SECURITIES AND EXCHANGE COMMISSION

FORM 10-K

Annual report pursuant to section 13 and 15(d)

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MIDWAY GAMES INC

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Mailing Address	Business Address
2704 WEST ROSCOE STREET	*2704 WEST ROSCOE STREET*
CHICAGO IL 60618	*CHICAGO IL 60618*
	7739612222

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

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

For the fiscal year ended December 31, 2008

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 1-12367

MIDWAY GAMES INC.

(Exact name of registrant as specified in its charter)

Delaware	**22-2906244**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*
2704 West Roscoe Street, Chicago, Illinois	**60618**
(Address of principal executive offices)	*(Zip Code)*

Registrant' s telephone number, including area code: (773) 961-2222

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

Title of Each Class	Name of Each Exchange on Which Registered

Securities registered pursuant to Section 12(g) of the Act: Common Stock, $.01 par value.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act Yes ☐ No ☑

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

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 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 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. Yes ☐ No ☑

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☑

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☑

APPLICABLE ONLY TO REGISTRANTS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes ☐ No ☐

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The aggregate market value of the 11,222,001 shares of Common Stock held by non-affiliates of the registrant on June 30, 2008 was $24,688,402. This calculation was made using a price per share of Common Stock of $2.20, the closing price of the Common Stock on the New York Stock Exchange on June 30, 2008, the last business day of the registrant' s most recently completed second fiscal quarter. Solely for purposes of this calculation, all shares held by directors and executive officers of the registrant have been excluded. This exclusion should not be deemed an admission that these individuals are affiliates of the registrant. On March 24, 2009, the number of shares of Common Stock outstanding, excluding 1,285,430 treasury shares, was 92,254,925 shares.

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the proxy statement for the Registrant' s 2009 Annual Meeting of Stockholders are incorporated by reference into Part III.

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Midway® is our registered trademark. Our product names mentioned in this report are also our trademarks, except where we license them. Other product names mentioned in this report are the trademarks of their respective owners.

This report contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 which describe our plans, strategies and goals, our beliefs concerning future business conditions and our outlook based on currently available information that involves risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of these risks and uncertainties, including, without limitation, (1) the ability of the Company to continue as a going concern; (2) the ability of the Company to develop, pursue, confirm and consummate one or more plans of reorganization with respect to the Chapter 11 cases; (3) the ability of the Company to obtain approval of and operate pursuant to the agreement with its secured creditor for the use of its cash collateral; (4) the ability of the Company to obtain court approval of the Company's motions in the Chapter 11 proceeding pursued by it from time to time; (5) risks associated with third parties seeking and obtaining court approval to terminate or shorten the exclusivity period for the Company to propose and confirm one or more plans of reorganization, or the appointment of a Chapter 11 trustee or to convert the cases to Chapter 7 cases; (6) the ability of the Company to obtain and maintain normal terms with vendors and service providers; (7) the ability of the Company to maintain contracts that are critical to its operations; (8) potential adverse developments with respect to the Company's liquidity or results of operations; (9) the ability of the Company to fund and execute its business plan; (10) the ability of the Company to retain and compensate key executives and other key employees; (11) the ability of the Company to attract and retain customers; and (12) any further deterioration in the macroeconomic environment or consumer confidence. Where possible, we have identified these forward-looking statements by words such as "may," "will," "should," "could," "expect," "eventually," "anticipate," "plan," "strategy," "believe," "estimate," "seek," "intend" and similar expressions.

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MIDWAY GAMES, INC.

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The parenthetical references below are to information incorporated by reference from the registrant' s Notice of Annual Meeting of Shareholders and Proxy Statement for its 2009 Annual Meeting of Shareholders ("Proxy Statement") to be filed on or prior to April 30, 2009.

(1) Proxy Statement sections entitled "Nominees for Directors," "Board Committees and Meetings," "Audit Committee Matters," "Corporate Governance," and "Section 16(a) Beneficial Ownership Reporting Compliance."

(2) Proxy Statement sections entitled "Compensation of Executive Officers and Directors," "Compensation Committee Interlocks and Insider Participation" and "Reports of the Committees of the Board − Compensation Committee Report."

(3) Proxy Statement sections entitled "Beneficial Ownership of Directors and Executive Officers," "Securities Authorized for Issuance under Equity Compensation Plans" and "Beneficial Ownership of More Than Five Percent of Any Class of Voting Securities."

(4) Proxy Statement sections entitled "Transactions with Related Persons, Promoters and Certain Control Persons" and "Director Independence."

(5) Proxy Statement section entitled "Independent Auditors' Fees."

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PART I

Item 1. Business.

Business Overview

We develop and publish interactive entertainment software for the global video game market. We and our predecessor companies have been in the business of creating video games for more than 20 years and have published over 400 titles in that time. Our games are available for play on the major home video game consoles and handheld game platforms, including Microsoft' s *Xbox 360*, Nintendo' s *Wii* and *Nintendo DS ("NDS"),* and Sony' s *PlayStation 3 ("PS3")* and *PlayStation Portable ("PSP")*. We began releasing games for this current generation of consoles beginning in 2006 (2007 for *PS3*). We have continued to release games for prior generation home consoles and handheld game platforms such as Microsoft' s *Xbox*, Nintendo' s *GameCube ("NGC")* and *Game Boy Advance ("GBA")* and Sony' s *PlayStation 2 ("PS2")*, but are currently investing most of our development resources in the creation of games for the current generation home consoles and handheld game platforms. We also develop and publish games for personal computers ("PCs").

Midway is a Delaware corporation that was formed in 1988. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to these reports are available free of charge through our website at www.investor.midway.com as soon as reasonably practicable after we electronically file or furnish these materials to or with the Securities and Exchange Commission ("SEC"). We have adopted a code of business conduct and ethics that applies to our Principal Executive Officer, our Principal Financial Officer and our Principal Accounting Officer. The code can be found on our website at www.investor.midway.com. We will provide, without charge, a copy of our Code of Business Conduct and Ethics upon request to: Investor Relations, Midway Games Inc., 2704 West Roscoe Street, Chicago, Illinois 60618. We will disclose any waiver to this code for our Principal Executive Officer, Principal Financial Officer or Principal Accounting Officer by means of a posting on our website. Our website home page is located at www.midway.com. Information contained on our website is not a part of this report.

As of March 24, 2009, approximately 87.2% of our common stock was beneficially owned by Acquisition Holdings Subsidiary I LLC. MT Acquisition Holdings LLC is the sole member of the Acquisition Holdings Subsidiary I LLC.

Change in Control / Bankruptcy Filing

On November 28, 2008, each of Mr. Sumner M. Redstone, National Amusements, Inc. ("NAI"), of which Mr. Redstone is the Chairman, and Sumco, Inc., which is owned jointly by both NAI and Mr. Redstone (collectively, the "Sellers") entered into a Stock Purchase Agreement with Acquisition Holdings Subsidiary I LLC (the "Purchaser"), pursuant to which the Sellers sold to the Purchaser, and the Purchaser purchased from the Sellers, all of the shares of common stock, $0.01 par value (the "Common Shares") of the Company beneficially owned by the Sellers immediately prior to such sale, representing, collectively, approximately 87.2% of the total issued and outstanding Common Shares of Midway.

