and L/C Exposure held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Revolving Loans and L/C Exposure then outstanding as the principal amount of its Revolving Loans and L/C Exposure prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Revolving Loans and L/C Exposure outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; *provided, however,* that if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.21 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest. The Borrowers expressly consent to the foregoing arrangements and agree that any Lender holding a participation in a Revolving Loan or L/C Disbursement deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrowers to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrowers in the amount of such participation.

SECTION 2.22. *Payments.* Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

SECTION 2.23. *Taxes.* (a) Any and all payments by or on account of any obligation of the Borrowers or any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; *provided* that if a Borrower or any Loan Party shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or such Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Loan Party shall

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make such deductions and (iii) the Borrower or such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrowers shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrowers shall jointly and severally indemnify the Administrative Agent and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrowers or any Loan Party hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and

any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowing Agent by a Lender, or by the Administrative Agent on its behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrowers or any other Loan Party to a Governmental Authority, the Borrowers shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrowing Agent (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrowers as will permit such payments to be made without withholding or at a reduced rate, *provided* that such Foreign Lender has received written notice from the Borrowing Agent advising it of the availability of such exemption or reduction and supplying all applicable documentation.

SECTION 2.24. *Assignment of Commitments Under Certain Circumstances; Duty to Mitigate.* (a) In the event (i) any Lender or the Issuing Bank delivers a certificate requesting compensation pursuant to Section 2.16, (ii) any Lender or the Issuing Bank delivers a notice described in Section 2.15 or (iii) the Borrowers are required to pay any additional amount to any Lender or the Issuing Bank or any Governmental Authority on account of any Lender or the Issuing Bank pursuant to Section 2.23, the Borrowers may, at their sole expense and effort (including with respect to the processing and recordation fee referred to in Section 9.04(b)), upon notice to such Lender or the Issuing Bank and the Administrative Agent, require such Lender or the Issuing Bank to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all of its interests, rights and obligations under this Agreement to an assignee that shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (x) such assignment shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority having jurisdiction, (y) the Borrowers shall have received the prior written consent of the Administrative Agent (and, if a Revolving Credit Commitment is being assigned, of the Issuing Bank), which consent shall not unreasonably be withheld, and (z) the Borrowers or such assignee shall have paid to the affected Lender or the Issuing Bank in immediately available funds an amount equal to the sum of the principal of and interest accrued to the date of such payment on the outstanding Loans or L/C Disbursements of such Lender or the Issuing Bank, respectively, plus all Fees and other amounts accrued for the account of such Lender or the Issuing Bank hereunder (including

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any amounts under Section 2.15 and Section 2.16); *provided further* that, if prior to any such transfer and assignment the circumstances or event that resulted in such Lender's or the Issuing Bank's claim for compensation under Section 2.16 or notice under Section 2.15 or the amounts paid pursuant to Section 2.23, as the case may be, cease to cause such Lender or the Issuing Bank to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in Section 2.15, or cease to result in amounts being payable under Section 2.23, as the case may be (including as a result of any action taken by such Lender or the Issuing Bank pursuant to paragraph (b) below), or if such Lender or the Issuing Bank shall waive its right to claim further compensation under Section 2.14 in respect of such circumstances or event or shall withdraw its notice under Section 2.15 or shall waive its right to further payments under Section 2.20 in respect of such circumstances or event, as the case may be, then such Lender or the Issuing Bank shall not thereafter be required to make any such transfer and assignment hereunder.

(b) If (i) any Lender or the Issuing Bank shall request compensation under Section 2.16, (ii) any Lender or the Issuing Bank delivers a notice described in Section 2.15 or (iii) the Borrowers are required to pay any additional amount to any Lender or the Issuing Bank or any Governmental Authority on account of any Lender or the Issuing Bank, pursuant to Section 2.23, then such Lender or the Issuing Bank shall use reasonable efforts (which shall not require such Lender or the Issuing Bank to incur an unreimbursed loss or unreimbursed cost or expense or otherwise take any action inconsistent with its internal policies or legal or regulatory restrictions or suffer any disadvantage or burden deemed by it to be significant) (x) to file any certificate or document reasonably requested in writing by the Borrowers or (y) to assign its rights and delegate and transfer its obligations hereunder to another of its offices, branches or affiliates, if such filing or assignment would reduce its claims for compensation under Section 2.16 or enable it to withdraw its notice pursuant to Section 2.15 or would reduce amounts payable pursuant to Section 2.23, as the case may be, in the future. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the Issuing Bank in connection with any such filing or assignment, delegation and transfer.

SECTION 2.25. *Defaulting Lender.* (a) Notwithstanding anything to the contrary contained herein, in the event any Lender (x) has refused (which refusal constitutes a breach by such Lender of its obligations under this Agreement) to make available its portion of any Revolving Credit Borrowing or reimbursement for drawings under Letters of Credit or (y) notifies either the Administrative Agent or the Borrowers that it does not intend to make available its portion of any Revolving Credit Borrowing or reimbursement (if the actual refusal would constitute a breach by such Lender of its obligations under this Agreement) (each, a "*Lender Default*" ), all rights and obligations hereunder of such Lender (a "*Defaulting Lender*") as to which a Lender Default is in effect and of the other parties hereto shall be modified to the extent of the express provisions of this Section 2.25 while such Lender Default remains in effect.

(b) Revolving Credit Borrowings shall be incurred pro rata from Lenders (the "*Non-Defaulting Lenders*") which are not Defaulting Lenders based on their respective Pro Rata Percentages, and no Pro Rata Percentage of any Lender or any Pro Rata Percentage of any Revolving Credit Borrowings required to be advanced by any Lender shall be increased as a result of such Lender Default. Amounts received in respect of principal of any type of Revolving Loans shall be applied to reduce the applicable Revolving Loans of each Lender pro rata based on the aggregate of the outstanding Revolving Loans of that type of all Lenders at the time of such application; *provided* that such amount shall not be applied to any Revolving Loans of a Defaulting Lender at any time when, and to the extent that, the aggregate amount of Revolving Loans of any Non-Defaulting Lender exceeds such Non-Defaulting Lender's Pro Rata Percentage of all Revolving Loans then outstanding.

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(c) A Defaulting Lender shall not be entitled to give instructions to the Administrative Agent or the Collateral Agent or to approve, disapprove, consent to or vote on any matters relating to this Agreement and the Loan Documents. All amendments, waivers and other modifications of this Agreement and the Loan Documents may be made without regard to a Defaulting Lender and, for purposes of the definition of "Required Lenders", a Defaulting Lender shall be deemed not to be a Lender and not to have Loans outstanding.

(d) Other than as expressly set forth in this Section 2.25, the rights and obligations of a Defaulting Lender (including the obligation to indemnify the Administrative Agent or the Collateral Agent) and the other parties hereto shall remain unchanged. Nothing in this Section 2.25 shall be deemed to release any Defaulting Lender from its obligations under this Agreement and the Loan Documents, shall alter such obligations, shall operate as a waiver of any default by such Defaulting Lender hereunder, or shall prejudice any rights which Borrowers, the Administrative Agent, the Collateral Agent or any Lender may have against any Defaulting Lender as a result of any default by such Defaulting Lender hereunder.

(e) In the event a Defaulting Lender retroactively cures to the satisfaction of the Administrative Agent the breach which caused a Lender to become a Defaulting Lender, such Defaulting Lender shall no longer be a Defaulting Lender and shall be treated as a Lender under this Agreement.

SECTION 2.26. *Letters of Credit.* (a) The Borrowing Agent on behalf of a Borrower may request the issuance of a Letter of Credit for its own account or the account of a Borrower, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time while the Revolving Credit Commitments remain in effect. This Section shall not be construed to impose an obligation upon the Issuing Bank to issue any Letter of Credit that is inconsistent with the terms and conditions of this Agreement.

(b) In order to request the issuance of a Letter of Credit (or to amend, renew or extend an existing Letter of Credit), the Borrowing Agent shall hand deliver or telecopy to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) the Administrative Agent's form of letter of credit application or the Issuing Bank's form of Letter of Credit Application, completed to the satisfaction of the Administrative Agent or the Issuing Bank, respectively, or a notice identifying the Letter of Credit to be amended, renewed or extended, the date of issuance, amendment, renewal or extension, the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) below), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare such Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if, and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrowers shall be deemed to represent and warrant that, after giving effect to such issuance, amendment, renewal or extension (i) the L/C Exposure shall not exceed the lesser of \$80,000,000 and the Total Revolving Credit Commitment, (ii) the Aggregate Revolving Credit Exposure shall not exceed the lesser of (x) the Total Revolving Credit Commitment, and (y) the Formula Amount in effect at such time and (iii) the outstanding principal amount of Revolving Loans of any Borrower plus such Borrower's L/C Exposure shall not exceed the Borrower's Individual Formula Amount.

If the Issuing Bank is not the Administrative Agent, the Administrative Agent will notify the Issuing Bank via phone, confirmed by telecopy, of changes in availability to issue Letters of Credit under the facility, and the Issuing Bank will notify the Administrative Agent via phone, confirmed by telecopy, of any changes in outstanding balances of Letters of Credit it has issued. No new Letter of Credit shall be issued, and no existing Letter of Credit shall be amended, renewed or

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extended, by the Issuing Bank until the Administrative Agent shall have approved, via phone, confirmed by telecopy, such issuance, amendment, renewal or extension.

(c) No Letter of Credit shall be issued with a stated expiration date or latest maturity date of the accepted draft if a usance letter of credit later than the earlier of (i) the close of business on the date that is five Business Days prior to the Revolving Credit Maturity Date and (ii) the close of business on the date that is (x) 270 days after the date of issuance of such Letter of Credit in the case of a Trade Letter of Credit and (y) 12 months after the date of issuance of such Letter of Credit in the case of a Standby Letter of Credit. Each Letter of Credit shall, among other things, (i) provide for the payment of sight drafts or acceptances of usance drafts when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein and (ii) have an expiry date or latest maturity date in the case of usance drafts not later than five Business Days prior to the Revolving Credit Maturity Date. Each Letter of Credit shall be subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500, and any amendments or revision thereof adhered to by the Issuing Bank and, to the extent not inconsistent therewith, the laws of the State of New York.

(d) By the issuance of a Letter of Credit and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Credit Lender, and each such Lender hereby acquires from the applicable Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit, effective upon the issuance of such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Credit Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Pro Rata Percentage of each L/C Disbursement made by the Issuing Bank and not reimbursed by the Borrowers (or, if applicable, another party pursuant to its obligations under any other Loan Document). Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) All disbursements or payments with respect to Letters of Credit shall be deemed to be Revolving Credit Borrowings consisting of ABR Loans and shall bear interest at the ABR Rate.

(f) The Borrowers' obligations to reimburse L/C Disbursements as provided in paragraph (e) above shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under any and all circumstances whatsoever, and irrespective of:

(i) any lack of validity or enforceability of any Letter of Credit or any Loan Document, or any term or provision therein;

(ii) any amendment or waiver of or any consent to departure from all or any of the provisions of any Letter of Credit or any Loan Document;

(iii) the existence of any claim, setoff, defense or other right that a Borrowers, any other party guaranteeing, or otherwise obligated with, such Borrowers, any Subsidiary or other Affiliate thereof or any other person may at any time have against the beneficiary under any Letter of Credit, the Issuing Bank, the Administrative Agent or any Lender or any other person, whether in connection with this Agreement, any other Loan Document or any other related or unrelated agreement or transaction;

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(iv) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; and

(vi) any other act or omission to act or delay of any kind of the Issuing Bank, the Lenders, the Administrative Agent or any other person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of the Borrowers' obligations hereunder.

Without limiting the generality of the foregoing, it is expressly understood and agreed that the absolute and unconditional obligation of the Borrowers hereunder to reimburse L/C Disbursements will not be excused by the gross negligence or willful misconduct of the Issuing Bank. However, the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by the Borrowers that are caused by the Issuing Bank's gross negligence or willful misconduct in determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof; it is understood that the Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and, in making any payment under any Letter of Credit (i) the Issuing Bank's exclusive reliance on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of Credit, whether or not the amount due to the beneficiary thereunder equals the amount of such draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order, and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever and (ii) any noncompliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, be deemed not to constitute willful misconduct or gross negligence of the Issuing Bank.

(g) The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall as promptly as possible give telephonic notification, confirmed by telecopy, to the Administrative Agent and the Borrowing Agent of such demand for payment and whether the Issuing Bank has made or will make an L/C Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse the Issuing Bank and the Revolving Credit Lenders with respect to any such L/C Disbursement.

(h) The Issuing Bank may resign at any time by giving 90 days' prior written notice to the Administrative Agent, the Lenders and the Borrowers but such resignation shall not be effective until a successor is appointed. Subject to the next succeeding paragraph, upon the acceptance of any appointment as the Issuing Bank hereunder by a Lender that shall agree to serve as successor Issuing Bank, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Bank and the retiring Issuing Bank shall be discharged from its obligations to issue additional Letters of Credit hereunder. At the time such removal or resignation shall become effective, the Borrowers shall pay all accrued and unpaid fees pursuant to Section 2.08(c)(ii). The acceptance of any appointment as the Issuing Bank hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form

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satisfactory to the Borrowers and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Bank under this Agreement and the other Loan Documents and (ii) references herein and in the other Loan Documents to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the resignation or removal of the Issuing Bank hereunder, the retiring Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation or removal, but shall not be required to issue additional Letters of Credit.

(i) If any Event of Default shall occur and be continuing, the Borrowers shall, on the Business Day the Borrowing Agent receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Credit Lenders holding participations in outstanding Letters of Credit representing greater than 50% of the aggregate undrawn amount of all outstanding Letters of Credit) of an Event of Default and of the amount to be deposited, deposit in an account with the Collateral Agent, for the benefit of the Revolving Credit Lenders, an amount in cash equal to 105% of the L/C Exposure as of such date or provide one or more letters of credit, in form and substance reasonably satisfactory to the Administrative Agent and from a bank acceptable to the Administrative Agent for such amount in lieu of or to replace such cash deposit. Such deposit or letter of credit shall be held by the Collateral Agent as collateral for the payment and performance of the Obligations. The Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits in Permitted Investments, which investments shall be made at the option and sole discretion of the Collateral Agent, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall (i) automatically be applied by the Administrative Agent to reimburse the Issuing Bank for L/C Disbursements for which it has not been reimbursed, (ii) be held for the

satisfaction of the reimbursement obligations of the Borrowers for the L/C Exposure at such time and (iii) if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Credit Lenders holding participations in outstanding Letters of Credit representing greater than 50% of the aggregate undrawn amount of all outstanding Letters of Credit), be applied to satisfy the Obligations. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three Business Days after all Events of Default have been cured or waived.