Concurrently with the execution of the Stock Purchase Agreement, NAI and the Purchaser entered into a Participation Agreement, pursuant to which NAI granted to the Purchaser, and the Purchaser acquired from NAI, (i) an undivided interest and participation in certain of the loans and advances made by NAI, whether before or after the date of the Participation Agreement, pursuant to the Loan and Security Agreement (as defined below) and the Unsecured Loan Agreement (as defined below) and (ii) all of NAI' s right, title and interest in, to and under the Loan and Security Agreement and the Unsecured Loan Agreement including guarantees, collateral, pledges, distributions, claims and causes of actions against the borrowers thereunder, all on the terms and conditions set forth in the Participation Agreement. The consideration paid by the Purchaser for the interests acquired under the Stock Purchase Agreement and the Participation Agreement was $100,000. See "Financing Arrangements" for definitions of the various loan agreements with NAI.

That sale of a majority interest in Midway triggered change in control provisions with respect to our 6.0% Convertible Senior Notes due 2025 (the "6.0% Notes") and our 7.125% Convertible Senior Notes due 2026

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(the “7.125% Notes,” and together, the “Notes”). The change in control provision gave holders of the Notes the option to require us to repurchase their Notes in January 2009 at the principal amount of the Notes plus accrued and unpaid interest, aggregating approximately $153 million. Through separate waivers and forbearances signed by holders of the Notes, the repurchase date was extended until February 12, 2009. As of that date, we did not have the liquidity to satisfy our obligation with respect to the repurchase of the Notes at the holders’ option. A failure to repurchase the Notes would have constituted an event of default under the terms of the Indentures for the Notes, which would allow the Trustee under each Indenture or the holders of 25% of each series of the Notes to declare all of the Notes of that series immediately due and payable.

Additionally, any failure to satisfy our obligation to repurchase the Notes would have had consequences under the February 29, 2008, (i) Loan and Security Agreement between certain of Midway’ s affiliates as borrowers and NAI as lender, (ii) Unsecured Loan Agreement between Midway as borrower and NAI as lender and (iii) Subordinated Unsecured Loan Agreement (as defined below) between Midway as borrower and NAI as lender (collectively, the “NAI Agreements”). Specifically, the lender under the NAI Agreements would have the option in such a circumstance to declare all amounts outstanding under the NAI Agreements immediately due and payable. Borrowings under the NAI Agreements totaled approximately $90 million as of February 12, 2009. Despite the waivers and forbearances agreed to with the holders of the Notes, we did not have the ability to satisfy our obligations to repay these amounts. See “Financing Arrangements” for definitions of the separate NAI Agreements.

On February 12, 2009, Midway and its U.S. subsidiaries (“the Debtors”) filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) seeking relief under the provisions of Chapter 11 of the United States Bankruptcy Code (collectively, the “Chapter 11 Cases”). Since that date, the Debtors have been operating as debtors-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court. The Company’ s foreign subsidiaries were not included in the Chapter 11 Cases.

The filing of the Chapter 11 Cases constituted an event of default under the NAI Agreements and each of the Indentures for the Notes. Under the terms of the NAI Agreements, upon an event of default the Purchaser may declare all amounts outstanding immediately due and payable. Upon an event of default under the Indentures for the Notes the aggregate principal amount of the Notes of $150 million, and any premium and accrued and unpaid interest, became immediately due and payable without any declaration or other act on the part of the Trustee or any holder of the Notes.

Cost Reduction Initiatives

In August 2008, we cancelled a specific game which resulted in a workforce reduction in our Austin, Texas facility. The majority of the headcount reduction of 86 employees occurred in August 2008. The cancelled game resulted in charges, including impairment and writedown of related software development costs, severance pay, accrued vacation pay and licensing and other charges, totaling approximately $11.7 million during the third quarter of 2008. Approximately $10.2 million of the total charges were non-cash in nature.

In December 2008, we announced a reduction in force affecting approximately 180 full-time employees, or 25% of our workforce. The employee terminations affected substantially all of our functional groups, including all remaining employees at our Austin, Texas, studio and substantial reductions in force in our Chicago, Illinois, and San Diego, California, locations. Also, we suspended several of our non-core prototype games in development. As a result of these actions, we recorded charges of approximately $2.6 million during the fourth quarter of 2008 for expenses incurred related to severance and accrued vacation owed to terminated employees.

Development of Our Business

Our product development efforts are focused on the creation of a portfolio of titles in the action/fighting, open-world and casual/handheld video game genres. Our product development strategy is focused on leveraging core games with proven track records. The *Mortal Kombat* franchise is the best example of our proven games. This franchise has sold in excess of 20 million units across nine major home console releases, and has been successfully leveraged into film and television. The *Mortal Kombat vs. DC Universe* title released in November 2008 has sold

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over 1.9 million units and is one of our most successful titles. Since 2002, we have released the following titles that have exceeded one million units in sales:

Mortal Kombat vs. DC Universe (2008);

TNA iMPACT! (2008);

Unreal Tournament 3 (2008);

Game Party (2007);

Stranglehold (2007);

Rampage: Total Destruction (2007);

Happy Feet (2006);

Mortal Kombat: Armageddon (2006);

Blitz: The League (2005);

Mortal Kombat: Shaolin Monks (2005);

Mortal Kombat: Deception (2004);

NBA Ballers (2004);

Midway Arcade Treasures (2003); and

Mortal Kombat: Deadly Alliance (2002).

We have also licensed entertainment intellectual properties, such as plots, artwork, brands, characters and titles, from leading entertainment companies in order appeal to a mass-market audience. The most recent of these arrangements led to the 2008 release of *TNA Impact!*, a videogame based upon TNA Entertainment' s *Total NonStop Action Wrestling*, a professional wrestling league which airs weekly television programs and monthly pay-per-view specials.

In February 2009, we entered into an agreement with Ubisoft Entertainment, S.A. ("Ubisoft"), a third-party publisher and developer, to publish *Wheelman*, an open-world driving game starring actor Vin Diesel. Ubisoft handles sales, marketing, and distribution of *Wheelman* in North America, South America, Australia, New Zealand, France, Germany, Austria, Ireland and the United Kingdom. *Wheelman* was released in March 2009. We continued to own and direct the development of the title through completion, will retain all future rights to the franchise and are selling the title in all other European territories. We believe this arrangement will enable us to maximize our current cash flow while providing us rights to additional future royalties if sales meet or exceed expectations.

We seek to attract and retain the highest quality development talent to support our product development efforts. As of February 28, 2009, we maintained five internal product development teams staffed with approximately 350 developers to support our creative efforts. We have entered into game development agreements with third-party development groups to leverage their expertise in a specific genre or take advantage of a proven intellectual property created by that team. We are not, however, dependent upon one or several third-party developers, and employ a combination of internal and third-party developers to create most of our titles.

For further information about our financial condition, assets, results of operations and cash flows, see our consolidated financial statements, including the notes to the consolidated financial statements and "Item 7. Management' s Discussion and Analysis of Financial Condition and Results of Operations."

Financing Arrangements

On February 29, 2008, Midway Home Entertainment Inc. and Midway Amusement Games, LLC ("Borrowers"), and Midway Games Inc., Midway Games West Inc., Midway Interactive Inc., Midway Sales Company, LLC, Midway Home Studios Inc., Surreal Software Inc., Midway Studios-Austin Inc., and Midway Studios-Los Angeles Inc. ("U.S. Credit Parties") terminated the Amended and Restated Loan and Security Agreement by and among the

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Borrowers, U.S. Credit Parties, the Lenders that are signatories thereto and Wells Fargo Foothill, Inc. (as the Arranger and Administrative Agent, and UK Security Trustee) and entered into a Loan and Security Agreement by and among the Borrowers and U.S. Credit Parties and NAI (the "Loan and Security Agreement"). Also on February 29, 2008, Midway Games Inc. entered into an Unsecured Loan Agreement with NAI (the "Unsecured Loan Agreement") and a Subordinated Unsecured Loan Agreement with NAI (the "Subordinated Unsecured Loan Agreement," together with the Loan and Security Agreement and the Unsecured Loan Agreement, the "NAI Agreements"). The NAI Agreements provide for up to $90,000,000 in total availability. The Loan and Security Agreement provides up to $30,000,000 under which we have a $20,000,000 term loan and a revolving line of credit of up to $10,000,000. The Unsecured Loan Agreement provides for a $40,000,000 revolving line of credit and the Subordinated Unsecured Loan Agreement provides for up to a $20,000,000 revolving line of credit.

NAI transferred its ownership of the Loan and Security Agreement and the Unsecured Loan Agreement to the Purchaser, who now acts as our lender under these agreements. The filing of the Chapter 11 Cases constituted an event of default under the NAI Agreements. Under the terms of the NAI Agreements, upon an event of default the Purchaser has the option to declare all amounts outstanding immediately due and payable. See Note 8 to our consolidated financial statements for further details on the NAI Agreements.

On September 15, 2008, two of the Company' s wholly-owned subsidiaries, Midway Home Entertainment Inc. ("MHE") and Midway Amusement Games, LLC ("MAG"), entered into a Factoring Agreement (the "Factoring Agreement") with NAI. Pursuant to the Factoring Agreement, NAI purchased from MHE certain of MHE' s accounts receivable invoices. MHE sold such accounts receivable invoices to NAI on an as-needed basis for the purpose of creating sufficient cash flow for working capital to finance inventory and fund operations related to the Company' s product offerings in the fourth quarter of 2008. The period during which MHE sold accounts receivable invoices under the Factoring Agreement expired on December 31, 2008. MHE was not committed to sell any accounts receivable invoices but subject to certain eligibility criteria and certain other conditions precedent, NAI was committed to purchase accounts receivable invoices by paying purchase prices in an aggregate not to exceed $40,000,000, provided that availability under the commitment was replenished to the extent NAI receives collections of accounts receivable invoices it has purchased.

Under the Factoring Agreement, MHE submitted accounts receivable invoices to be purchased by NAI, and NAI paid to MHE a purchase price equal to the face amount of such purchased accounts receivable invoices minus an amount for dilution, a factoring fee, and an interest component. As servicing agent, MAG received a servicing fee of 0.15% on the gross invoice amount of each accounts receivable invoice purchased.

During 2008, MHE sold receivables in the amount of $47,552,000 (net of $14,972,000 of dilution) to NAI under the Factoring Agreement, recorded $308,000 and $189,000 of factoring fees and interest expense, respectively, and received $94,000 of servicing fees.

Industry Overview

The interactive entertainment industry is comprised of hardware manufacturers, independent publishers and third-party developers. The hardware manufacturers focus primarily on the development and manufacture of hardware platforms for game play, including home game consoles which connect to a television set and self-contained handheld platforms. The hardware manufacturers also develop and publish video game software for their respective platforms in an effort to distinguish their hardware products in the marketplace. The independent publishers are in the business of developing, publishing and, in some cases, distributing video game software. Titles published by these groups can either be developed internally or through relationships with third-party developers. Third-party developers are principally focused on game development and contract with independent publishers or hardware manufacturers for the publishing and distribution of their games.

The Home Console and Handheld Platform Market. Historically, there have been multiple console platforms available in the market and strong competition between console manufacturers. The success of a title on a given platform is, to an extent, dependent upon the market acceptance of that platform.

Video game software for home consoles and handheld platforms is created by the platform manufacturers and by independent publishers using internal product development teams or independent developers contracted on a

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project-by-project basis. Platform manufacturers grant licenses to publishers to publish games for their platforms; however, they retain a significant degree of control over the content, quality and manufacturing of these games. The publishers have the right to determine the types of games they will create subject to concept, content and quality approval by the platform manufacturers.

Historically, a new generation of more technologically advanced game consoles has reached the market approximately every four to six years. Each new generation of these platforms has the capability to permit developers to create more realistic and exciting games. At the beginning of each new generation, or cycle, during the period of rapid growth in the installed base of the new generation of consoles, software sales for the new consoles have historically experienced periods of rapid expansion, as an increasing number of new console owners purchase video games for the new consoles. At the end of each cycle, when the introduction of the next-generation of home consoles is announced, hardware and software sales related to the older generation of platforms generally diminish, and prices are discounted, as consumers defer and decrease purchases in anticipation of the new platforms and games. The time period from the first announcement of the introduction of the first next-generation home consoles until these new consoles supplant the older-generation consoles in terms of software sales is referred to in the industry as the home console transition period. The industry has emerged from the previous home console transition period as each of the three main competitors (Sony, Microsoft and Nintendo) have had their latest home console platforms, or current generation consoles, in place for the past two to four years. The primary home consoles for which we have been developing video games in recent years can be summarized by period as follows:

Previous Generation Home Consoles	Current Generation Home Consoles
- Sony' s *PS2*	- Sony' s *PS3*
- Nintendo' s *NGC*	- Nintendo' s *Wii*
- Microsoft' s *Xbox*	- Microsoft' s *Xbox 360*

Substantially all of our current development activity is focused on video games for the current generation home consoles. Microsoft launched the first current generation home console platform, *Xbox 360*, in November 2005 in the U.S. and December 2005 in Europe. Nintendo released its current generation home console platform, the *Wii*, in November 2006 in the U.S. and then in Europe and Japan in December 2006. Finally, Sony released its current generation home console platform, the *PS3*, in November 2006 in both the U.S. and Japan and in March 2007 in Europe.

The handheld platform market is largely dominated by Nintendo whose previous generation products include *Game Boy, GBA* and *GBA SP*, and current generation product *NDS,* which was released in November 2004. Sony introduced its handheld game platform, *PSP,* in Japan in 2004 and in North America in March 2005.

The Personal Computer Game Market. The market for PC games is similar to the home console video games market in many respects, including development processes and costs, time to market and marketing processes and costs. Unlike console games, with the exception of certain first-party designations such as Microsoft' s *Games for Windows*, PC games do not require approval from, or royalties to, any hardware manufacturer as do console games. Therefore, there are fewer barriers to entry in this market and the number of products offered to consumers is much greater. The PC games market is not subject to video game console cycles and consequently gives publishers the ability to use PC game sales to soften the variability of console revenues during the home console transition periods.

The Online and Wireless Markets. Technologies such as the internet and wireless devices have created potential new revenue opportunities for video game software publishers. Online functionality in a game can be as simple as the ability to post game scores to a public leaderboard or as complex as head-to-head online play. This online functionality may provide improved game play and, for certain games, make them more compelling and marketable. Generally, these online features have been incidental to the overall product offering for our video games.