(j) The Borrowers may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Lender, designate one or more additional Lenders to act as an issuing bank under the terms of this Agreement. Any Lender designated as an issuing bank pursuant to this paragraph (k) shall be deemed (in addition to being a Lender) to be the Issuing Bank with respect to Letters of Credit issued or to be issued by such Lender, and all references herein and in the other Loan Documents to the term "Issuing Bank" shall, with respect to such Letters of Credit, be deemed to refer to such Lender in its capacity as Issuing Bank.

(k) The Existing Letters of Credit shall be deemed to be Letters of Credit issued hereunder, and on the Restatement Effective Date each Revolving Credit Lender shall be deemed to have been granted and acquired a participation therein pursuant to paragraph (d) above.

(l) In connection with the issuance of any Letter of Credit, the Borrowers shall jointly and severally indemnify, save and hold the Administrative Agent, each Lender and each Issuing Bank harmless from any loss, cost, expense or liability, including, without limitation, payments made by

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the Administrative Agent, any Lender or any Issuing Bank and expenses and reasonable attorneys' fees incurred by the Administrative Agent, any Lender or Issuing Bank arising out of, or in connection with, any Letter of Credit to be issued or created for any Borrower. The Borrowers shall be bound by the Administrative Agent's or any Issuing Bank's regulations and good faith interpretations of any Letter of Credit issued or created for Borrowers' Account, although this interpretation may be different from its own; and neither the Administrative Agent, nor any Lender, nor any Issuing Bank nor any of their correspondents shall be liable for any error, negligence, or mistakes, whether of omission or commission, in following the applicable Borrowers' instructions or those contained in any Letter of Credit or of any modifications, amendments or supplements thereto or in issuing or paying any Letter of Credit, except for the Administrative Agent's, any Lender's, any Issuing Bank's or such correspondents' willful misconduct or gross negligence.

(m) If the Administrative Agent is not the Issuing Bank of any Letter of Credit, Borrower shall authorize and direct the Issuing Bank to deliver to the Administrative Agent all instruments, documents, and other writings and property received by the Issuing Bank pursuant to the Letter of Credit and to accept and rely upon the Administrative Agent's instructions and agreements with respect to all matters arising in connection with the Letter of Credit and the application therefor

(n) In connection with all Letters of Credit issued or caused to be issued by the Administrative Agent under this Agreement, each Borrower hereby appoints the Administrative Agent, or its designee, as its attorney, with full power and authority (i) to sign and/or endorse such Borrower's name upon any warehouse or other receipts, letter of credit applications and acceptances; (ii) to sign such Borrower's name on bills of lading; (iii) to clear Inventory through the United States of America Customs Department ("*Customs*") in the name of such Borrower or the Administrative Agent or the Administrative Agent's designee, and to sign and deliver to Customs officials powers of attorney in the name of such Borrower for such purpose; and (iv) to complete in such Borrower's name or the Administrative Agent's, or in the name of the Administrative Agent's designee, any order, sale or transaction, obtain the necessary documents in connection therewith, and collect the proceeds thereof. Neither the Administrative Agent nor its attorneys will be liable for any acts or omissions nor for any error of judgment or mistakes of fact or law, except for the Administrative Agent's or its attorney's willful misconduct. This power, being coupled with an interest, is irrevocable as long as any Letters of Credit remain outstanding.

**SECTION 2.27. *Borrowing Agency Provisions.*** (a) Each Borrower hereby irrevocably designates the Borrowing Agent to be its attorney and agent and in such capacity to borrow, sign and endorse notes, and execute and deliver all instruments, documents, writings and further assurances now or hereafter required hereunder, on behalf of such Borrower or Borrowers, and hereby authorizes the Administrative Agent to pay over or credit all loan proceeds hereunder in accordance with the request of the Borrowing Agent.

(b) The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to the Borrowers and at their request. Neither the Administrative Agent, the Collateral Agent, nor any Lender shall incur liability to any Borrower as a result thereof. To induce the Administrative Agent, the Collateral Agent and Lenders to do so and in consideration thereof, each Borrower hereby indemnifies the Administrative Agent, the Collateral Agent and each Lender and holds the Administrative Agent, the Collateral Agent and each Lender harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against the Administrative Agent, the Collateral Agent or any Lender by any Person arising from or incurred by reason of the handling of the financing arrangements of the Borrowers as provided herein, reliance by the Administrative Agent, the Collateral Agent or any Lender on any request or instruction from the Borrowing Agent or any other action taken by the Administrative Agent, the Collateral Agent or any Lender

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with respect to this Section 2.27, except due to willful misconduct or gross (not mere) negligence by the indemnified party.

(c) Subject to Section 2.29, all Obligations shall be joint and several, and each Borrower shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of each Borrower shall in no way be affected by any extensions, renewals and forbearance granted by the Administrative Agent, the Collateral Agent or any Lender to any Borrower, failure of the Administrative Agent, the Collateral Agent or any Lender to give any Borrower notice of borrowing or any other notice, any failure of the Administrative Agent, the Collateral Agent or any Lender to pursue or preserve its rights against any Borrower, the release by Agent or any Lender of any Collateral now or thereafter acquired from any Borrower, and such agreement by each Borrower to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by the Administrative Agent, the Collateral Agent or any Lender to the

other Borrowers or any Collateral for such Borrower's Obligations or the lack thereof.

SECTION 2.28. *Waiver of Subrogation.* Each Borrower expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution of any other claim which such Borrower may now or hereafter have against the other Borrowers or other person directly or contingently liable for the Obligations hereunder, or against or with respect to the other Borrowers' property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until termination of this Agreement and repayment in full of the Obligations.

SECTION 2.29. *Borrower Guarantee Agreement.* The Obligations of the Borrowers as joint and several obligors shall be subject to all the terms, conditions, waivers and agreements contained in the Borrower Guarantee Agreement.

SECTION 2.30. *Increases in Total Revolving Credit Commitment.* The Borrowers have requested that the Total Revolving Credit Commitment be increased to \$100,000,000, and the Administrative Agent has agreed to use its best efforts to find one or more additional financial institutions ("New Lenders") to become parties to this Agreement with Revolving Credit Commitments not in excess of \$22,000,000 in the aggregate (the "Commitment Increase"). Such New Lenders shall be selected by the Administrative Agent and the Borrowers shall pay to the Administrative Agent such customary fees and expenses in connection with syndicating the Commitment Increase as may be necessary, in the reasonable judgment of the Administrative Agent, to achieve a successful syndication, and no portion of such fees shall be allocable to any Lender other than the Administrative Agent and any New Lender. The Administrative Agent shall have no liability to the Borrowers or the Lenders if the Administrative Agent is unable to successfully syndicate the Commitment Increase. If the Administrative Agent is able to successfully syndicate the Commitment Increase, the Commitment Increase (or so much thereof as shall have been syndicated, as notified to the Borrowers and the Lenders by the Administrative Agent) shall become effective on the date specified by the Administrative Agent; *provided, however,* that (i) no Default or Event of Default shall exist on such date, both before and after giving effect to the Commitment Increase, (ii) the New Lenders shall have entered into one or more joinder agreements, in form and substance satisfactory to the Administrative Agent, to become Lenders hereunder, (iii) the Borrowers shall have paid all fees and expenses in connection with the syndication and arrangement of the Commitment Increase, (iv) the Borrowers shall have executed and delivered to the Administrative Agent for the benefit of the New Lenders promissory notes in the amount of the respective portion of the Commitment Increase, and (v) the Borrowers shall have delivered or caused to be delivered to the Administrative Agent such legal opinions, certificates and other documents as the Administrative Agent may reasonably request. On the effective date of the Commitment Increase, subject to the satisfaction of the foregoing conditions, (x) Schedule 2.01 shall be amended to reflect the reallocated Revolving Credit Commitments, and

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(y) each New Lender shall become a Lender hereunder and under the other Loan Documents. In no event shall the Total Revolving Credit Commitments exceed \$100,000,000 without the consent of all Lenders.

SECTION 2.31 *Realignment of the Revolving Credit Commitments on the Restatement Effective Date.* In order to effect a realignment of the Revolving Credit Commitments of the Lenders, after the Terminating Lenders shall have ceased to become parties to this Agreement, the Borrowers and each Lender agree as follows, notwithstanding the provisions of any Loan Document:

(a) On the Restatement Effective Date, each outstanding Eurodollar Loan owing to each Lender and each Terminating Lender shall be converted to an ABR Loan, and the Borrowers agree to pay to each Lender and each Terminating Lender any amount that may be owing under the Existing Credit Agreement as a result of any conversion on any date other than the last day of an Interest Period. On the Restatement Effective Date, the Borrowers shall pay all accrued interest on any Eurodollar Loan so converted, and any accrued fees under the Existing Credit Agreement.

(b) On the Restatement Effective Date, subject to the satisfaction of the conditions in this Agreement, the Administrative Agent, the Lenders and the Terminating Lenders shall, among themselves, purchase or sell such interests in the Revolving Loans and Revolving Credit Commitments in such amounts as shall be necessary so that, after giving effect thereto, the Revolving Loans and Revolving Credit Commitments will be held by the Lenders ratably in proportion to the Revolving Credit Commitments of all Lenders set forth on Schedule 2.01. The Borrowers shall take such actions as the Administrative Agent may reasonably request (including the execution and delivery of new promissory notes) to facilitate the realignment of the Revolving Credit Commitments.

(c) Upon completion of the foregoing realignment, each outstanding Revolving Loan under the Existing Credit Agreement shall be a Revolving Loan outstanding under this Agreement, and shall be comprised of Revolving Loans made by each Lender in proportion to its Pro Rata Percentage of the Total Revolving Credit Commitment.

### ARTICLE III

#### *Representations and Warranties*

The Borrowers represent and warrant to the Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders that:

SECTION 3.01 *Organization; Powers.* The Borrowers and each of the Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure so to qualify could not reasonably be expected to result in a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated hereby to which it is or will be a party and, in the case of the Borrowers, to borrow hereunder.

SECTION 3.02 *Authorization.* The execution, delivery and performance by each Loan Party of each of the Loan Documents and the consummation of the transactions contemplated by the Loan Documents (including the borrowings hereunder) (collectively, the "Transactions") (i) have been duly authorized by all requisite corporate and, if required, stockholder action and (ii) will not (x) violate (A) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of any Borrower or any Subsidiary, (B) any order of any Governmental Authority or (C) any provision of any indenture, agreement or other instrument to which

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any Borrower or any Subsidiary is a party or by which any of them or any of their property is or may be bound, (y) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any such indenture, agreement or other instrument or (z) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by any Borrowers or any Subsidiary (other than any Lien created hereunder or under the Security Documents).

SECTION 3.03 *Enforceability*. This Agreement has been duly executed and delivered by each Borrower and constitutes, and each other Loan Document when executed and delivered by the each Loan Party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with its terms.

SECTION 3.04 *Governmental Approvals*. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions, except for (i) the filing of Uniform Commercial Code financing statements and filings with the United States Patent and Trademark Office and the United States Copyright Office, (ii) recordation of the Mortgages and (iii) such as have been made or obtained and are in full force and effect.

SECTION 3.05 *Financial Statements*. (a) The Borrowers have heretofore furnished to the Lenders Activision's consolidated balance sheets and statements of income, stockholder's equity and cash flows (i) as of and for the fiscal year ended March 31, 1998, audited by and accompanied by the opinion of KPMG Peat Marwick LLP, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended December 31, 1998, certified by its chief financial officer. Such financial statements present fairly the financial condition and results of operations and cash flows of Activision and its consolidated Subsidiaries as of such dates and for such periods. Such balance sheets and the notes thereto disclose all material liabilities, direct or contingent, of Activision and its consolidated Subsidiaries as of the dates thereof required to be disclosed therein in accordance with GAAP. Such financial statements were prepared in accordance with GAAP applied on a consistent basis.

(b) Activision has heretofore delivered to the Lenders its unaudited pro forma consolidated balance sheet and statements of income, stockholder's equity and cash flows as of March 31, 1999, prepared giving effect to the Transactions as if they had occurred, with respect to such balance sheet, on such date and, with respect to such other financial statements, on the first day of the 12-month period ending on such date. Such pro forma financial statements have been prepared in good faith by the Borrowers, based on the assumptions used to prepare the pro forma financial information contained in the Confidential Information Memorandum (which assumptions are believed by the Borrowers on the date hereof and on the Restatement Effective Date to be reasonable), are based on the best information available to the Borrowers as of the date of delivery thereof, accurately reflect all adjustments required to be made to give effect to the Transactions and presents fairly on a pro forma basis the estimated consolidated financial position of Activision and its consolidated Subsidiaries as of such date and for such period, assuming that the Transactions had actually occurred at such date or at the beginning of such period, as the case may be.

SECTION 3.06 *No Material Adverse Change*. There has been no material adverse change in the business, results of operations, property, condition (financial or otherwise) or prospects of the Borrowers and the Subsidiaries, taken as a whole, since December 31, 1998.

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SECTION 3.07 *Title to Properties; Possession Under Leases*. (a) Each of the Borrowers and the Subsidiaries has good and marketable title to, or valid leasehold interests in, all its material properties and tangible assets (including all Mortgaged Property), except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes. All such material properties and assets are free and clear of Liens, other than Liens expressly permitted by Section 6.02.

(b) Each of the Borrowers and the Subsidiaries has complied in all material respects with all obligations under all material leases or warehousing agreements to which it is a party and all such leases or warehousing agreements are in full force and effect. Each of the Borrowers and the Subsidiaries enjoys peaceful and undisturbed possession under all such material leases.

(c) No Borrower has received any notice of, nor has any knowledge of, any pending or contemplated condemnation proceeding affecting the Mortgaged Properties or any sale or disposition thereof in lieu of condemnation.

(d) No Borrower nor any of the Subsidiaries is obligated under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Mortgaged Property or any interest therein.

SECTION 3.08 *Subsidiaries*. Schedule 3.08 sets forth as of the Restatement Effective Date a list of all Subsidiaries and the percentage ownership interest of the Borrowers or their Subsidiaries therein. The shares of capital stock or other ownership interests so indicated on Schedule 3.08 are fully paid and non-assessable and are owned by the applicable Borrower or Subsidiary, directly or indirectly, free and clear of all Liens, other than Liens in favor of the Collateral Agent and Liens disclosed in Schedule 6.02.

SECTION 3.09 *Litigation; Compliance with Laws*. (a) Except as set forth on Schedule 3.09, there are not any actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of the Borrowers, threatened against or affecting any Borrower or any Subsidiary or any business, property or rights of any such person (i) that involve any Loan Document or the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Neither any Borrower nor any of the Subsidiaries or any of their respective material properties or assets is in violation of, nor will the continued operation of their material properties and assets as currently conducted violate, any law, rule or regulation (including any zoning, building, Environmental Law, ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Mortgaged Property, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where such violation or default could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10 *Agreements*. (a) Neither any Borrower nor any of the Subsidiaries is a party to any agreement or instrument or subject to any

corporate restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(b) Neither any Borrower nor any of the Subsidiaries is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any Material Contract, where such default could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11 *Federal Reserve Regulations.* (a) Neither the Borrowers nor any of the Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

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(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation T, U or X.