Business models are emerging that provide distinct revenue opportunities for online functionality in games. In addition, more games are becoming available for play on wireless devices such as cell phones and personal digital assistants. A console or PC publisher may license the wireless rights to games to third parties who create and sell wireless products based on the licensed intellectual properties. As the market for wireless products grows significantly, publishers for other platforms are increasingly creating and marketing their own wireless games.

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Distribution. Software for video game platforms is sold by mass merchandise retailers, such as Wal-Mart and Best Buy, or by regional retailers, discount store chains, video rental retailers, internet-based retailers, software specialty retailers and entertainment software distributors. In addition, we have agreements with digital distribution providers in the United States and Europe which facilitate the download and purchase of our PC games. Video game software publishers either distribute their products directly to these retailers or sell them through national distributors.

Our Business Strategy

Our corporate objectives are to improve our market share, achieve profitability and establish a leadership position within the global interactive entertainment industry. We believe our ability to achieve these objectives depends on our execution of the following strategies:

Leverage core competencies and established franchises

An important part of our product focus is leveraging our established franchises and developing video games in genres in which we have a demonstrated competency, including action/fighting and casual/handheld video games, and open-world video games which are viewed to have high potential.

Action/Fighting Games − Midway has a demonstrated competency in fighting games such as *Mortal Kombat* and *TNA iMPACT!*. Many of the games we have released over the past 20 years have been best-sellers and have attracted loyal fan bases. The popularity of many of our games has enabled us to successfully market sequels, including sequels for *Mortal Kombat.* The latest sequel in the *Mortal Kombat* series that we released in November 2008 for *PlayStation 3* and *Xbox 360*, *Mortal Kombat vs. DC Universe*, proved to be our best selling game of 2008. The strength of our brands, the advanced nature of our technology, and our ability to leverage a common core fighting engine across our internal development teams gives us a strategic advantage in this genre both in terms of cost and quality.

Open-World Games − We have devoted significant resources to the development of open-world games that are more ambitious in terms of functionality and interaction. These games offer consumers increased playability and multiple experiences within a single video game, such as driving, fighting and shooting. Though we have not developed open-world games such as *Wheelman* (released in March 2009) and *This is Vegas* (scheduled for release in late 2009) in the past, we believe that our success with other action games increase our likelihood of success in this genre. Open-world video games produced by other publishers have been very successful, and we believe these types of games may develop into a source of increased revenue growth in the near future.

Casual/Handheld Games − Midway has a long history making the types of games that are ideal for the casual and the handheld game market: fun, fast-paced, short play-cycle games that appeal to a mass audience. In fact, many of the games we released into this market have been successful and profitable, such as *Game Party*, *Game Party 2*, *TouchMaster* and *Midway Arcade Treasures. Game Party*, a casual game initially released in November 2007 for *Wii*, has sold well over two million units. Its sequel, *Game Party 2*, was released in October 2008 and is anticipated to be similarly successful. We intend to continue to leverage our franchises to create popular titles for play on traditional console platforms and new gaming mediums. We also control the intellectual property rights to numerous classic video game titles, including titles originally released under the Midway, Williams and Atari brands. We have leveraged this large library of proven intellectual properties by releasing numerous collections of "arcade classics" for home consoles, handheld platforms and the PC.

Third-party and PC games markets

We will continue to seek arrangements to market third-party games, especially in international markets, where we believe we can generate significant sales and operating margins. We had increased our investment and resources in PC game development in 2007, but plan to reduce the focus on PC games in the future in order to commit the resources necessary for our home console and handheld platform video games. Our revenues from PC games declined in 2008 compared to 2007.

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Continue international presence

Our United Kingdom, German and French subsidiaries are responsible for sales, marketing and distribution in Europe, Australia the Middle East and Africa. France and Germany are currently the second and third largest, respectively, console video game markets in Europe, and second and first largest, respectively, in terms of PC video game markets. We believe that directly marketing our products in foreign markets will produce higher sales and lower costs than if we relied solely on the use of third-party distributors. In addition, to expand our presence outside of North America, we have developed titles such as *Wheelman*, which is set in Barcelona, Spain, that we believe will have a stronger global appeal. We are also publishing and distributing third-party games in Europe that we believe will generate significant sales.

Products

We sell games primarily in North America, Europe and Australia for the major current generation video game platforms, including Sony' s *PS3* and *PSP*; Microsoft' s *Xbox 360*; and Nintendo' s *Wii* and *NDS*. We also sell games for previous generation platforms such as Microsoft' s *Xbox,* Nintendo' s *NGC* and *GBA* and Sony' s *PS2*, as well as for the PC, but these mostly represent sequels of previously released games; substantially all newly developed games are created for current generation platforms. Most of our video games currently have suggested retail prices on the initial release date in North America ranging from $19.99 to $59.99 for home console games, $19.99 to $29.99 for handheld games and $19.99 to $49.99 for PC games. Most of our video games currently have suggested retail prices on the initial release date in international markets ranging from $30.00 to $80.00 for home console games, $30.00 to $50.00 for handheld games and $30.00 to $50.00 for PC games. Retail price ranges for our frontline current generation video games on the initial release date have increased from those for our previous platform releases.

We receive license or royalty fees from third parties for the use of certain intellectual property. These third parties use our intellectual property to, among other things, sell video games in parts of the world where we do not currently conduct business, convert video games to play on alternative platforms (e.g., wireless phones), and include our video games or intellectual property in products, software or online services they offer.

Many of our games incorporate a variety of online capabilities and features. Online functionality may increase the playability of certain games and make them more compelling and marketable. In 2008, we released our first retail downloadable asset on the *Xbox Live* server that is an add-on to a previously-released console game. We anticipate releasing more of these retail add-on downloads in the future.

From time to time, we purchase distribution rights to games under development by third parties. Some of these games are sequels to games that have previously been successful releases.

Historically, a limited number of products have generated a disproportionately large amount of our revenues. In 2008, 2007 and 2006, our *Mortal Kombat* video games accounted for 34.8%, 13.3% and 22.4% of our revenues, respectively.

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2008 Video Game Releases

During 2008, we released the following video games:

Video Game Title	Platform	Territory
Blitz: The League II	*PS3, Xbox 360*	North America, International
Game Party 2 / More Game Party	*Wii*	North America, International
Mechanic Master	*NDS*	North America, International
Midway Arcade.com	*PC*	North America
Mortal Kombat Kollection	*PS2*	North America
Mortal Kombat vs. DC Universe	*PS3, Xbox 360*	North America, International
Mortal Kombat vs. DC Universe: Kollector's Edition	*PS3, Xbox 360*	North America
NBA Ballers: Chosen One	*PS3, Xbox 360*	North America, International
Stranglehold: Expansion Pack	*PS3, Xbox 360*	North America
TNA iMPACT!	*PS3, Xbox 360, Wii, PS2*	North America, International
TouchMaster 2 / More TouchMaster	*NDS*	North America, International
Unreal Tournament 3	*Xbox 360*	North America, International
Blacksite: Area 51	*PS3*	International
Cruis'n	*Wii*	International
Foster's Home for Imaginary Friends: Imagination Invaders	*NDS*	International
Game Party	*Wii*	International
Hour of Victory	*PC*	International
PopStar Guitar	*Wii*	International
Sins of a Solar Empire	*PC*	International
Unreal Tournament 3	*PS3*	International

2007 Video Game Releases

During 2007, we released the following video games:

Video Game Title	Platform	Territory
Aqua Teen Hunger Force: Zombie Ninja Pro-Am	*PS2*	North America, International
Big Buck Hunter	*PC*	North America
Blacksite: Area 51	*Xbox 360; PC*	North America, International
Blacksite: Area 51	*PS3*	North America
Blitz: The League	*Xbox 360*	International
Cocoto Racers	*NDS*	International
Cruis'n	*Wii*	North America
Foster's Home for Imaginary Friends: Imagination Invaders	*NDS*	North America
Game Party	*Wii*	North America
Hot Brain	*PSP*	North America, International
Hour of Victory	*Xbox 360*	North America, International
Mortal Kombat: Armageddon	*Wii*	North America, International
Myst	*NDS*	International
Stranglehold	*Xbox 360; PC; PS3*	North America, International
The Ant Bully	*Wii*	International
The Bee Game	*NDS; GBA*	North America
The Grim Adventures of Billy & Mandy	*Wii*	International
The Lord of the Rings Online: Shadows of Angmar	*PC*	North America
TouchMaster	*NDS*	North America, International
Ultimate Mortal Kombat	*NDS*	North America, International
Unreal Tournament 3	*PC*	North America, International
Unreal Tournament 3	*PS3*	North America

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2009 Products

We expect our 2009 releases to include *This Is Vegas,* a lifestyle action experience game, for *Xbox 360*, *PS3* and PC; *Game Party 3*, the third installment of this successful franchise, for the *Wii*; and other as-yet-unannounced titles for multiple platforms. We released *Wheelman* for *Xbox 360, PS3* and PC in March 2009.

Product Development

We seek to develop video games that are engaging and entertaining, and which provide sufficient challenges at various levels of proficiency to encourage repeated play. Each concept is reviewed initially for viability and evaluated relative to several factors, including consumer purchase intent and whether the proposed product fits within our general strategy and profitability objectives. Our management team meets regularly to formally review and evaluate the progress and quality of each title in development. Our game development personnel are organized into teams. We are focused on sharing the technologies and resources developed by one team among the other teams in order to maximize our development efficiency and provide our teams with the tools to produce the best video games possible.

The internal product development teams operate in studio environments that encourage creativity, productivity and cooperation. We believe that this environment, together with a compensation structure that rewards development teams for the success of their games, enables us to attract and retain highly talented game developers. We currently have product development studios in Chicago, Illinois; San Diego, California; Seattle, Washington; and Newcastle, England.

We expect the development cycle for video games for the current generation of consoles to range from 12 to 48 months, compared to a development cycle of 12 to 36 months for games on the previous generation of consoles, depending on the specific software requirements. We expect our costs related to developing titles on the current generation of consoles will generally range between $8 million to $50 million per title, which is substantially higher than costs incurred to develop the previous generation titles, which have ranged from $4 million to $16 million. Because of the greater complexity of the technology and software involved, both the time and cost to develop games have generally increased for the current generation of consoles.

Our current game development, including all of our anticipated 2009 title releases, is primarily focused on the current generation home consoles. We expect that the next generation of home consoles will be developed and available for commercial use over the next three to five years. We also anticipate that the game engines, technologies and art resources used currently will continue to be useful through the remainder of the current generation console cycle.

We use both our own internal teams and independent third parties to develop video games. We select third parties based on their capabilities, suitability, availability and cost. Our contracts with these developers generally provide that we own the video game developed and protect the confidentiality of the development process and work product. We believe that as a result of consolidation in our industry, there are now fewer highly skilled independent developers available to us. Competition for highly skilled developers is intense in our industry, and we may not be successful in attracting and retaining these developers.

We are required to submit games to the platform manufacturers (primarily Microsoft, Nintendo and Sony) for approval prior to publishing a game for their platforms. Additionally, prior to release, each product undergoes careful quality assurance testing which involves technical review of each component of the final product and testing on the applicable platforms.

We endeavor to comply with the rules established by a domestic ratings board voluntarily established by the video game industry and some foreign countries' ratings boards, and we label our products with these ratings.

We incurred research and development expenses of $32.9 million in 2008 compared to $25.4 million in 2007 and $37.0 million in 2006. See also Note 4 to our consolidated financial statements for information about capitalized product development costs.

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Marketing and Distribution

We market our video games under the Midway trademark. We market through our internal sales staff and through independent sales representatives, distributors and resellers, including:

- mass merchandisers;
- foreign, national and regional retailers;
- discount store chains; and
- video rental retailers.

It is customary for the independent sales representatives and distributors of our video games who are assigned specific customers to also distribute games produced by other publishers. Distribution channels are dominated by a select group of companies, and a publisher' s access to retail shelf space is a significant competitive factor. As a result of our efforts to maintain high product quality and our commitment to increase promotion of our products, we have been able to obtain shelf space for our product line with key retailers and distributors.

Our principal customers are mass merchandisers such as Wal-Mart, Best Buy and Target and software specialty retailers such as GameStop. In 2008 and 2007, GameStop and Wal-Mart were our two largest customers. Sales to GameStop and Wal-Mart represented 14.8% and 11.9% of our total net revenues, respectively, in 2008 and 14.9% and 10.2%, respectively, in 2007. In 2008 and 2007, respectively, 43.4% and 41.1% of our net revenues were attributable to our five largest customers, and 57.0% and 53.7% of our net revenues were attributable to our ten largest customers.

We warrant to our customers that the medium on which our software is recorded is free from defects for a period of 90 days. Historically, defective product returns have not been significant relative to our total net revenues.

Our selling and distribution efforts are supported by marketing programs, which emphasize early product awareness through focused public relations efforts that precede our media spending, brand recognition, dealer merchandising opportunities and celebrity endorsements. Our marketing activities include television, on-line and print advertising, retail store promotions, direct mailings, user support programs and our website. We also use a store-oriented marketing approach, which includes point-of-purchase promotions, use of display cards and other forms of merchandise displays. We provide technical support for our products through a customer support department, which is staffed by personnel trained to respond to customer inquiries. We are continuing to focus our marketing resources on the enhancement of pre-launch awareness and visibility of our games with consumers, using the internet and long-term advance planning and staged information release. Additionally, we continue to commit significant spending on media advertising and retail marketing for all titles, with a particular emphasis on titles that we believe have the greatest chance for commercial success.

Our office in London, England sells directly to retailers and distributors in the United Kingdom, and through distribution relationships in Europe, the Middle East, Australia and South Africa. Our French office adds to our European distribution capabilities and sells our products directly to retailers and distributors in France. France currently is the second largest console and PC market in Europe. Our office in Germany allows us to sell directly to retailers and distributors in many other European territories. Germany is the third largest console territory, and the largest PC territory, in the European marketplace. We continue to explore other methods by which we can improve our distribution efficiency and grow our business in Europe and other international markets.

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The following table sets forth our North American and international net revenues for 2008, 2007 and 2006, respectively:

	Years Ended December 31,					
	2008		2007		2006	
	Net Revenues	%	Net Revenues	%	Net Revenues	%
	(Dollars in thousands)					
North America:						
United States	$135,079	61.5 %	$86,393	55.0 %	$116,714	70.5 %
Outside United States	8,654	4.0	10,307	6.5	7,398	4.5
Total North America	143,733	65.5	96,700	61.5	124,112	75.0
International	75,823	34.5	60,495	38.5	41,462	25.0
Total Net Revenues	$219,556	100.0%	$157,195	100.0%	$165,574	100.0%

Competition

The interactive entertainment software industry is highly competitive. It is characterized by the continuous introduction of new titles and the development of new technologies. Our competitors vary in size from very small companies with limited resources to very large corporations with greater financial, marketing and product development resources than ours.