SECTION 3.12 *Investment Company Act; Public Utility Holding Company Act.* Neither any Borrower nor any Subsidiary is (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 3.13 *Use of Proceeds.* The Borrowers will use the proceeds of the Loans only for working capital and other general corporate purposes and will request the issuance of Letters of Credit only to support obligations incurred in the ordinary course of business. In no event may any Seasonal Advance be used to purchase any Equity Interests of Activision Holdings or any of its Subsidiaries (or options, warrants or other rights to acquire such Equity Interests) or to make any investments under Section 6.04(l) hereof.

SECTION 3.14 *Tax Returns.* Each of the Borrowers and the Subsidiaries has filed or caused to be filed all Federal, state, local and foreign tax returns or materials required to have been filed by it and has paid or caused to be paid all taxes due and payable by it and all assessments received by it, except taxes that are being contested in good faith by appropriate proceedings and for which the applicable Borrowers or such Subsidiary, as applicable, shall have set aside on its books adequate reserves.

SECTION 3.15 *No Material Misstatements.* None of (a) the Confidential Information Memorandum or (b) any other written information, report, financial statement, exhibit or schedule furnished by the Borrowers to the Administrative Agent or any Lender in connection with the Loan Documents or included therein or delivered pursuant thereto contained, contains or will contain any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading; *provided* that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, the Borrowers represent only that they acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule.

SECTION 3.16 *Employee Benefit Plans.* (a) Each of the Borrowers and its ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in material liability of the Borrowers or any of their ERISA Affiliates. The present value of all benefit liabilities under each Plan (based on those assumptions used to fund such Plan) did not, as of the last annual valuation date applicable thereto, exceed the fair market value of the assets of such Plan, and the present value of all benefit liabilities of all underfunded Plans (based on those assumptions used to fund each such Plan) did not, as of the last annual valuation dates applicable thereto, exceed the fair market value of the assets of all such underfunded Plans.

(b) Each Foreign Pension Plan is in compliance in all material respects with all requirements of law applicable thereto and the respective requirements of the governing documents for such plan except to the extent such non-compliance could not reasonably be expected to result in a Material Adverse Effect. With respect to each Foreign Pension Plan, none of the Borrowers, any Affiliates or any of their directors, officers, employees or agents has engaged in a transaction that subjects any Borrower or any of its Subsidiaries, directly or indirectly, to a material tax or civil penalty. With respect to each Foreign Pension Plan, reserves have been established in the financial statements furnished to the Lenders in respect of any unfunded liabilities in accordance with

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applicable law and prudent business practice or, where required, in accordance with ordinary accounting practices in the jurisdiction in which such Foreign Pension Plan is maintained. The aggregate unfunded liabilities, with respect to such Foreign Pension Plans could not reasonably be expected to result in a Material Adverse Effect. There are no actions, suits or claims (other than routine claims for benefits) pending or threatened against any Borrower or any of its Affiliates with respect to any Foreign Pension Plan that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 3.17 *Environmental Matters.* Except as set forth in Schedule 3.17:

(a) The properties owned or operated by the Borrowers and the Subsidiaries (the "*Properties*") do not contain any Hazardous Materials in amounts or concentrations which (i) constitute, or constituted a violation of, (ii) require Remedial Action under, or (iii) could give rise to liability under, Environmental Laws, which violations, Remedial Actions and liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(b) The Properties and all operations of the Borrowers and the Subsidiaries are in compliance, and in the last six years have been in compliance, with all Environmental Laws and all necessary Environmental Permits have been obtained and are in effect, except to the extent that such non-compliance or failure to obtain any necessary permits, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(c) There have been no Releases or threatened Releases at, from, under or proximate to the Properties or otherwise in connection with the operations of the Borrowers or the Subsidiaries, which Releases or threatened Releases, in the aggregate, could reasonably be

expected to result in a Material Adverse Effect;

(d) Neither any Borrowers nor any of the Subsidiaries has received any notice of an Environmental Claim in connection with the Properties or the operations of any Borrowers or the Subsidiaries or with regard to any person whose liabilities for environmental matters any Borrower or any Subsidiary has retained or assumed, in whole or in part, contractually, by operation of law or otherwise, which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect, nor do the Borrowers or the Subsidiaries have reason to believe that any such notice will be received or is being threatened; and

(e) Hazardous Materials have not been transported from the Properties, nor have Hazardous Materials been generated, treated, stored or disposed of at, on or under any of the Properties in a manner that could give rise to liability under any Environmental Law, nor have the Borrowers or the Subsidiaries retained or assumed any liability, contractually, by operation of law or otherwise, with respect to the generation, treatment, storage or disposal of Hazardous Materials, which transportation, generation, treatment, storage or disposal, or retained or assumed liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.18 *Insurance*. Schedule 3.18 sets forth a true, complete and correct description of all insurance maintained by the Borrowers or by the Borrowers for their Subsidiaries as of the date hereof and the Restatement Effective Date. As of each such date, such insurance is in full force and effect and all premiums have been duly paid. The Borrowers and their Subsidiaries have insurance in such amounts and covering such risks and liabilities as are in accordance with normal industry practice.

SECTION 3.19 *Security Documents*. (a) The Pledge Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral (as defined in the Pledge Agreement) and, when the Collateral is delivered to the Collateral Agent (or in the case of Foreign Subsidiaries in Germany, the Netherlands and the United Kingdom, when pledge agreements complying with applicable foreign laws are executed and delivered), the Pledge Agreement shall constitute a fully perfected first priority Lien on, and

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security interest in, all right, title and interest of the pledgors thereunder in such Collateral, in each case prior and superior in right to any other person.

(b) The Security Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral (as defined in the Security Agreement) and, when financing statements in appropriate form are filed in the offices specified on Schedule 6 to the Perfection Certificate, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Collateral (other than the Intellectual Property, as defined in the Security Agreement), in each case prior and superior in right to any other person, other than with respect to Liens expressly permitted by Section 6.02.

(c) When the Security Agreement is filed in the United States Patent and Trademark Office and the United States Copyright Office, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the Intellectual Property (as defined in the Security Agreement), in each case prior and superior in right to any other person (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a lien on registered trademarks, trademark applications and copyrights acquired by the grantors after the date hereof).

(d) The Mortgages are effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable Lien on all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, and when the Mortgages are filed in the appropriate offices in the jurisdictions in which the Mortgaged Properties are located the Mortgages shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Mortgaged Property and the proceeds thereof, in each case prior and superior in right to any other person, other than with respect to the rights of persons pursuant to Liens expressly permitted by Section 6.02.

(e) The UK Charge Documents are effective to create in favor of Activision a legal, valid and enforceable security interest in and charge over the personal property assets of UK Sub described therein and, when Form 395 is filed in the Companies House in the United Kingdom, such UK Charge Documents shall constitute a fully perfected Lien on, and security interest on all right, title and interest of UK Sub in such personal property assets prior and superior in right to any other person.

SECTION 3.20 *Location of Real Property and Leased Premises*. (a) Schedule 3.20(a) lists completely and correctly as of the Restatement Effective Date all real property owned by the Loan Parties and the addresses thereof. The Loan Parties own in fee all the real property set forth on Schedule 3.20(a).

(b) Schedule 3.20(b) lists completely and correctly as of the Restatement Effective Date all real property leased by the Loan Parties and all locations of Collateral and the addresses thereof. The Loan Parties have valid leases in or valid warehouse agreements with respect to all the real property set forth on Schedule 3.20(b) except to the extent set forth on such Schedule.

SECTION 3.21 *Labor Matters*. As of the date hereof and the Restatement Effective Date, there are no strikes, lockouts or slowdowns against any Borrower or any Subsidiary pending or, to the knowledge of the Borrowers, threatened. The hours worked by and payments made to employees of any Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters. All payments due from the Borrowers or any Subsidiary, or for which any claim may be made against any Borrowers or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have

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been paid or accrued as a liability on the books of such Borrower or such Subsidiary. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Borrower or any Subsidiary is bound.

SECTION 3.22 *Solvency*. Immediately after the consummation of the Transactions to occur on the Restatement Effective Date and immediately following the making of each Loan and after giving effect to the application of the proceeds of each Loan, (a) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) each Loan Party will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Restatement Effective Date.

SECTION 3.23 *Year 2000*. No further programming or reprogramming is required to permit the proper functioning, in and following the year 2000, of (a) the Borrowers' and their Subsidiaries' computer systems and (b) equipment containing embedded microchips (including systems and equipment supplied by others or with which the Borrowers' or their Subsidiaries' systems interface). The cost to the Borrowers and their Subsidiaries of the reasonably foreseeable consequences of the year 2000 to the Borrowers and their Subsidiaries (including reprogramming errors and the failure of others' systems or equipment) will not result in a Material Adverse Effect. The computer and management information systems of the Borrowers and their Subsidiaries are and, with ordinary course upgrading and maintenance, will continue for the term of this Agreement to be, sufficient to permit the Borrowers and its Subsidiaries to conduct their business without Material Adverse Effect.

SECTION 3.24 *Letters of Credit*. The Existing Letters of Credit are the only letters of credit issued for the account of the Borrowers or any of its Domestic Subsidiaries that are outstanding immediately prior to the Restatement Effective Date.

## ARTICLE IV

### *Conditions of Lending*

The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder are subject to the satisfaction of the following conditions:

SECTION 4.01 *All Credit Events*. On the date of each Borrowing, and on the date of each issuance, amendment, extension or renewal of a Letter of Credit (each such event being called a "*Credit Event*"):

(a) The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.26(b).

(b) The representations and warranties set forth in Article III hereof and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall have been true and correct as of such earlier date.

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(c) The Borrowers and each other Loan Party shall be in compliance in all material respects with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and at the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing, or would exist after giving effect to the Loan to be made or Letter of Credit to be issued on such date.

Each Credit Event shall be deemed to constitute a representation and warranty by the Borrowers on the date of such Credit Event as to the matters specified in paragraphs (b) and (c) of this Section 4.01.

SECTION 4.02 *Restatement Effective Date*. On the Restatement Effective Date (or, as specifically indicated below, prior to the date hereof):

(a) This Agreement shall have been executed and delivered by each Lender and each Borrower, and the Administrative Agent shall have received satisfactory evidence of such execution and delivery.

(b) The Borrower shall have executed and delivered to each Lender requesting the issuance of a promissory note a note payable to the order of such Lender in the amount of its Revolving Credit Commitment.

(c) The Administrative Agent shall have received, on behalf of itself, the Lenders and the Issuing Bank, a favorable written opinion of Robinson Silverman Pearce Aronsohn & Berman LLP, counsel for the Loan Parties, (A) dated the Restatement Effective Date, (B) addressed to the Issuing Bank, the Administrative Agent, the Collateral Agent and the Lenders, and (C) covering such matters relating to the Loan Documents and the Transactions as the Administrative Agent shall reasonably request, and the Borrowers hereby request such counsel to deliver such opinions.

(d) All legal matters incident to this Agreement, the Borrowings and extensions of credit hereunder and the other Loan Documents shall be satisfactory to the Lenders, to the Issuing Bank and to the Administrative Agent.

(e) The Administrative Agent shall have received (i) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Restatement Effective Date and certifying (A) that the certificate or articles of incorporation and bylaws of such Loan Party have not been amended since June 8, 2000 (or attaching any amendments since such date), and (B) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party; (ii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to (i) above; and (iii) such other documents as the Lenders, the Issuing Bank or the Administrative Agent may reasonably request.

(f) The Administrative Agent shall have received a certificate, dated the Restatement Effective Date and signed by an officer of the



Borrowers, confirming compliance with the conditions precedent set forth in paragraphs (b) and (c) of Section 4.01.

(g) The Administrative Agent shall have received all Fees and other amounts due and payable on or prior to the Restatement Effective Date, including, any amounts owing under Section 2.31 as a result of the realignment of the Revolving Credit Commitments and, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrowers hereunder or under any other Loan Document.

(h) Each of the Subsidiary Guarantors shall have duly executed and delivered to the Collateral Agent a consent to this Agreement.

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(i) The Term Loans (under and as defined in, the Existing Credit Agreement), and all accrued interest thereon, shall have been paid in full.

(j) The Administrative Agent shall have received all other documents, agreements and certificates as the Administrative Agent or any Lender shall reasonably request.

## ARTICLE V

### *Affirmative Covenants*

The Borrowers covenant and agree with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, each Borrower will, and will cause each of the Subsidiaries to:

SECTION 5.01 *Existence; Businesses and Properties.* (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05.

(b) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; maintain and operate such business in substantially the manner in which it is presently conducted and operated or in a manner reasonably related to present operations; comply in all material respects with all applicable laws, rules, regulations (including any zoning, building, Environmental Law, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Mortgaged Properties) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted; and at all times maintain and preserve all property material to the conduct of such business and keep such property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times.

SECTION 5.02 *Insurance.* The Loan Parties shall bear the full risk of any loss of any nature whatsoever with respect to the Collateral. At the cost and expense of the Loan Parties in amounts and with carriers reasonably acceptable to the Administrative Agent, the Loan Parties shall (a) keep all insurable properties and properties in which any Loan Party has an interest insured against the hazards of fire, flood, sprinkler leakage, those hazards covered by extended coverage insurance and such other hazards, and for such amounts, as is customary in the case of companies engaged in businesses similar to the business of the Loan Parties including, without limitation, business interruption insurance and marine and air cargo insurance, (b) maintain a bond in such amounts as is customary in the case of companies engaged in businesses similar to the business of the Loan Parties insuring against larceny, embezzlement or other criminal misappropriation of insured's officers and employees who may either singly or jointly with others at any time have access to the assets or funds of such Loan Party either directly or through authority to draw upon such funds or to direct generally the disposition of such assets; (c) maintain public and product liability insurance against claims for personal injury, death or property damage suffered by others; (d) maintain all such worker's compensation or similar insurance as may be required under the laws of any state or jurisdiction in which such Loan Party is engaged in business; (e) furnish the Administrative Agent with (i) copies of all policies and evidence of the maintenance of such policies by the renewal thereof at least thirty (30) days before any expiration date, and (ii) appropriate loss payable endorsements in form and substance reasonably satisfactory to the Administrative Agent, naming the Administrative Agent as a co-insured and loss payee as its interests

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may appear with respect to all insurance coverage referred to in clause (a), and providing (A) that all proceeds thereunder shall be payable to the Administrative Agent, (B) no such insurance shall be affected by any act or neglect of the insured or owner of the property described in such policy, and (C) that such policy and loss payable clauses may not be canceled, amended or terminated unless at least thirty (30) days' prior written notice is given to the Administrative Agent. In the event of any loss thereunder, the carriers named therein hereby are directed by the Administrative Agent and the applicable Loan Party to make payment for such loss to the Administrative Agent and not to such Loan Party and Administrative Agent jointly. If any insurance losses are paid by check, draft or other instrument payable to any Loan Party and the Administrative Agent jointly, the Administrative Agent may endorse such Loan Party's name thereon and do such Loan Party other things as the Administrative Agent may deem advisable to reduce the same to cash. Following the occurrence of an Event of Default, the Administrative Agent is hereby authorized to adjust and compromise claims under insurance coverage referred to in clauses (a), and (b). All loss recoveries received by the Administrative Agent upon any such insurance prior to the occurrence of an Event of Default shall be applied to the Revolving Loans. Any surplus shall be paid by the Administrative Agent to Borrowers or applied as may be otherwise required by law.