The principal factors of competition in our industry are:

the ability to select and develop popular titles;

the ability to identify and obtain rights to commercially marketable intellectual properties; and

the ability to adapt products for use with new technologies.

Successful competition in our market is also based on price, access to retail shelf space, product quality, product enhancements, brand recognition, marketing support and access to distribution channels.

We compete with Microsoft, Nintendo and Sony, who publish software for their respective systems. We also compete with numerous companies licensed by the platform manufacturers to develop or publish software products for use with their respective systems. These competitors include Activision Blizzard, Atari, Capcom, Electronic Arts, Konami, Namco, Sega, Take-Two Interactive Software, THQ, and Ubisoft, among others. We face additional competition from the entry of new companies into our market, including large diversified entertainment companies.

Our competitors with greater resources are able to spend more time and money on concept and focus testing, game development, product testing and marketing. We believe that we have comparable access to distribution channels in North America; however, in Europe the distribution networks are segmented, the barriers to entry are high and some of our competitors have better access to these markets. There is also intense competition for shelf space among video game developers and publishers, many of whom have greater brand name recognition, significantly more titles and greater leverage with retailers and distributors than we do. Regardless of our competitors' financial resources or size, our success depends on our ability to successfully execute our competitive strategies.

We believe that a number of factors provide us with competitive opportunities in the industry, including the standardization of software development tools, the creation of libraries for storing and sharing artwork, and our ability to efficiently share developed assets across game development teams. We believe our product development team incentive structure allows us to attract and retain top quality talent and motivate our teams to efficiently develop successful games. In addition, we believe that our most popular franchise, *Mortal Kombat,* along with other successful titles such as *Game Party* and *TNA iMPACT!,* provide us with strong brand recognition and a competitive advantage in the marketing of our products.

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The number of new video game releases for PCs in a given year is much higher than the number of new video game releases for home consoles and handheld platforms. Although the barriers to entry in the PC market are lower because there are no publishing agreements with, or royalties to be paid, to hardware manufacturers, our future development focus will be on home console and handheld platform titles. We will continue to publish titles for the PC within established franchises but will reduce our emphasis on the development of games exclusively for the PC.

Manufacturing and Distribution

The manufacturers of the home and handheld video game platforms may manufacture our video games for us or require us to use their designees. The platform manufacturers charge us a fixed fee for each game title' s software disk or cartridge that they manufacture which is based upon a game title' s wholesale price, units manufactured and sales region. The fixed fee includes manufacturing, printing, and packaging fees as well as a royalty for the use of their technology and intellectual property, or a royalty if their third party designees perform the manufacturing. The platform manufacturer may change its fees without our consent. We believe that the platform manufacturers have plentiful sources of supply for the raw materials that they need to manufacture our products.

We contract with disk replicators for the manufacture of PC game units. There is competition in this manufacturing field, and we have the opportunity to negotiate the price of manufacturing these games and their packaging. We believe that these manufacturers also have plentiful sources of supply for the raw materials that they will need to manufacture our products. We are responsible in most cases for resolving, at our expense, any applicable warranty or repair claim. We have not experienced significant costs from warranty or repair claims in recent years.

Production is based upon estimated demand for each specific title. The level of inventory of finished goods depends upon anticipated market demand during the life of a specific game title. Most of our products are manufactured for us on an "as is" and "where is" basis, and delivery is at our expense and risk. Initial orders generally require from ten days to eight weeks to manufacture and ship depending on the platform. Reorders of disk-based products generally require ten to 24 days to manufacture and ship, while reorders of cartridge-based products require approximately five to seven weeks to manufacture and ship. Only Nintendo' s *GBA* and *NDS* use cartridges, while all home console, *PSP* and PC games are disk-based.

In 2007, we transitioned from leasing a distribution facility in Dallas, Texas to using a third-party warehouse facility managed by Technicolor Home Entertainment Services, Inc., a worldwide provider of inventory fulfillment and distribution services for packaged media. The warehouse facility is located in Livonia, Michigan, from which we distribute our video games throughout North America. We participate in the electronic data interchange program maintained by most of our large customers. The electronic data interchange program allows us to transmit purchase orders and invoices between us and our customers in an agreed-upon standardized format via electronic transmission between computer systems.

We generally fill re-orders from inventory within two days. As a result, our video games traditionally have no backlog of orders. We ship products to a customer only upon receipt of a purchase order from that customer. Due to the relatively short time frame needed to reorder inventory, we are generally able to manage our inventory levels to closely approximate actual orders received or anticipated to be received. We will generally receive information from our largest customers on their intended order quantities prior to placing our orders with the manufacturers.

We often provide markdowns or other credits on varying terms to customers holding slow-moving inventory of our video games. We often grant discounts to, and sometimes accept product returns from, these customers. At the time of product shipment, we establish allowances, including allowances under our practices for price protection, returns and discounts, which estimate the potential for future returns and markdowns of products based on historical return rates, seasonality of sales, retailer inventories of our products and other factors. If product returns and price adjustments exceed our allowances, we will incur additional charges, which would have an adverse affect on our results of operations.

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Licenses and Intellectual Property

Platform Licenses. The platform manufacturers require that publishers obtain a license from them to develop and market games for play on their platforms. Generally, we are required to pay royalties pursuant to these licenses, and such licenses are typically terminable by the licensor in the event of our breach of the license and other events. We have non-exclusive licenses from Microsoft, Nintendo and Sony under which we develop and market software products for their current platforms. Each platform manufacturer requires that the software and a prototype of each title, together with all related artwork and documentation, be submitted for its pre-publication approval. This approval is generally discretionary.

Upon expiration of a platform license, we usually have a limited period to sell off our inventory subject to that license, after which time any remaining inventory is generally required to be destroyed. Microsoft, Nintendo and Sony are among the largest publishers of software for use on their respective systems, and they compete directly with us. If game platform manufacturers refuse to license their platforms to us or do not manufacture our games on a timely basis or at all, our revenues would be adversely affected.

Intellectual Property Licenses. While we develop original proprietary games, some of our games are licensed from third-party developers or based on trademarks and other rights and properties owned by third parties, such as DC Comics, TNA Entertainment and television and film production studios. License agreements generally extend for a term of two to three years, are terminable in the event of a material breach on our part, including failure to pay any amounts owing to the licensor in a timely manner, and other events. Some licenses are limited to specific territories or platforms. Each license typically provides that the licensor retains the right to leverage the licensed property for all other purposes, including the right to license the property for use with other products and, in some cases, software for other interactive hardware platforms.

Patent, Trademark and Copyright Protection. Each software title may embody a number of separately protected intellectual property rights, including:

trademarks associated with elements of the game, such as team logos;

trademarks under which the game is marketed;

the copyrights for the game software, including the game' s audiovisual elements; and

the patents for inventions in the game software.

We have hundreds of trademark registrations worldwide associated with our games, and we apply for trademark protection for all of our game titles, other than those licensed from third parties. These registrations are renewable, potentially indefinitely, as long as we continue to use the trademarks. Notwithstanding our patent, copyright and trademark protection, our competitors can effectively compete against us or bring infringement actions against unauthorized duplication or use of software products.