SECTION 5.03 *Obligations and Taxes.* Pay its Indebtedness and other obligations promptly and in accordance with their terms and pay and discharge promptly when due all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien upon such properties or any part thereof; *provided, however,* that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested

in good faith by appropriate proceedings and the Borrowers shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such contest operates to suspend collection of the contested obligation, tax, assessment or charge and enforcement of a Lien and, in the case of a Mortgaged Property, there is no risk of forfeiture of such property.

SECTION 5.04 *Financial Statements, Reports, etc.* In the case of the Borrowers, furnish to the Administrative Agent and each Lender:

(a) within 90 days after the end of each fiscal year, the consolidated and consolidating balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition of Activision Holdings and its consolidated Subsidiaries as of the close of such fiscal year and the results of its operations and the operations of such Subsidiaries during such year, and the balance sheet and related statement of income, stockholders' equity and cash flows showing the financial condition of Kaboom as of the close of such fiscal year and the results of its operations during such year. The consolidated financial statements shall be audited by PriceWaterhouseCoopers or other independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which shall not be qualified in any material respect) to the effect that such consolidated financial statements fairly present the financial condition and results of operations of Activision Holdings and its consolidated Subsidiaries on a consolidated basis, or of Kaboom, as the case may be, in accordance with GAAP. In addition, Development Costs and the amortization of Development Costs for such year shall be identified explicitly in the audited financial statements or in the notes thereto;

(b) within 45 days after the end of each fiscal quarter of each fiscal year, the consolidated and consolidating balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition of Activision Holdings and its consolidated Subsidiaries, and of the Loan Parties, as of the close of such fiscal quarter and the results of its operations and the operations of such Subsidiaries during such fiscal quarter and the then elapsed portion of the fiscal year, and the balance sheet and related statement of income, stockholders' equity and cash flows

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showing the financial condition of Kaboom as of the close of such fiscal quarter and the results of its operations during such fiscal quarter and the then elapsed portion of the fiscal year, each certified by a Financial Officer of Activision Holdings or Kaboom, as the case may be, as fairly presenting the financial condition and results of operations of the Loan Parties and Activision Holdings and its consolidated Subsidiaries, or of Kaboom, as the case may be, in accordance with GAAP, subject to normal year-end audit adjustments;

(c) within 20 days after the end of each month, the consolidated and consolidating balance sheet and related statements of income, stockholder's equity and cash flows showing the financial condition of the Loan Parties and of Activision Holdings and its consolidated Subsidiaries as of the close of such fiscal month and the results of its operations and the operations of such Subsidiaries and of the Loan Parties during such fiscal month and the then elapsed portion of such fiscal year, all certified by one of its Financial Officers as fairly presenting the financial condition and results of operations of the Loan Parties and of Activision Holdings and its consolidated Subsidiaries in accordance with GAAP, subject to normal year-end audit adjustments;

(d) concurrently with the delivery of financial statements under paragraph (b) above, a report in reasonable detail of amounts accrued and paid during such quarter for royalties and fees under license, distribution or development agreements, in a form reasonably satisfactory to the Administrative Agent.

(e) concurrently with any delivery of financial statements under paragraph (a) or (b) above, a certificate of the accounting firm (in the case of paragraph (a)) or Financial Officer (in the case of paragraph (b)) opining on or certifying such statements (which certificate, when furnished by an accounting firm, may be limited to accounting matters and disclaim responsibility for legal interpretations) (i) certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (ii) setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the covenants contained in Sections 6.09, 6.10, and 6.13;

(f) within 90 days of the Restructure Date, an inventory appraisal, from an appraiser acceptable to the Administrative Agent and in form and substance satisfactory to the Administrative Agent;

(g) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by Activision Holdings or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed to its shareholders, as the case may be;

(h) promptly after the receipt thereof by any Borrower or any of its Subsidiaries, a copy of any "management letter" (whether in draft or final form) received by any such person from its certified public accountants and the management's responses thereto; and

(i) each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to clause (a) above, the Borrowers shall deliver to the Administrative Agent a certificate of a Financial Officer of the Borrowers (i) setting forth the information required pursuant to Sections 1-4, 6 and 9 of the Perfection Certificate or confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section and (ii) certifying that all Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral have been filed

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of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above to the extent necessary to protect and perfect the security interests under the Security Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

(j) on or before the fifteenth (15<sup>th</sup>) day of each month as and for the prior month (a) a Schedule of Receivables, (b) a Schedule of Payables and (c) Inventory reports; *provided, however*, that during the period from September 1 to December 1 of each year, the foregoing

information shall be provided on each Thursday as and for the prior Week; and (d) a schedule, in form and substance satisfactory to the Administrative Agent, of all Convertible Subordinated Notes converted to common stock, and all repurchases or redemptions of Convertible Subordinated Notes and common stock during such month and cumulatively. In addition, the Borrowers will deliver to the Administrative Agent at least once every two weeks (or more frequently at the option of the Borrowers) or as the Administrative Agent may require, (i) confirmatory assignment schedules, (ii) remittance schedules and (iii) schedules of credits to Receivables, each certified as complete and correct by a Financial Officer of the Borrowers. Borrowers shall also deliver to the Administrative Agent at such intervals as the Administrative Agent may require: (i) copies of Customer invoices (ii) evidence of shipment or delivery and (iii) such further schedules, documents and/or information regarding the Collateral as the Administrative Agent may require including, without limitation, trial balances and test verifications. The Administrative Agent shall have the right to confirm and verify all Receivables by any manner and through any medium it considers advisable and do whatever it may deem reasonably necessary to protect its interests hereunder. The items to be provided under this Section are to be in form reasonably satisfactory to the Administrative Agent and executed by the Borrowers and delivered to the Administrative Agent from time to time solely for the Administrative Agent's convenience in maintaining records of the Collateral, and any Borrower's failure to deliver any of such items to the Administrative Agent shall not affect, terminate, modify or otherwise limit the Collateral Agent's Lien with respect to the Collateral.

(k) no later than forty-five (45) days after the beginning of each fiscal year commencing with the fiscal year ending March 31, 2001, a month by month projected operating budget and cash flow of Activision Holdings and of the Loan Parties for such fiscal year (including an income statement for each month and a balance sheet as at the end of the last month in each fiscal quarter), such projections to be accompanied by a certificate signed by a Financial Officer of the Borrowers to the effect that such projections have been prepared on the basis of sound financial planning practice consistent with past budgets and financial statements and that such officer has no reason to question the reasonableness of any material assumptions on which such projections were prepared; provided that Borrowers will deliver a preliminary projected operating budget and cash flow for the fiscal year ending March 31, 2003 by April 1, 2002. In addition, concurrently with the delivery of the financial statements referred to in clauses (a), (b) and (c) above the Borrowers will deliver a written report summarizing all material variances from the budgets submitted by the Borrowers and a discussion and analysis by management with respect to such variances.

(l) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrowers or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

SECTION 5.05 *Litigation and Other Notices*. Furnish to the Administrative Agent, the Issuing Bank and each Lender prompt written notice of the following:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

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(b) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against any Borrower or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect;

(c) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect;

(d) any event of default or event which, with notice or lapse of one or both would constitute an event of default under the Convertible Subordinated Note Documents or any agreement with respect to Subordinated Debt;

(e) all matters materially affecting the value, enforceability or collectibility of any portion of the Collateral, including, without limitation, any Loan Party's reclamation or repossession of, or the returns to any Loan Party of, a material amount of goods or claims or disputes asserted by any Customer or other obligor; and

(f) any breach or default under any agreement under which a Loan Party is the licensee or distributor or any notice of intent to terminate any such agreement.

SECTION 5.06 *Employee Benefits*. (a) Comply in all material respects with the applicable provisions of ERISA and the Code and (b) furnish to the Administrative Agent (i) as soon as possible after, and in any event within 10 days after any Responsible Officer of any Borrower or any ERISA Affiliate knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of the Borrowers in an aggregate amount exceeding \$1,000,000, a statement of a Financial Officer of the Borrowers setting forth details as to such ERISA Event and the action, if any, that the Borrowers propose to take with respect thereto.

SECTION 5.07 *Maintaining Records; Access to Properties and Inspections*. Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all requirements of law are made of all dealings and transactions in relation to its business and activities. Each Loan Party will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the properties of the Borrowers or any Subsidiary at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances and condition of the Borrowers or any Subsidiary with the officers thereof and independent accountants therefor.

SECTION 5.08 *Use of Proceeds*. Use the proceeds of the Loans and request the issuance of Letters of Credit only for the purposes set forth in Section 3.13.

SECTION 5.09 *Compliance with Environmental Laws*. Comply, and cause all lessees and other persons occupying its Properties to comply, in all material respects with all Environmental Laws and Environmental Permits applicable to its operations and Properties; obtain and renew all material Environmental Permits necessary for its operations and Properties; and conduct any Remedial Action in accordance with Environmental Laws; *provided, however*, that neither any Borrowers nor any of the Subsidiaries shall be required to undertake any Remedial Action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances.

SECTION 5.10 *Preparation of Environmental Reports.* If a Default caused by reason of a breach of Section 3.17 or 5.09 shall have occurred and be continuing, at the request of the Required Lenders through the Administrative Agent, provide to the Lenders within 45 days after such request, at the expense of the Borrowers, an environmental site assessment report for the Properties which are the

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subject of such Default prepared by an environmental consulting firm acceptable to the Administrative Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or Remedial Action in connection with such Properties.

SECTION 5.11 *Audits.* From time to time upon the request of the Collateral Agent or the Required Lenders through the Administrative Agent, permit the Collateral Agent or the Lenders to conduct evaluations and appraisals of (a) the Borrowers' practices in the computation of the Borrowing Base and (b) the assets included in the Borrowing Base. In connection therewith, Borrowers shall pay the costs of the Collateral Agent's auditors in accordance with the Agent's Fee Letter.

SECTION 5.12 *Further Assurances.* Execute any and all further documents, financing statements, agreements and instruments, and take all further action (including filing Uniform Commercial Code and other financing statements, mortgages and deeds of trust) that may be required under applicable law, or that the Required Lenders, the Administrative Agent or the Collateral Agent may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and first priority of the security interests created or intended to be created by the Security Documents and the UK Charge Documents. The Borrowers will cause any subsequently acquired or organized Domestic Subsidiary which is a Material Subsidiary and any other Domestic Subsidiary which becomes a Material Subsidiary to execute a Subsidiary Guarantee Agreement, Indemnity Subrogation and Contribution Agreement and each applicable Security Document in favor of the Collateral Agent. If any new Domestic Subsidiary is to become a Borrower hereunder, it will execute and deliver a Joinder Agreement and the Borrower Guarantee Agreement, Indemnity, Subrogation and Contribution Agreement and the Security Agreement; *provided, however,* that any new Borrower's Receivables and Inventory may not be included in calculating the Formula Amount or Individual Formula Amount until the Administrative Agent has completed its audit with respect thereto with results satisfactory to it in its Permitted Discretion. In addition, from time to time, the Borrowers will, at their cost and expense, promptly secure the Obligations by pledging or creating, or causing to be pledged or created, perfected security interests with respect to such of the assets and properties of the Loan Parties as the Administrative Agent or the Required Lenders shall designate (it being understood that it is the intent of the parties that the Obligations shall be secured by substantially all the assets of the Borrowers and their Domestic Subsidiaries (including real and other properties acquired subsequent to the Closing Date)). Such security interests and Liens will be created under the Security Documents and other security agreements, mortgages, deeds of trust and other instruments and documents in form and substance satisfactory to the Collateral Agent, and the Borrowers shall deliver or cause to be delivered to the Lenders all such instruments and documents (including legal opinions, title insurance policies and lien searches) as the Collateral Agent shall reasonably request to evidence compliance with this Section. The Borrowers agree to provide such evidence as the Collateral Agent shall reasonably request as to the perfection and priority status of each such security interest and Lien.

SECTION 5.13 *Government Receivables.* Notify the Administrative Agent immediately if any Receivables arise out of contracts between any Borrower and the United States, any state or any department, agency or instrumentality of any of them and take all steps necessary to protect the Collateral Agent's interest in the Collateral under the Federal Assignment of Claims Act or other applicable state or local statutes or ordinances and deliver to the Administrative Agent appropriately endorsed any instrument or chattel paper connected with any Receivable arising out of contracts between any Loan Party and the United States, any state or any department, agency of instrumentality of any of them.

SECTION 5.14 *Intellectual Property.* (a) Each Loan Party shall register or cause to be registered (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those intellectual property rights listed on the exhibits to the Security Agreement within thirty (30) days of the date of this Agreement. Each Loan Party shall

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register or cause to be registered with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those additional material intellectual property rights developed or acquired by such Loan Party from time to time in connection with any product prior to the sale or licensing of such product to any third party, including without limitation revisions or additions to the intellectual property rights listed on such exhibits, when such Loan Party reasonably determines that such registration is appropriate; *provided* that such Loan Party shall in any case register such additional patents, and/or copyrights as are developed or obtained in connection with any product accounting for more than five percent (5%) of such Loan Party's gross revenues in any calendar quarter. Notwithstanding the foregoing, each Loan Party shall only be required to register trademarks when such Loan Party reasonably determines that such registration is appropriate.

(b) Each Loan Party shall execute and deliver such additional instruments and documents from time to time as the Collateral Agent shall reasonably request to perfect the Collateral Agent's security interest in the Collateral consisting of Intellectual Property (as defined in the Security Agreement).

(c) Each Loan Party shall (i) protect, defend and maintain the validity and enforceability of the Intellectual Property, (ii) use commercially reasonable efforts to detect infringements of the Intellectual Property and promptly advise the Administrative Agent in writing of material infringements detected, and (iii) not allow any Intellectual Property to be abandoned, forfeited or dedicated to the public without the written consent of the Required Lenders, which shall not be unreasonably withheld.

(d) The Collateral Agent shall have the right, but not the obligation, to take, at Borrowers' sole expense, any actions that Borrowers are required to take under this Section, but fail to take, after fifteen (15) days' notice to Borrowers. Borrowers shall reimburse and indemnify the Administrative Agent for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section.