Each console or handheld game also includes patents, copyrights and trademarks licensed from the platform manufacturer. Elements of some of our titles are owned by third parties and licensed to us. We rely on these third parties for protection of our licensed intellectual property rights. Their failure to adequately protect these rights could have a material adverse effect on our business.

The platform manufacturers incorporate security devices in the games that they manufacture for us, and also in their platforms, which seek to prevent unlicensed software products from being played on their platforms. We rely upon each platform manufacturer for protection of this intellectual property from infringement. We bear the risk of claims of infringement brought by third parties arising from the sale of software with respect to intellectual property supplied by third-party developers and embodied in our software products. Our agreements with these outside developers generally require the developers to indemnify us for costs and damages incurred in connection with these claims.

Seasonality

Our business is highly seasonal and we have generally experienced higher revenues in the quarter ended December 31 due to customer purchases before the year-end retail holiday selling season. We may also generate

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higher revenues in periods during which a major title release occurs. Significant working capital is required to finance high levels of inventories and accounts receivable during these periods.

Employees

As of February 28, 2009, we had approximately 540 full-time employees, approximately 350 of whom are members of our development staff and approximately 70 of whom are members of our sales and marketing staffs. We believe that our relations with our employees are satisfactory.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our principal corporate office is located at 2704 West Roscoe Street, Chicago, Illinois. Our design and development studios are located in San Diego, California; Seattle, Washington; Chicago, Illinois; and Newcastle, England. We principally conduct our marketing operations out of our offices in Chicago, Illinois; London, England; Paris, France; and Munich, Germany. We principally conduct our sales operations out of our offices in San Diego, California; London, England; Munich, Germany; and Paris, France. We use a third party warehouse and distribution facility, managed by Technicolor Home Entertainment Services, Inc., located in Livonia, Michigan. All of our properties are leased. See Note 16 to our consolidated financial statements for information regarding our lease commitments.

We believe that our facilities and equipment are suitable for the purposes for which they are employed, are adequately maintained and will be adequate for current requirements.

Item 3. Legal Proceedings.

We currently and from time to time are involved in litigation and disputes incidental to the conduct of our business, none of which, in our opinion, is likely to have a material adverse effect on us. No amounts have been accrued related to legal proceedings at December 31, 2008.

On February 12, 2009 (the "Petition Date"), Midway and its U.S.-based operating subsidiaries ("the Debtors") filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") seeking relief under the provisions of Chapter 11 of the United States Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Chapter 11 Cases are being jointly administered under the caption "Midway Games Inc., et al., Debtors, Case No. 09-10465(KG)." Included in the Consolidated Financial Statements are subsidiaries operating outside of the United States, which have not been involved in the Chapter 11 Cases or other similar proceedings elsewhere, and are not Debtors. As debtors-in-possession, the Debtors are authorized under Chapter 11 to continue to operate as an ongoing business, but may not engage in transactions outside the ordinary course of business without the prior approval of the Bankruptcy Court. As of the Petition Date, virtually all pending litigation (including some of the actions described below) is stayed, and absent further order of the Bankruptcy Court, no party, subject to certain exceptions, may take any action, again subject to certain exceptions, to recover on pre-petition claims against the Debtors. In addition, Debtors may reject pre-petition executory contracts and unexpired lease obligations, and parties affected by these rejections may file claims with the Bankruptcy Court. At this time, it is not possible to predict the outcome of the Chapter 11 Cases or their effect on the Company' s business.

Beginning on June 1, 2007, two shareholders' derivative lawsuits were filed against certain directors and officers of Midway Games Inc. ("Midway") and nominally against Midway in the Circuit Court of Cook County, Illinois: Rosenbaum Capital, LLC, Derivatively and on Behalf of Midway Games Inc., Plaintiff, vs. David F. Zucker, Thomas E. Powell, Deborah K. Fulton, Steven M. Allison, James R. Boyle, Miguel Iribarren, Kenneth D. Cron, Shari E. Redstone, William C. Bartholomay, Peter C. Brown, Joseph A. Califano, Jr., Ira S. Sheinfeld and Robert N. Waxman, Defendants, and Midway Games Inc., a Delaware corporation, Nominal Defendant and Murray Zucker, Derivatively and on Behalf of Midway Games Inc., Plaintiff, v. Thomas E. Powell, David F. Zucker, Deborah K. Fulton, Steven M. Allison, James R. Boyle, Miguel Iribarren, Kenneth D. Cron, Shari E. Redstone,

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William C. Bartholomay, Peter C. Brown, Joseph A. Califano, Jr., Ira S. Sheinfeld, and Robert N. Waxman, Defendants, and Midway Games Inc., a Delaware corporation, Nominal Defendant. The complaints allege that, between April 2005 and the present, defendants made misrepresentations to the investing public through their involvement in drafting, producing, reviewing, approving, disseminating, and or controlling the dissemination of statements that plaintiffs claim were false and misleading in violation of the securities laws, and that certain defendants sold Midway common stock on the basis of the alleged misrepresentations. Plaintiff also allege that defendants breached their fiduciary duties to Midway and its shareholders by failing in their oversight responsibility and by making or permitting to be made material false and misleading statements concerning Midway' s business prospects and financial condition. Plaintiffs seek to recover damages and to institute corporate governance reforms on behalf of Midway. On December 13, 2007, the Court dismissed the Zucker v. Powell, et al. lawsuit as duplicative of the Rosenbaum Capital LLC v. Zucker, et al. lawsuit, which remains pending. On February 22, 2008, Rosenbaum Capital, LLC filed an Amended Complaint, adding Sidney Kallman as an additional plaintiff and naming Robert Steele and Sumner Redstone as additional defendants. On May 22, 2008, all of the Defendants responded to the Amended Complaint with Motions to Dismiss. On July 16, 2008, the Plaintiffs filed a motion for an extension of time to respond to the directors' Motion to Dismiss in order to take discovery. By agreed order, briefing on the Motions to Dismiss and all discovery was stayed pending resolution of the Plaintiffs' motion. That motion was denied on October 20, 2008. On December 4, 2008, the Plaintiffs voluntarily dismissed the action, without prejudice.

Beginning on July 6, 2007, a number of putative securities class actions were filed against Midway, Steven M. Allison, James R. Boyle, Miguel Iribarren, Thomas E. Powell and David F. Zucker in the United States District Court, Northern District of Illinois. The lawsuits are essentially identical and purport to bring suit on behalf of those who purchased the Company' s publicly traded securities between August 4, 2005 and May 24, 2006 (the "Class Period"). Plaintiffs allege that defendants made a series of misrepresentations and omissions about Midway' s financial well-being and prospects concerning its financial performance, including decisions regarding reductions in force, our need to seek additional capital, and decisions by Sumner Redstone and his related parties with respect to their ownership or trading of our common stock, that had the effect of artificially inflating the market price of the Company' s securities during the Class Period. Plaintiffs also claim that defendants lacked a reasonable basis for our earnings projections, which plaintiffs alleged were materially false and misleading. Plaintiffs seek to recover damages on behalf of all purchasers of our common stock during the Class Period. The actions have all been consolidated, and on October 16, 2007, the Court appointed lead plaintiffs and lead counsel. Lead plaintiffs filed a Consolidated Amended Complaint on December 17, 2007, making the same allegations and asserting the same claims. Midway and the individual defendants filed motions to dismiss the Consolidated Amended Complaint in its entirety on February 15, 2008. Plaintiffs' filed a response to the motions on March 20, 2008 and the defendants filed replies on April 8, 2008. On February 20, 2009, Midway filed a suggestion of bankruptcy, informing the Court of Midway' s February 12, 2009 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware. In response, Plaintiffs filed a notice on March 3, 2009 voluntarily dismissing Midway from the action, without prejudice. The Court dismissed Midway from the case on March 11, 2009, terminating the action as to Midway. The action remains pending against the remaining defendants.