SECTION 5.15 *Blocked Accounts.* All proceeds of Collateral shall, at the direction of the Administrative Agent, be deposited by the Loan Parties into a lock box account, dominion account or such other "blocked account" ("*Blocked Accounts*") with PNC or another bank reasonably acceptable to the Administrative Agent, that enters into a Lock Box Agreement with the Administrative Agent in form and substance acceptable to the Administrative Agent. Each Loan Party shall issue to the institution with which the Blocked Accounts are maintained an irrevocable letter of instruction directing said bank to transfer such funds so deposited in accordance with a notice from the Administrative Agent to the Administrative Agent, either to any account maintained by the Administrative Agent at said bank or by wire transfer to appropriate account(s) of the

Administrative Agent. All funds deposited in such Blocked Accounts shall immediately become the property of the Administrative Agent and Borrowers shall obtain the agreement by such bank to waive any offset rights against the funds so deposited (except any rights of PNC as a Lender hereunder). Neither the Administrative Agent, the Collateral Agent nor any Lender assumes any responsibility for such "blocked account" arrangement, including without limitation, any claim of accord and satisfaction or release with respect to deposits accepted by any bank thereunder. Alternatively, the Administrative Agent may establish depository accounts (the "*Depository Accounts*") in the name of the Administrative Agent at a bank or banks for the deposit of such funds and the Loan Parties shall deposit all proceeds of Collateral or cause same to be deposited, in kind, in such Depository Accounts in lieu of depositing same to the Blocked Accounts.

All funds in the Blocked Accounts or Depository Accounts shall be transferred daily to the Administrative Agent to be applied to outstanding Revolving Loans which are ABR Loans, and applied to the Obligations as they become due. Any funds remaining after such application may be transferred, if all ABR Loans and all other Obligations then due have been paid in full, to the Investment Account to be held as Cash Collateral hereunder and applied to the Obligations as they become due. From time to time the Administrative Agent shall, upon the request of the Borrowing Agent, transfer funds from the Investment Account to Borrower's operating account, but Borrowers may not make investments in Permitted Investments other than those held in the Investment Account unless no Revolving Loans are outstanding and, after any transfer of funds from the Investment Account, Undrawn Availability is at least \$10,000,000 or such lesser amount to which the Administrative Agent otherwise consents.

SECTION 5.16 *Receivables*. (a) Each of the Receivables shall be a bona fide and valid account representing a bona fide indebtedness incurred by the Customer therein named and each of the Receivables proposed to be included as an Eligible Receivable is for a fixed sum as set forth in the invoice relating thereto (provided immaterial or unintentional invoice errors shall not be deemed to be a breach hereof) with respect to an absolute sale or lease and delivery of goods upon stated terms of a Borrower, or work, labor or services theretofore rendered by a Borrower as of the date each Receivable is created. Same shall be due and owing in accordance with the applicable Borrower's standard terms of sale without dispute, setoff or counterclaim except as may be stated on the Schedules of Receivables delivered by Borrowers to the Administrative Agent.

(b) Each Customer, to the best of each Borrower's knowledge, as of the date each Receivable is created, is and will be solvent and able to pay all Receivables on which the Customer is obligated in full when due or with respect to such Customers of any Borrower who are not solvent such Borrower has set up on its books and in its financial records bad debt reserves adequate to cover such Receivables.

(c) Each Borrower's chief executive office is located at the addresses set forth on Schedule 3.20(a) or (b) hereto. Until written notice is given to the Administrative Agent by the Borrowing Agent of any other office at which any Borrower keeps its records pertaining to Receivables, all such records shall be kept at such executive office.

(d) Until any Borrower's authority to do so is terminated by the Administrative Agent (which notice the Administrative Agent may give at any time following the occurrence of an Event of Default), each Borrower will, at such Borrower's sole cost and expense, but on the Administrative Agent's behalf and for the Administrative Agent's account, collect as the Administrative Agent's property and in trust for the Administrative Agent all amounts received on Receivables, and shall not commingle such collections with any Borrower's funds or use the same except to pay Obligations. Each Borrower shall, upon request, deliver to the Administrative Agent, or deposit in the Blocked Account, in original form and on the date of receipt thereof, all checks, drafts, notes, money orders, acceptances, cash and other evidences of Indebtedness.

(e) At any time following the occurrence of an Event of Default, the Administrative Agent shall have the right to send notice of the assignment of, and the Collateral Agent's security interest in, the Receivables to any and all Customers or any third party holding or otherwise concerned with any of the Collateral. Thereafter, the Collateral Agent shall have the sole right to collect the Receivables, take possession of the Collateral, or both. The Collateral Agent's actual collection expenses, including, but not limited to, stationery and postage, telephone and telegraph, secretarial and clerical expenses and the salaries of any collection personnel used for collection, may be charged to Borrowers' Account and added to the Obligations.

(f) The Collateral Agent shall have the right to receive, endorse, assign and/or deliver in the name of the Collateral Agent or any Borrower any and all checks, drafts and other instruments for the payment of money relating to the Receivables, and each Borrower hereby waives notice of

presentment, protest and non-payment of any instrument so endorsed. Each Borrower hereby constitutes the Collateral Agent or its designee as such Borrower's attorney with power (i) to endorse such Borrower's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment or Collateral; (ii) to sign such Borrower's name on any invoice or bill of lading relating to any of the Receivables, drafts against Customers, assignments and verifications of Receivables; (iii) to send verifications of Receivables to any Customer; (iv) to sign such Borrower's name on all financing statements or any other documents or instruments deemed necessary or appropriate by the Collateral Agent to preserve, protect, or perfect the Collateral Agent's interest in the Collateral and to file same; (v) following an Event of Default, to demand payment of the Receivables; (vi) following an Event of Default, to enforce payment of the Receivables by legal proceedings or otherwise; (vii) following an Event of Default, to exercise all of Borrowers' rights and remedies with respect to the collection of the Receivables and any other Collateral; (viii) following an Event of Default, to settle, adjust, compromise, extend or renew the Receivables; (ix) following an Event of Default, to settle, adjust or compromise any legal proceedings brought to collect Receivables; (x) following an Event of Default, to prepare, file and sign such Borrower's name on a proof of claim in bankruptcy or similar document against any Customer, (xi) following an Event of Default, to prepare, file and sign such Borrower's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables; and (xii) to do all other acts and things necessary to carry out this Agreement. All acts of said attorney or designee are hereby ratified and approved, and said attorney or designee shall not be liable for any acts of omission or commission nor for any error of judgment or mistake of fact or of law, unless constituting willful misconduct or gross (not mere) negligence; this power being coupled with an interest is irrevocable while any of the Obligations remain unpaid. The Collateral Agent shall have the right at any time following the occurrence of an Event of Default to change the address for delivery of mail addressed to any Borrower to such address as the Collateral Agent may designate and to receive, open and dispose of all mail addressed to any Borrower.

(g) Neither the Administrative Agent, the Collateral Agent nor any Lender shall, under any circumstances or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Receivables or any instrument received in payment thereof, or for any damage resulting therefrom. Following the occurrence of an Event of Default the Administrative Agent may, without notice or consent from any Borrower, sue upon or otherwise collect, extend the time of payment of, compromise or settle for cash, credit or upon any terms any of the Receivables or any other securities, instruments or insurance applicable thereto and/or release any obligor thereof. The Collateral Agent is authorized and empowered to accept following the occurrence of an Event of Default the return of the goods represented by any of the Receivables, without notice to or consent by any Borrower, all without discharging or in any way affecting any Borrower's liability hereunder.

(h) No Borrower will, without the Administrative Agent's consent, compromise or adjust any material amount of the Receivables or extend the time for payment thereof or accept any material returns of merchandise or grant any additional discounts, allowances or credits thereon except for those compromises, adjustments, returns, discounts, credits and allowances as have been heretofore customary in the business of such Borrower.

## ARTICLE VI

### *Negative Covenants*

The Borrowers covenant and agree with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder

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have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, no Borrower will nor will it cause or permit any of the Subsidiaries to:

SECTION 6.01 *Indebtedness*. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness for borrowed money existing on the Closing Date and set forth in Schedule 6.01, but not any extensions, renewals or replacements of such Indebtedness (unless otherwise permitted under this Section 6.01);

(b) Indebtedness created hereunder and under the other Loan Documents;

(c) Indebtedness evidenced by Capital Lease Obligations, or secured pursuant to Section 6.02(h), in each case so long as the aggregate principal amount of all Indebtedness permitted to be outstanding under this paragraph (c) shall not exceed \$5,000,000;

(d) Indebtedness in favor of a Lender (or an Affiliate thereof) under one or more Hedging Agreements approved by the Administrative Agent (such approval not to be unreasonably withheld);

(e) intercompany Indebtedness of Activision and its Subsidiaries to the extent permitted by Sections 6.04(e), (g) and (o);

(f) Indebtedness with respect to any surety bonds required in the ordinary course of business of the Borrowers and the Subsidiaries, *provided* that such Indebtedness shall not at any time exceed \$250,000 in the aggregate;

(g) Indebtedness of the European Distribution Subsidiaries in an aggregate principal amount not to exceed \$50,000,000 (or the equivalent thereof) at any time outstanding, *provided* that such Indebtedness shall not be Guaranteed by any Loan Party other than through one or more Letters of Credit issued hereunder to support such Indebtedness in a face amount not in excess of \$9,000,000;

(h) Indebtedness of Foreign Subsidiaries (other than the European Distribution Subsidiaries) in an aggregate principal amount not to exceed \$15,000,000 (or the equivalent thereof) at any time outstanding, *provided* such Indebtedness shall not be Guaranteed by any Loan Party;

(i) other unsecured Indebtedness of the Borrowers and the Subsidiaries in an aggregate principal amount not to exceed \$5,000,000 at any time outstanding;

(j) Subordinated Debt in an aggregate principal amount which does not exceed at the time of incurrence \$15,000,000 in outstanding principal amount; and

(k) Acquired Debt in connection with a Permitted Acquisition.

SECTION 6.02 *Liens*. Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any person, including any Subsidiary) now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except:

(a) Liens on property or assets of the Borrowers and its Subsidiaries existing on the date hereof and set forth in Schedule 6.02; *provided* that such Liens shall secure only those obligations which they secure on the date hereof and may not encumber Receivables;

(b) any Lien created under the Loan Documents;

(c) Liens for taxes not yet due or which are being contested in compliance with Section 5.03; *provided* that the Lien shall have no effect on the priority of the Liens under the Loan Documents or the value of the Collateral and a stay of enforcement of any such Lien shall be in effect;

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(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business and securing obligations that are not due and payable or which are being contested in compliance with Section 5.03;

(e) Liens (other than any Lien imposed by ERISA), pledges and deposits made in the ordinary course of business in compliance with workmen's compensation, unemployment insurance and other social security laws or regulations;

(f) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrowers or any of its Subsidiaries;

(h) purchase money security interests in real property, improvements thereto or equipment hereafter acquired (or, in the case of improvements, constructed) by the Borrowers or any Subsidiary; *provided* that (i) such security interests secure Indebtedness permitted by Section 6.01, (ii) such security interests are incurred, and the Indebtedness secured thereby is created, within 90 days after such acquisition (or construction), (iii) the Indebtedness secured thereby does not exceed 85% of the lesser of the cost or the fair market value of such real property, improvements or equipment at the time of such acquisition (or construction) and (iv) such security interests do not apply to any other property or assets of the Borrowers or any Subsidiary;

(i) Liens on assets of Foreign Subsidiaries; *provided* that (i) such Liens do not extend to, or encumber, assets of the Borrowers or any of its Domestic Subsidiaries and (ii) such Liens secure only Indebtedness incurred by such Foreign Subsidiaries pursuant to Section 6.01 (g), (h) or (k); and

(j) Liens granted to licensors by a Loan Party which encumber only the licensed intellectual property and inventory produced thereunder (but not any Receivables from the sale, distribution or licensing thereof), are subordinated to the Liens of the Collateral Agent on terms and conditions satisfactory to the Collateral Agent and expressly permit the Liens granted by the Loan Documents and the exercise of remedies thereunder.

**SECTION 6.03 *Sale and Lease-Back Transactions.*** Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred unless (a) the sale of such property is permitted by Section 6.05 and (b) the Capital Lease Obligations arising therefrom are permitted by Section 6.01(c).

**SECTION 6.04 *Investments, Loans and Advances.*** Purchase, hold or acquire any Equity Interests, evidences of indebtedness or other securities of, make or permit to exist any loans or advances to, or make or permit to exist any investment or any other interest in, any other person, except:

(a) investments by the Borrowers existing on the date hereof in the Equity Interests of the Subsidiaries and the investment by Activision Holdings in Kaboom existing on the date hereof in an amount not in excess of \$1,000;

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(b) Permitted Investments held in the Investment Account and, if Undrawn Availability is at least \$10,000,000 and there are no outstanding Revolving Loans (or such lesser amount to which the Administrative Agent consents), other Permitted Investments;

(c) Receivables owing to any Borrower or any of its Subsidiaries arising from sales of Inventory under usual and customary terms in the ordinary course of business;

(d) advances not to exceed \$500,000 outstanding at any time to employees of the Borrowers and the Subsidiaries to meet expenses incurred by such employees in the ordinary course of business;

(e) any wholly owned Subsidiary may make intercompany loans to a Borrower or any other wholly owned Subsidiary and any Borrower may make intercompany loans and advances to any wholly owned Subsidiary; *provided* that any promissory notes evidencing such intercompany loans shall be pledged (and delivered) by the applicable Borrower or the respective wholly owned Domestic Subsidiary that is the lender of such intercompany loan as Collateral pursuant to the Pledge Agreement; *provided further* that (i) any Borrower or any Domestic Subsidiaries may make loans to and repay loans from any Foreign Subsidiaries pursuant to this paragraph (e) only if, after giving effect thereto, the outstanding principal amount of all loans made by Foreign Subsidiaries to Activision during any Fiscal Year shall exceed the principal of loans made by any Borrower and its Domestic Subsidiaries during such period and as of the end of each Fiscal Year the outstanding principal amount of loans made by Foreign Subsidiaries shall exceed the outstanding principal amount of loans made by the Borrowers and their Domestic Subsidiaries by at least \$4,000,000 and (ii) any loans made by any Foreign Subsidiaries to any Borrower or any of its Domestic Subsidiaries pursuant to this paragraph (e) shall be unsecured and subordinated to the obligations of the Loan Parties pursuant to subordination provisions in substantially the form of Exhibit J to the Existing Credit Agreement; and any loans made by any Loan Party to any Foreign Subsidiary shall be evidenced by one or more revolving Master Notes pledged to the Collateral Agent pursuant to the Pledge Agreement.

(f) the Borrowers may establish Subsidiaries to the extent permitted by Section 6.15;

(g) the Borrowers and the Domestic wholly owned Subsidiaries may make additional loans and advances to, or other investments in, Foreign Subsidiaries of the Borrowers with the prior written consent of the Required Lenders;

(h) a Borrower or any wholly owned Subsidiary may acquire substantially all the assets of, or more than 50% of the Equity Interests of, a person (such assets or such person referred to herein as the "*Acquired Entity*") and any acquisition completed under this subsection 6.04(h) is a "*Permitted Acquisition*"; *provided* that each of the following conditions is satisfied:

(i) the Acquired Entity shall be a going concern and shall be in a line of business reasonably related to that of the Borrowers and their Subsidiaries as conducted during the current and most recent calendar year;

(ii) the Acquired Entity shall have approved such transaction;

(iii) the Borrowers shall have delivered to the Administrative Agent at least 5 Business Days prior to consummation of the acquisition a certificate of a Financial Officer demonstrating, in reasonable detail, that, at the time of such transaction (A) both before and after giving effect thereto, no Event of Default or Default shall have occurred and be continuing or shall exist, (B) the Borrowers are in compliance with the covenants set forth in Sections 6.09, 6.10, and 6.13 as of the last day of the most recent fiscal quarter preceding such acquisition, and would be in compliance on a *pro forma* basis with such covenants as of the last day of the month preceding such acquisition, and (C) all calculations necessary to

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determine compliance with the conditions in clauses (vi) or (vii) below. All *pro forma* calculations required to be made pursuant to this subsection 6.04(h) shall (i) include only those adjustments that would be permitted or required by Regulation S-X, (ii) be based on reasonably detailed written assumptions which accompany the certificate and shall be acceptable to the Administrative Agent, and (iii) be certified by a Financial Officer as having been prepared in good faith based upon reasonable assumptions;

(iv) the Borrowers shall comply with Sections 5.12, 6.15 and the relevant provisions of the other Loan Documents with respect to the Acquired Entity and its assets or any new Subsidiary formed to effect the acquisition;

(v) the Borrowers shall have delivered to the Lenders consolidating financial statements for each Borrower, each Subsidiary and the Acquired Entity for the most recent fiscal year and fiscal quarter prior to the date of acquisition in question, and the financial statements of the Acquired Entity for the most recent fiscal year prior to the date of acquisition in question audited by an independent certified public accountant; *provided that* if the total amount expended (including the value of any Equity Issuance) is less than \$30,000,000 and the Cash Components for such acquisition are less than \$15,000,000, the Borrowers shall not be required to deliver financial statements for the Acquired Entity audited by an independent certified public accountant to the extent such statements have not been delivered to the Borrowers or their subsidiaries;

(vi) for any acquisition in which the Cash Components are no more than \$4,000,000 for any individual acquisition or \$13,000,000 in the aggregate since the Closing Date, (a) the Fixed Charge Coverage Ratio of the Loan Parties for the four quarters ending on the last day of the most recent fiscal quarter preceding such acquisition was, and the Fixed Charge Coverage Ratio of the Loan Parties for the 12 months ending on the last day of the month preceding such acquisition (such last day of the preceding month or such last day of the preceding fiscal quarter, a "*Measurement Date*"), would be, on a *pro forma* basis, at least 1.0 to 1.0 and (b) after giving effect to the acquisition, the actual Undrawn Availability at closing (calculated for these purposes without including the Inventory or Receivables of the Acquired Entity) is at least the lesser of (x) \$5,000,000 and (y) 10% of the sum of the amounts calculated under clauses (i), (ii) and (v) of the definition of Formula Amount or if the Administrative Agent has completed its audit of the Acquired Entity with results satisfactory to the Administrative Agent in its Permitted Discretion, the actual Undrawn Availability at closing calculated for the Borrowers and the Acquired Entity is at least \$10,000,000;

(vii) for any acquisition other than an acquisition described in clause (vi), (a) the Cash Components may be no more than \$15,000,000 for any acquisition, no more than \$40,000,000 in any twelve month period, and no more than \$60,000,000 since the Closing Date; (b) the Fixed Charge Coverage Ratio of the Loan Parties for the four quarters ending the last day of the most recent fiscal quarter preceding such acquisition was, and the Fixed Charge Coverage Ratio of the Loan Parties for the 12 months ending on the last day of the month preceding such acquisition would be, on a *pro forma* basis, at least the higher of (x) 1.1 to 1.0 or (y) the ratio required by Section 6.10; and (c) after giving effect to the acquisition, the *pro forma* average daily Undrawn Availability at closing (calculated for these purposes without including the Inventory or Receivables of the Acquired Entity) for the most recent January to June period would be greater than \$15,000,000 or, if the Administrative Agent has completed its audit of the Acquired Entity with results satisfactory to the Administrative Agent in its Permitted Discretion, the actual Undrawn Availability at closing calculated for the Borrowers and the Acquired Entity is at least \$20,000,000;

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(viii) any Indebtedness incurred in connection with the acquisition, including any Acquired Debt and any Subordinated Debt, must be permitted under Section 6.01; and

(ix) in no event may any Equity Issuance in connection with any acquisition exceed a number of shares of Activision common stock (or equivalents) equal to 40% of the issued and outstanding common stock of Activision on such date and all Equity Issuances shall be of common equity or equivalents;

(i) the Borrowers may enter into Hedging Agreements to the extent permitted in Section 6.01(d);

(k) Activision and the Subsidiaries may consummate the Transactions;

(l) the Borrowers may make investments in persons not constituting subsidiaries *provided that* (i) such person is in a line of business reasonably related to the business of the Borrowers and their Subsidiaries, (ii) prior and after giving effect to such investment, Undrawn Availability (without giving effect to clause (iv) of the definition of "Formula Amount" in Section 2.01) is an amount of at least 10% of the Formula Amount (without giving effect to such clause (iv)), (iii) after giving effect to the investment and any Revolving Loans made on the acquisition date, no Seasonal Advance is outstanding and the Loan Parties are in compliance with the financial covenants contained in this Agreement, (iv) the Cash Component of any single investment or series of related investments shall not exceed \$5,000,000, (v) the Cash Component(s) of all such investments in persons not constituting subsidiaries shall not exceed \$15,000,000 in any twelve month period, and (vi) all capital stock or other equity interests acquired by a Borrower or any other Loan Party shall be pledged to the Collateral Agent.



(m) the Borrowers and their Subsidiaries may make advance payments of royalties under license or distribution agreements in the ordinary course of business;

(n) Activision may make loans to directors and employees in connection with the granting of stock options or as incentive or bonus compensation; and

(o) loans from Activision to UK Sub evidenced by the Intercompany Note may remain outstanding.

In no event may any Loan Party make any investment in Kaboom after the Restatement Effective Date.

SECTION 6.05 *Mergers, Consolidations, Sales of Assets and Acquisitions.* (a) Merge into or consolidate with any other person, or permit any other person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any substantial part of the assets of any Borrower (whether now owned or hereafter acquired) or any Equity Interest of any Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other person, except that (i) the Borrowers and any Subsidiary may purchase and sell Inventory in the ordinary course of business, (ii) the Borrowers or any wholly owned Subsidiary may make acquisitions permitted under Section 6.04 above, (iii) if at the time thereof and immediately after giving effect thereto no Event of Default or Default shall have occurred and be continuing (x) any wholly owned Subsidiary may merge into a Borrower in a transaction in which the Borrower is the surviving corporation and (y) any wholly owned Subsidiary may merge into or consolidate with any other wholly owned Subsidiary in a transaction in which the surviving entity is a wholly owned Subsidiary and no person other than a Borrower or a wholly owned Subsidiary receives any consideration, *provided* that if any such merger described in this clause (y) shall involve a Domestic Subsidiary, the surviving entity of such merger shall be a Domestic Subsidiary; and (iv) any Subsidiary which is not a Material Subsidiary may be wound up and dissolved.

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(b) Engage in any Asset Sale unless (i) such Asset Sale is for consideration at least 85% of which is cash, (ii) such consideration is at least equal to the fair market value of the assets being sold, transferred, leased or disposed of, (iii) the fair market value of all assets sold, transferred, leased or disposed of pursuant to this paragraph (b) and Section 6.05 of the Existing Credit Agreement shall not exceed (x) \$10,000,000 in any fiscal year or (y) \$20,000,000 in the aggregate and (iv) the Net Cash Proceeds are applied as required by Section 2.14.

SECTION 6.06 *Dividends and Distributions; Restrictions on Ability of Subsidiaries to Pay Dividends.* (a) Declare or pay, directly or indirectly, any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests or directly or indirectly redeem, purchase, retire or otherwise acquire for value (or permit any Subsidiary to purchase or acquire) any of its Equity Interests or set aside any amount for any such purpose; *provided, however,* that any wholly owned Subsidiary may declare and pay dividends or make other distributions to the holders of its Equity Interests, but other Subsidiaries which are not wholly owned may not make dividends or distributions and *provided further* that, as long as no Default or Event of Default shall have occurred and be continuing or result therefrom, after the Restatement Effective Date, Activision Holdings may purchase or redeem its capital stock for an aggregate amount which, if added to any funds used to redeem or purchase Convertible Subordinated Notes permitted under Section 6.14(b), does not exceed the Repurchase Amount. In no event may any Seasonal Advance be used to make any purchase or redemption of its stock hereunder.

(b) Permit its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Subsidiary to (i) pay any dividends or make any other distributions on its Equity Interests or (ii) make or repay any loans or advances to a Borrower or the parent of such Subsidiary except (w) for such encumbrances or restrictions existing under or by reason of (A) applicable law, (B) this Agreement and the other Loan Documents, (C) the Convertible Subordinated Note Documents, (x) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Borrower or a Subsidiary of a Borrower, (y) customary provisions restricting assignment of any agreement entered into by a Borrower or a Subsidiary in the ordinary course of business, and (z) any holder of a Lien permitted by Section 6.02 may restrict the transfer of the asset or assets subject thereto.

SECTION 6.07 *Transactions with Affiliates.* Except for transactions by or among Loan Parties, sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except that:

(a) a Borrower or any Subsidiary may engage in any of the foregoing transactions in the ordinary course of business at prices and on terms and conditions not less favorable to such Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties;

(b) dividends may be paid to the extent provided in Section 6.06;

(c) loans may be made and other transactions may be entered into between and among the Borrowers, the Subsidiaries and their respective Affiliates to the extent permitted by Sections 6.01 and 6.04;

(d) a Borrower or any Subsidiary may pay reasonable compensation to officers and directors in the ordinary course of business.

SECTION 6.08. [Intentionally omitted].

SECTION 6.09 *Interest Coverage Ratio.* Permit the Interest Coverage Ratio for (a) the six-month period ending September 30, 1999, (b) the nine-month period ending December 31, 1999 or (c) any

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period of four consecutive fiscal quarters thereafter, in each case taken as one accounting period, ended on the last day of the applicable fiscal quarter to be less than 5.00 to 1.00 for the Loan Parties on a consolidated basis.

SECTION 6.10 *Fixed Charge Coverage Ratio.* Permit the Fixed Charge Coverage Ratio of the Loan Parties on a consolidated basis for any period of four consecutive fiscal quarters in each case taken as one accounting period, ending on the last day of any fiscal quarter ending during

any period set forth below to be less than 1.0 to 1.0:

SECTION 6.11. [Intentionally omitted]

SECTION 6.12. [Intentionally omitted]

SECTION 6.13 *Minimum Tangible Net Worth.* (a) Permit Tangible Net Worth of the Loan Parties on a consolidated basis at any date set forth below to be less than the amount set forth opposite such date:

Fiscal Quarter	Amount
June 30, 2000	\$ 36,000,000
September 30, 2000	\$ 40,000,000
December 31, 2000	\$ 47,000,000
March 31, 2001	\$ 52,000,000
June 30, 2001	\$ 55,000,000
September 30, 2001	\$ 60,000,000
December 31, 2001	\$ 70,000,000
March 31, 2002	\$ 78,000,000

SECTION 6.14 *Limitation on Modifications of Indebtedness; Modifications of Certificate of Incorporation, By-laws and Certain Other Agreements, etc.* (a) Amend or modify, or permit the amendment or modification of, any provision of existing Indebtedness or of any agreement (including any purchase agreement, indenture, loan agreement or security agreement) relating thereto other than any amendments or modifications to Indebtedness which do not in any way materially adversely affect the interests of the Lenders, (b) make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Convertible Subordinated Notes, any Subordinated Debt, the Intercompany Note or any other Indebtedness that is expressly subordinated to the Obligations; *provided, however,* that, as long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, after the Restatement Effective Date Activision Holdings may redeem or purchase the Convertible Subordinated Notes for an aggregate amount which, if added to any funds used to redeem or purchase capital stock of Activision Holdings permitted under Section 6.06(a) hereof, does not exceed the Repurchase Amount, but no Seasonal Advance may be used for such redemption or purchase; (c) amend or modify, or permit the amendment or modification of, the Merger Agreement or any of the operating agreements entered into in connection therewith or any tax sharing agreement, in each case except for amendments or modifications which are not in any way adverse in any material respect to the interests of the Lenders or (d) amend, modify or change its Certificate of Incorporation (including by the filing or modification of any certificate of designation) or By-laws, or any agreement entered into by it, with respect to its Equity Interests (including any shareholders' agreement), or enter into any new agreement with respect to its Equity Interests, other than any amendments, modifications or changes pursuant to this clause (d) or any such new agreements pursuant to this clause (d) which do not in any way materially adversely affect the interests of the Lenders.

SECTION 6.15 *Limitation on Creation of Subsidiaries.* Establish or create any additional Subsidiaries; *provided* that the Borrowers may establish or create one or more Subsidiaries of the

Borrowers so long as (a) 100% of the Equity Interests of any new Domestic Subsidiary owned by a Loan Party (or all the Equity Interests of any new Foreign Subsidiary that is owned by any Loan Party, except that not more than 65% of the voting Equity Interests of any such Foreign Subsidiary shall be required to be so pledged) is upon the creation or establishment of any such new Subsidiary pledged and delivered to the Collateral Agent for the benefit of the Secured Parties under the Pledge Agreement and (b) upon the creation or establishment of any such new Domestic Subsidiary such Domestic Subsidiary becomes a party to the applicable Security Documents in accordance with Section 5.12 and the other Loan Documents.

SECTION 6.16 *Business.* With respect to Activision Holdings, engage in any business other than owning Equity Interests in Activision and Kaboom and, subject to compliance with Section 5.12 hereof, such other Subsidiaries as may be organized from time to time and with respect to Activision and other Subsidiaries, engage (directly or indirectly) in any business other than the businesses in which Activision and its Subsidiaries are engaged on the Closing Date and other businesses reasonably related thereto.

SECTION 6.17 *Fiscal Year; Accounting Changes.* Change its fiscal year end to a date other than March 31 or make any change in accounting treatment and reporting practices except as required by GAAP.

SECTION 6.18 *Minimum Undrawn Availability.* Other than during the period from August 15 to November 15 in each year, permit Undrawn Availability at any time to be less than an amount equal to 5% of the Formula Amount.

## ARTICLE VII

### *Events of Default*

In case of the happening of any of the following events ("*Events of Default*"):

(a) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan or the reimbursement with respect to any L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or any Fee or L/C Disbursement or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three Business Days;

(d) default shall be made in the due observance or performance by any Borrowers or any Subsidiary of any covenant, condition or agreement contained in Section 5.01(a), 5.05 or 5.08 or in Article VI;

(e) default shall be made in the due observance or performance by any Borrower or any Subsidiary or by UK Sub in any UK Charge Document of any covenant, condition or agreement contained in any Loan Document (other than those specified in (b), (c) or (d) above) and such default shall continue unremedied for a period of 30 days;

(f) any Loan Party or UK Sub shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness in a principal amount in excess of \$2,000,000, when and as the same shall become due and payable, or (ii) fail to observe or perform any other term,

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covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Borrower or any Subsidiary, or of a substantial part of the property or assets of any Borrower or a Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any Subsidiary or for a substantial part of the property or assets of any Borrower or a Subsidiary or (iii) the winding-up or liquidation of any Borrower or any Subsidiary; and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) any Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in (g) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any Subsidiary or for a substantial part of the property or assets of any Borrower or any Subsidiary, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take any action for the purpose of effecting any of the foregoing;

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$250,000 be rendered against any Borrower, any Loan Party or any combination thereof, unless the same shall be contested in good faith, the Borrowers have established reserves reasonably satisfactory to the Administrative Agent and enforcement shall be effectively stayed, satisfied, or discharged within forty (40) days or any action shall be legally taken by a judgment creditor to levy upon assets or properties of the Borrowers or any Loan Party to enforce any such judgment;

(j) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other such ERISA Events, could reasonably be expected to result in liability of the Borrowers and their ERISA Affiliates in an aggregate amount exceeding \$2,000,000;

(k) any security interest purported to be created by any Security Document or UK Charge Document shall cease to be, or shall be asserted by any Borrowers or any other Loan Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document security interest in the securities, assets or properties covered thereby, except to the extent that any such loss of perfection or priority results from the failure of the Collateral Agent to maintain possession of certificates representing securities pledged under the Pledge Agreement and except to the extent that such loss is covered by a lender's title insurance policy and the related insurer promptly after such loss shall have acknowledged in writing that such loss is covered by such title insurance policy;

(l) any of the Obligations shall cease to constitute "Senior Indebtedness" under and as defined in the Convertible Subordinated Note Indenture, any Subordinated Debt, the Intercompany Note or any Master Note;

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(m) there shall have occurred a Change in Control;

(n) issuance of a notice of Lien, levy, assessment, injunction or attachment against a material portion of the property of any Loan Party or UK Sub, or any portion of the Collateral shall be seized or taken by any Governmental Agency or the title or right of any Loan Party which is the owner of any material portion, or the Collateral shall have become the subject matter of any litigation which, in the opinion of the Required Lenders, could reasonably be expected upon final determination, to result in the impairment or loss of the security provided by the Security Documents;

(o) termination (other than as a result of any Asset Sale, merger or liquidation of a Subsidiary permitted hereunder) or breach of any Subsidiary Guarantee Agreement, or any Subsidiary Guarantor attempts to terminate, challenge the validity of, or its liability under, any such Subsidiary Guarantee Agreement or UK Sub attempts to challenge the validity of, or its liability under the Intercompany Note or any UK Charge Document;

then, and in every such event (other than an event with respect to any Borrower described in paragraph (g) or (h) above), and at any time thereafter

during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrowing Agent, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrowers accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding; and in any event with respect to any Borrower described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrowers accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding.

The Administrative Agent shall have the right in its sole discretion to determine which rights, Liens, security interests or remedies the Administrative Agent may at any time pursue, relinquish, subordinate, or modify or to take any other action with respect thereto and such determination will not in any way modify or affect any of the Administrative Agent's or Collateral Agent's or Lenders' rights hereunder.

## ARTICLE VIII

### *The Administrative Agent and the Collateral Agent*

In order to expedite the transactions contemplated by this Agreement, PNC Bank, National Association, is hereby appointed to act as Administrative Agent and Collateral Agent on behalf of the Lenders and the Issuing Bank (for purposes of this Article VIII, the Administrative Agent and the Collateral Agent are referred to collectively as the "Agents"). Each of the Lenders and each assignee of any such Lender, hereby irrevocably authorizes the Agents to take such actions on behalf of such Lender or assignee or the Issuing Bank and to exercise such powers as are specifically delegated to the Agents by the terms and provisions hereof and of the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. As to any matters not expressly provided for by this Agreement (including without limitation, collection of the Obligations) the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from

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acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or as otherwise required by Section 9.08(b)), and such instructions shall be binding; *provided, however*, that the Agents shall not be required to take any action which exposes either of them to liability or which is contrary to this Agreement or the other Loan Documents or applicable law unless the Agents are furnished with an indemnification reasonably satisfactory to each of them with respect thereto. The Administrative Agent is hereby expressly authorized by the Lenders and the Issuing Bank, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders and the Issuing Bank all payments of principal of and interest on the Loans, all payments in respect of L/C Disbursements and all other amounts due to the Lenders hereunder, and promptly to distribute to each Lender or the Issuing Bank its proper share of each payment so received; (b) to give notice on behalf of each of the Lenders to the Borrowers of any Event of Default specified in this Agreement of which the Administrative Agent has actual knowledge acquired in connection with its agency hereunder; and (c) to distribute to each Lender copies of all notices, financial statements and other materials delivered by the Borrowers or any other Loan Party pursuant to this Agreement or the other Loan Documents as received by the Administrative Agent. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents.

Agents shall have no duties or responsibilities except those expressly set forth in the Loan Documents. Neither the Agents nor any of their respective directors, officers, employees or agents shall be liable as such for any action taken or omitted by any of them except for its or his own gross negligence or willful misconduct, or be responsible for any statement, warranty or representation herein or in any Loan Document or the contents of any document delivered in connection herewith, or be required to ascertain or to make any inquiry concerning the performance or observance by the Borrowers or any other Loan Party of any of the terms, conditions, covenants or agreements contained in any Loan Document. The Agents shall not be responsible to the Lenders for the due execution, genuineness, validity, enforceability or effectiveness of this Agreement or any other Loan Documents, instruments or agreements. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any of the other Loan Documents, or to inspect the properties, books or records of the Borrowers or any other Loan Party. The duties of the Agents as respects the Loans to the Borrowers shall be mechanical and administrative in nature; the Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon the Agents any obligations in respect of this Agreement except as expressly set forth herein.

The Agents shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders (or as otherwise required by Section 9.08(b)) and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Lenders. Each Agent shall, in the absence of actual knowledge to the contrary, be entitled to rely on any instrument or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons. Neither the Agents nor any of their respective directors, officers, employees or agents shall have any responsibility to the Borrowers or any other Loan Party on account of the failure of or delay in performance or breach by any Lender or the Issuing Bank of any of its obligations hereunder or to any Lender or the Issuing Bank on account of the failure of or delay in performance or breach by any other Lender or the Issuing Bank or the Borrowers or any other Loan Party of any of their respective obligations hereunder or under any other Loan Document or in connection herewith or therewith. Each of the Agents may execute any and all duties hereunder by or through agents or employees and shall be entitled to rely upon the advice of legal counsel selected by it with respect to all matters arising hereunder and shall not be liable for any action taken or suffered in good faith by it in

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accordance with the advice of such counsel and the term "Lender" or any similar term shall, unless the context clearly otherwise indicates, include the Administrative Agent and the Collateral Agent in its individual capacity as a Lender.

The Agents shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before making of the Loans or at any time or times thereafter except as shall be provided by the Borrowers pursuant to the terms of this Agreement. The Agents shall not be responsible to any Lender for any recitals, statements, information, representations or warranties herein or in any agreement, document, certificate or a statement delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Agreement or any other Loan Document, or of the financial condition of Borrowers, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement, the other Loan Documents or the financial condition of the Borrowers or any of its subsidiaries, or the existence of any Event of Default or any Default.

Either Agent may resign on sixty (60) days' written notice to each of the Lenders and the Borrowers and upon such resignation, the Required Lenders will promptly designate a successor Administrative Agent or Collateral Agent, as the case may be, reasonably satisfactory to the Borrowers.

Any such successor Administrative Agent or Collateral shall succeed to the rights, powers and duties of the Administrative Agent or Collateral Agent, and the term "the Administrative Agent" or "the Collateral Agent" shall mean such successor Agent effective upon its appointment, and the former Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Agent. After any Agent's resignation, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement.

If either Agent shall request instructions from Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, such Agent shall be entitled to refrain from such act or taking such action unless and until it shall have received instructions from the Required Lenders; and neither Agent shall incur liability to any person by reason of so refraining. Without limiting the foregoing, Lenders shall not have any right of action whatsoever against either Agent as a result of its acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders.

The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, telex, teletype or telecopier message, cablegram, order or other document or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person or entity, and, with respect to all legal matters pertaining to this Agreement and the Loan Documents and its duties hereunder, upon advice of counsel selected by it. The Agents may employ agents and attorneys-in-fact and shall not be liable for the default or misconduct of any such agents or attorneys-in-fact selected by the applicable Agent with reasonable care.

No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder or under the other Loan Documents, unless it has received notice from a Lender or the Borrowers referring to this Agreement or the other Loan Documents, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that an Agent receives such a notice, it shall give notice thereof to the Lenders. The Agents shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; *provided, that*, unless and until the Agents shall have received such directions, the Agents may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of Lenders.

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The Lenders hereby acknowledge that neither Agent shall be under any duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement unless it shall be requested in writing to do so by the Required Lenders.

With respect to the Loans made by it hereunder, each Agent in its individual capacity and not as Agent shall have the same rights and powers as any other Lender and may exercise the same as though it were not an Agent, and the Agents and their Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrowers or any Subsidiary or other Affiliate thereof as if it were not an Agent.

Each Lender agrees (a) to reimburse the Agents, on demand, in the amount of its pro rata share (based on the aggregate amount of its outstanding Revolving Credit Commitments hereunder) of any expenses incurred for the benefit of the Lenders by the Agents, including counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, that shall not have been reimbursed by the Borrowers and (b) to indemnify and hold harmless each Agent and any of its directors, officers, employees or agents, on demand, in the amount of such pro rata share, from and against any and all liabilities, taxes, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against it in its capacity as Agent or any of them in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by it or any of them under this Agreement or any other Loan Document, to the extent the same shall not have been reimbursed by the Borrowers or any other Loan Party, *provided* that no Lender shall be liable to an Agent or any such other indemnified person for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent or any of its directors, officers, employees or agents. Each Revolving Credit Lender agrees to reimburse the Issuing Bank and its directors, employees and agents, in each case, to the same extent and subject to the same limitations as provided above for the Agents.

Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

## ARTICLE IX

### *Miscellaneous*

SECTION 9.01 *Notices*. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight

courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(a) if to the Borrowers or the Borrowing Agent, to Activision, Inc. at 3100 Ocean Park Blvd., Santa Monica, California 90405, Attention of Chief Financial Officer (Telecopy No. 310-255-2191);

(b) if to the Administrative Agent, to PNC Bank, National Association, Two Tower Center Boulevard, East Brunswick, New Jersey 08816, Attention of Ryan Peak (Telecopy No. 732-220-4315) with a copy to PNC Bank, National Association, 2 North Lake Ave., Suite 940, Pasadena, California 91109, Attention of Albert Perez (Telecopy No. 626-432-4589); and

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(c) if to a Lender, to it at its address (or telecopy number) set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender shall have become a party hereto.

Any party may change the directions for delivery of notices hereunder by notice delivered in accordance with this Section 9.01. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01.

**SECTION 9.02 *Survival of Agreement.*** All covenants, agreements, representations and warranties made by the Borrowers herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and the Issuing Bank and shall survive the making by the Lenders of the Loans and the issuance of Letters of Credit by the Issuing Bank, regardless of any investigation made by the Lenders or the Issuing Bank or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not been terminated. The provisions of Sections 2.16, 2.18, 2.19, 2.23 and 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank.

**SECTION 9.03 *Binding Effect.*** This Agreement shall become effective when it shall have been executed by the Borrowers and the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

**SECTION 9.04 *Successors and Assigns.*** (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrowers, the Administrative Agent, the Issuing Bank or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) Each Lender may assign to one or more assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided, however*, that (i) except in the case of an assignment to a Lender or an Affiliate or Related Fund of such Lender, (x) the Borrowers and the Administrative Agent (and, in the case of any assignment of a Revolving Credit Commitment, the Issuing Bank) must give their prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed); *provided, however*, that the consent of the Borrowers shall not be required to any such assignment during the continuance of any Event of Default described in subsection (g) or (h) of Article VII, and (y) the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 (or, if less, the entire remaining amount of such Lender's Commitment) or such lesser amount as the Borrowers and the Administrative Agent may from time to time agree (such agreement to be conclusively evidenced by the execution of the related Assignment and Acceptance by all the

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parties thereto), (ii) the parties to each such assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together (except in the case of any assignment to an Affiliate or a Related Fund) with a processing and recordation fee of \$3,500 and (iii) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. Upon acceptance and recording pursuant to paragraph (e) of this Section 9.04, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.16, 2.20 and 9.05, as well as to any Fees accrued for its account and not yet paid).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Revolving Credit Commitment, and the outstanding balances of its Revolving Loans, in each case without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance, (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrowers or any

Subsidiary or the performance or observance by the Borrowers or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in Section 3.05(a) or delivered pursuant to Section 5.04 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive and the Borrowers, the Administrative Agent, the Issuing Bank, the Collateral Agent and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register

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shall be available for inspection by the Borrowers, the Issuing Bank, the Collateral Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above and, if required, the written consent of the Borrowers, the Issuing Bank and the Administrative Agent to such assignment, the Administrative Agent shall (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Lenders and the Issuing Bank. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e).

(f) Each Lender may without the consent of the Borrowers, the Issuing Bank or the Administrative Agent sell participations to one or more banks or other entities in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided, however*, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other entities shall be entitled to the benefit of the cost protection provisions contained in Sections 2.16 and 2.18 to the same extent as if they were Lenders and (iv) the Borrowers, the Administrative Agent, the Issuing Bank and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right to enforce the obligations of the Borrowers relating to the Loans or L/C Disbursements and to approve any amendment, modification or waiver of any provision of this Agreement (other than amendments, modifications or waivers decreasing any fees payable hereunder or the amount of principal or the rate at which interest is payable on the Loans, extending any scheduled principal payment date or date fixed for the payment of interest on the Loans, increasing or extending the Commitments or releasing any Subsidiary Guarantor or all or any substantial part of the Collateral).

(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.04, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrowers furnished to such Lender by or on behalf of the Borrowers; *provided* that, prior to any such disclosure of information designated by the Borrowers as confidential, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary exceptions) to preserve the confidentiality of such confidential information on terms no less restrictive than those applicable to the Lenders pursuant to Section 9.16.

(h) Any Lender may at any time assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; *provided* that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrowers, the option to provide to the Borrowers all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrowers pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making

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of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.04, any SPC may (i) with notice to, but without the prior written consent of, the Borrowers and the Administrative Agent and without paying any processing fee therefore, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the

Borrowers and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

(j) No Borrower shall assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent, the Issuing Bank and each Lender, and any attempted assignment without such consent shall be null and void.

(k) In the event that Standard & Poor's Ratings Group, Moody's Investors Service, Inc., and Thompson's BankWatch (or InsuranceWatch Ratings Service, in the case of Lenders that are insurance companies (or Best's Insurance Reports, if such insurance company is not rated by Insurance Watch Ratings Service)) shall, after the date that any Lender becomes a Revolving Credit Lender, downgrade the long-term certificate deposit ratings of such Lender, and the resulting ratings shall be below BBB-, Baa3 and C (or BB, in the case of a Lender that is an insurance company (or B, in the case of an insurance company not rated by InsuranceWatch Ratings Service)), then the Issuing Bank shall have the right, but not the obligation, at its own expense, upon notice to such Lender and the Administrative Agent, to replace (or to request the Borrowers to use their reasonable efforts to assist in the replacement of) such Lender with an assignee (in accordance with and subject to the restrictions contained in paragraph (b) above), and such Lender hereby agrees to transfer and assign without recourse (in accordance with and subject to the restrictions contained in paragraph (b) above) all its interests, rights and obligations in respect of its Revolving Credit Commitment to such assignee; *provided, however*, that (i) no such assignment shall conflict with any law, rule and regulation or order of any Governmental Authority and (ii) the Issuing Bank or such assignee, as the case may be, shall pay to such Lender in immediately available funds on the date of such assignment the principal of and interest accrued to the date of payment on the Loans made by such Lender hereunder and all other amounts accrued for such Lender's account or owed to it hereunder.

SECTION 9.05 *Expenses; Indemnity.* (a) The Borrowers jointly and severally agree to pay all out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, and the Issuing Bank in connection with the syndication of the credit facilities provided for herein and the preparation and administration of this Agreement and the other Loan Documents or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions hereby or thereby contemplated shall be consummated) or incurred by the Administrative Agent, the Collateral Agent or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Loans made or Letters of Credit issued hereunder, including the fees, charges and disbursements of counsel for the Administrative Agent and the Collateral Agent, and, in connection with any such

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enforcement or protection, the fees, charges and disbursements of any other counsel for the Administrative Agent, the Collateral Agent or any Lender.

(b) The Borrowers jointly and severally agree to indemnify the Administrative Agent, the Collateral Agent, each Lender and the Issuing Bank, each Affiliate of any of the foregoing persons and each of their respective directors, officers, trustees, employees and agents (each such person being called an "*Indemnitee*") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated thereby, (ii) the use of the proceeds of the Loans or issuance of Letters of Credit, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, or (iv) any actual or alleged presence or Release of Hazardous Materials on any property owned or operated by any Borrowers or any of the Subsidiaries, or any Environmental Claim related in any way to any Borrowers or the Subsidiaries; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank. All amounts due under this Section 9.05 shall be payable on written demand therefor.

SECTION 9.06 *Right of Setoff.* If an Event of Default shall have occurred and be continuing, each Lender or any affiliate of a Lender is hereby authorized at any time and from time to time, except to the extent prohibited by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or any affiliate of a Lender to or for the credit or the account of any Borrowers against any of and all the obligations of the Borrowers now or hereafter existing under this Agreement and other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although such obligations may be unmatured. The rights of each Lender and its affiliate under this Section 9.06 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.07 *Applicable Law.* THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN LETTERS OF CREDIT AND AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. EACH LETTER OF CREDIT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OR RULES DESIGNATED IN SUCH LETTER OF CREDIT, OR IF NO SUCH LAWS OR RULES ARE DESIGNATED, THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 500 (THE "*UNIFORM CUSTOMS*") AND, AS TO MATTERS NOT GOVERNED BY THE UNIFORM CUSTOMS, THE LAWS OF THE STATE OF NEW YORK.

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SECTION 9.08 *Waivers; Amendment.* (a) No failure or delay of the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial



exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrowers or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrowers in any case shall entitle the Borrowers to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders; *provided, however*, that no such agreement shall (i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any interest on any Loan or any date for reimbursement of an L/C Disbursement, or waive or excuse any such payment or any part thereof, or decrease the rate of interest on any Loan or L/C Disbursement or any Fees, without the prior written consent of each Lender affected thereby, (ii) change or extend the Commitment or decrease or extend the date for payment of the Commitment Fees of any Lender without the prior written consent of such Lender, (iii) amend or modify the pro rata requirements of Section 2.20, the provisions of Section 9.04(i), the provisions of this Section, the definition of the term "Required Lenders" or release any Subsidiary Guarantor or all or any substantial part of the Collateral, without the prior written consent of each Lender (iv) amend or modify the protections afforded to an SPC pursuant to the provisions of Section 9.04(i) without the written consent of such SPC, or (v) increase the Advance Rates above the Advance Rates in effect on the Restatement Effective Date, without the prior written consent of each Lender; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Collateral Agent or the Issuing Bank hereunder or under any other Loan Document without the prior written consent of the Administrative Agent, the Collateral Agent or the Issuing Bank, respectively.

(c) In the event that the Administrative Agent requests the consent of a Lender pursuant to this Section 9.08 and such Lender shall not respond or reply to the Administrative Agent in writing within 5 days of delivery of such request, such Lender shall be deemed to have consented to the matter that was the subject of the request. In the event that the Administrative Agent requests the consent of a Lender and such consent is denied, then PNC may, at its option, require such Lender to assign its interest in the Obligations to PNC or to another Lender or to any other Person designated by the Administrative Agent (the "*Designated Lender*") for a price equal to the then outstanding principal amount thereof plus accrued and unpaid interest and fees due such Lender, which interest and fees shall be paid when collected from Borrowers. In the event that PNC elects to require any Lender to assign its interest to PNC, or a Designated Lender, PNC will so notify such Lender in writing within 45 days following such Lender's denial, and such Lender will assign its interest to PNC or the Designated Lender no later than 5 days following receipt of such notice pursuant to an Assignment and Acceptance Agreement executed by such Lender, PNC or the Designated Lender, as appropriate, and the Administrative Agent.

SECTION 9.09. [Intentionally Deleted]

SECTION 9.10 *Entire Agreement*. This Agreement, the Fee Letter and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any

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other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 9.11 *WAIVER OF JURY TRIAL; CONSEQUENTIAL DAMAGES*. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11. Neither the Administrative Agent, the Collateral Agent nor any Lender, nor any agent or attorney for any of them, shall be liable to any Borrowers or any other Loan Party for consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations.

SECTION 9.12 *Severability*. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.13 *Counterparts*. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 9.03. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 9.14 *Headings*. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.15 *Jurisdiction; Consent to Service of Process*. (a) Each Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal

court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender may otherwise have to

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bring any action or proceeding relating to this Agreement or the other Loan Documents against any Borrowers or its properties in the courts of any jurisdiction.

(b) Each Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.16 *Confidentiality*. The Administrative Agent, the Collateral Agent, the Issuing Bank, and each of the Lenders agrees to keep confidential (and to use its best efforts to cause its respective agents and representatives to keep confidential) the Information (as defined below) and all copies thereof, extracts therefrom and analyses or other materials based thereon, except that the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender shall be permitted to disclose Information (a) to such of its respective officers, directors, employees, agents, affiliates and representatives as need to know such Information, (b) to a potential assignee or participant of such Lender or any direct or indirect contractual counterparty in any swap agreement relating to the Loans or such potential assignee's or participant's or counterparty's advisors who need to know such Information (provided that any such potential assignee or participant or counterparty shall, and shall use its best efforts to cause its advisors to, keep confidential all such information on the terms set forth in this Section 9.16, (c) to the extent requested by any regulatory authority, (d) to the extent otherwise required by applicable laws and regulations or by any subpoena or similar legal process, (e) in connection with any suit, action or proceeding relating to the enforcement of its rights hereunder or under the other Loan Documents or (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 9.16 or (ii) becomes available to the Administrative Agent, the Issuing Bank, any Lender or the Collateral Agent on a nonconfidential basis from a source other than a Borrower. For the purposes of this Section, "Information" shall mean all financial statements, certificates, reports, agreements and information (including all analyses, compilations and studies prepared by the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender based on any of the foregoing) that are received from any Borrower and related to such Borrower, any Subsidiary, any shareholder of the Borrowers or any employee, customer or supplier of the Borrowers, other than any of the foregoing that were available to the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to its disclosure thereto by the Borrowers, and which are in the case of Information provided after the date hereof, clearly identified at the time of delivery as confidential. The provisions of this Section 9.16 shall remain operative and in full force and effect regardless of the expiration and term of this Agreement.

SECTION 9.17 *Delivery of Notes*. Agent shall in good faith use commercially reasonable efforts to request and obtain from each Lender and Terminating Lender the delivery of any promissory note evidencing the Term Loan made by such Lender or Terminating Lender. After receipt thereof, the Administrative Agent shall immediately mark such promissory notes "cancelled" and return them to the Borrower as soon as reasonably practicable. Each Lender and the Administrative Agent on behalf of each of the Terminating Lenders hereby confirms the cancellation and release of the Borrower's obligations under such promissory notes and agrees to indemnify and hold harmless the Borrowers from any loss, damage, claim or liability (including reasonable fees and disbursements of its attorneys and all costs and expenses of enforcing this indemnity) arising out of the presentation of such promissory notes by any person or entity to whom such Lender or Terminating Lender transferred,

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assigned, pledged, hypothecated, created a security interest in or otherwise encumbered such promissory note or related to the loss or theft of such note.

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IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ACTIVISION, INC.,  
a Delaware corporation

By \_\_\_\_\_

Name:  
Title:

ACTIVISION PUBLISHING INC.,  
a Delaware corporation

By \_\_\_\_\_

Name:  
Title:

EXPERT SOFTWARE, INC.,  
a Delaware corporation

By \_\_\_\_\_

Name:  
Title:

ACTIVISION VALUE PUBLISHING, INC.,  
a Minnesota corporation

By \_\_\_\_\_

Name:  
Title:

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IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

PNC BANK, NATIONAL ASSOCIATION,  
individually and as Administrative Agent, Collateral  
Agent and Issuing Bank,

By \_\_\_\_\_

Name:  
Title:

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IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

COMERICA BANK

By \_\_\_\_\_

Name:  
Title:

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IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

GUARANTY BUSINESS CREDIT CORPORATION  
d/b/a Fidelity Funding

By \_\_\_\_\_

Name:  
Title:

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IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

LASALLE BANK NATIONAL ASSOCIATION

By \_\_\_\_\_

Name:  
Title:

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IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

U.S. BANK NATIONAL ASSOCIATION

By \_\_\_\_\_

Name:

Title:

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Schedule 2.01	Lenders and Commitments
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EXHIBIT 21.1

PRINCIPAL SUBSIDIARIES OF THE REGISTRANT

Name of subsidiary	State or Other Jurisdiction of Incorporation or Organization
Activision Publishing, Inc.	Delaware
Kaboom.com, Inc.	Delaware
Activision Australia Pty Ltd.	Australia
Activision International B.V.	The Netherlands
Activision Deutschland GmbH	Germany
Activision GmbH	Germany
Activision Productions, Inc.	Delaware
Activision Texas, Inc.	Texas
Activision Canada, Inc.	Canada
Activision International Holdings, Inc.	California
Activision Value Publishing, Inc.	Minnesota
Elsinore Multimedia, Inc.	Florida
Neversoft Entertainment, Inc.	California
Activision U.K. Ltd.	United Kingdom
CD Contact Data GmbH	Germany
CD Contact Data BV	The Netherlands
CentreSoft Ltd.	United Kingdom
ATVI France SARL	France
Combined Distribution (Holdings) Limited	United Kingdom
Contact Data Belgium N.V.	Belgium
Expert Software, Inc.	Delaware
Activision Vermögensverwaltungs GmbH	Germany
Activision Beteiligungs GmbH	Germany
NBG EDV Handels und Verlags GmbH & Co. KG	Germany
PDQ Distribution Ltd.	United Kingdom
Electric Dreams Ltd.	United Kingdom
Target Software Vertriebs GmbH	Germany

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**EXHIBIT 23.1**

**INDEPENDENT AUDITORS' CONSENT**

We hereby consent to the incorporation by reference in the registration statements Nos. 333-30303, 333-36949, 333-43961, 333-46425, 333-56879, 333-61571, 333-67707, 033-75878, 333-85385, 333-96079 and 333-94509 on Form S-3 and Nos. 333-06130, 333-12621, 333-06054, 333-40727, 333-61573, 333-81239, 033-48411, 033-63638, 033-68144, 033-91074, 333-85383, 333-36272 and 333-58922 on Form S-8 of Activision, Inc. of our report dated May 9, 2001 relating to the consolidated financial statements and financial statement schedule as of and for the year ended March 31, 2001 which appears in this Form 10-K.

PricewaterhouseCoopers LLP  
Los Angeles, CA  
June 22, 2001

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[INDEPENDENT AUDITORS' CONSENT](#)

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**EXHIBIT 23.2**

**INDEPENDENT AUDITORS' CONSENT**

We consent to the incorporation by reference in the registration statements Nos. 333-30303, 333-36949, 333-43961, 333-46425, 333-56879, 333-61571, 333-67707, 033-75878, 333-85385, 333-96079 and 333-94509 on Form S-3 and Nos. 333-06130, 333-12621, 333-06054, 333-40727, 333-61573, 333-81239, 033-48411, 033-63638, 033-68144, 033-91074, 333-85383, 333-36272 and 333-58922 on Form S-8 of Activision, Inc. of our report dated May 5, 2000, except as to Note 16, which is as of June 9, 2000, relating to the consolidated balance sheet of ACTIVISION, INC. and subsidiaries as of March 31, 2000 and the related consolidated statements of operations, changes in shareholders' equity, and cash flows for each of the years in the two-year period ended March 31, 2000, and the related financial statement schedule for each of the years in the two-year period ended March 31, 2000, which report appears in the March 31, 2001 annual report on Form 10-K of ACTIVISION, INC.

KPMG LLP

Los Angeles, California  
June 22, 2001

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[EXHIBIT 23.2](#)

[INDEPENDENT AUDITORS' CONSENT](#)