Item 4. Submission of Matters to a Vote of Security Holders.

We did not submit any matter during the fourth quarter of 2008 to a vote of our stockholders, through the solicitation of proxies or otherwise.

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Executive Officers. Below is information about our executive officers. There is no family relationship between any of our directors or executive officers.

Name and Age	Position(s) with Midway
Matthew V. Booty(42)	President and Chief Executive Officer
Ryan G. O' Desky(33)	Chief Financial Officer, Senior Vice President − Finance, Treasurer and Principal Accounting Officer
Deborah K. Fulton(45)	Senior Vice President, Secretary and General Counsel
Miguel Iribarren(42)	Senior Vice President − Publishing
Martin Spiess(43)	Executive Vice President − International (Midway Games Limited)

Biographical Information

Matthew V. Booty has served as our President and Chief Executive Officer since October 2008. Prior to that, Mr. Booty served us as Interim President and Chief Executive Officer from March 2008 until October 2008 and as Senior Vice President − Worldwide Studios from June 2005 until October 2008. Prior to that, he served as our Senior Vice President − Product Development between June 2004 and June 2008 and between June 1999 and June 2004, he served our wholly-owned subsidiary, Midway Amusement Games, LLC in various capacities in its product development organization, ultimately being promoted to Vice President − Product Development in June 2002.

Ryan G. O' Desky has been our Chief Financial Officer, Senior Vice President − Finance and Treasurer since November 2008. Prior to that Mr. O' Desky served us as Interim Chief Financial Officer, Vice President − Finance, Controller and Treasurer from February 2008 until November 2008. He also served us as Vice President − Finance, Controller, and Assistant Treasurer from November 2007 until February 2008 and served as Chief Internal Auditor from May 2007 to November 2007. Prior to joining us, from June 2002 until May 2007, Mr. O' Desky served as a Senior Manager of Audit within the Audit and Enterprise Risk Services Division of Deloitte & Touche LLP, a professional services firm. From 1998 to 2002, Mr. O' Desky served as an experienced senior auditor within the Assurance & Business Advisory Department of Arthur Andersen LLP, a professional services firm.

Deborah K. Fulton has served as our Senior Vice President, Secretary and General Counsel since January 30, 2002. She served us as Vice President, Secretary and General Counsel from May 2000 to January 2002. She was employed by us as Senior Counsel from 1998 until May 2000 and by WMS as Senior Counsel from 1994 to 1998. Formerly, she was employed by the law firm of Gardner Carton & Douglas from 1988 until 1994.

Miguel Iribarren has served as our Senior Vice President − Publishing since April 2008. He served us as Vice President − Publishing from July 2005 until April 2008 and prior to that as Vice President, Corporate Communications and Strategic Planning from February 2002 to July 2005. Prior to joining Midway, Mr. Iribarren was a Vice President, Research for Wedbush Morgan Securities, an investment banking and brokerage firm. At Wedbush, where he was employed from May 2000 to February 2002, Mr. Iribarren was responsible for research on the interactive entertainment industry. From 1994 to May 2000, Mr. Iribarren was employed by the Atlantic Richfield Corporation, an oil and gas company, in various finance and planning positions, ultimately serving as Manager, Corporate Finance.

Martin Spiess has served as the Executive Vice President − International of our wholly-owned subsidiary, Midway Games Limited, since April 2008. Prior to that, Mr. Spiess served Midway Games Limited as its Managing Director-Europe from May 2005 to April 2008. Prior to joining us, from February 2003 to March 2005 he was Senior Vice President of European marketing at Atari, Inc., a video game publisher and distributor. In his role as Senior Vice President of European marketing at Atari, Mr. Spiess was responsible for developing and implementing pan-European marketing strategies.

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PART II

Item 5. Market for Registrant' s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Until February 12, 2009, our common stock traded publicly on the NYSE under the symbol "MWY". The following table shows the high and low closing sale prices of our common stock for the periods indicated as reported on the NYSE:

Calendar Period	High	Low
2007		
First Quarter	$7.69	$5.93
Second Quarter	$7.52	$6.00
Third Quarter	$6.52	$4.25
Fourth Quarter	$4.37	$2.05
2008		
First Quarter	$2.70	$1.75
Second Quarter	$2.90	$2.02
Third Quarter	$3.94	$2.14
Fourth Quarter	$2.18	$0.18
2009		
First Quarter (through February 12, 2009)	$0.35	$0.16

On February 12, 2009, our common stock ceased trading on the NYSE and subsequently traded in the over-the-counter market under the symbol "MWYGQ." The high and low closing sale prices of our common stock in the over-the-counter market during the period of February 12, 2009 and March 24, 2009 were $0.11 and $0.04 respectively. On March 24, 2009, there were approximately 735 holders of record of our common stock.

Dividends. No cash dividends with respect to our common stock were declared or paid during 2008 or 2007. We plan to retain any earnings to fund the operation of our business. In addition, under the NAI Agreements, we are prohibited from paying cash dividends on our common stock. Although the terms of the 7.125% Notes do not prohibit our ability to declare or pay dividends on our common stock, the payment of dividends may result in an adjustment to the conversion rate of the 7.125% Notes.

Recent Sales of Unregistered Securities. None

Issuer Repurchases. None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers. Based upon information contained in a Schedule 13D/A, dated December 1, 2008, filed with the SEC by Mr. Sumner Redstone, NAI and Sumco, Inc. and the exhibits thereto, on November 28, 2008, each of Mr. Sumner M. Redstone, NAI and Sumco, Inc. (collectively, the "Sellers") entered into a Stock Purchase Agreement (the "Stock Purchase Agreement") with Acquisition Holdings Subsidiary I LLC (the "Purchaser"), pursuant to which the Sellers sold to the Purchaser, and the Purchaser purchased from the Sellers, all of the shares of our common stock, $0.01 par value, beneficially owned by the Sellers immediately prior to such sale, representing, collectively, approximately 87.2% of our total issued and outstanding common stock.

Item 7. Management' s Discussion and Analysis of Financial Condition and Results of Operations.

Overview

Midway continues to face significant challenges with respect to liquidity and capital resources. On February 12, 2009, the Registrant and its U.S. subsidiaries filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") seeking relief under the provisions of Chapter 11 of the United States Bankruptcy Code (the "Chapter 11 Cases"). As of the time of the filing of the Chapter 11 Cases, we

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are entirely dependent on our existing cash and income from future sales. We have no continuing outside sources of financing and we are fully borrowed under our existing debt agreements.

Due to the potential resolution of material events and uncertainties from the Chapter 11 Cases, the reported financial information is likely not indicative of future operating results or of future financial condition. See Notes 2 and 3 to our consolidated financial statements for further details.

We have one operating segment, developing and publishing interactive entertainment software (video games). We sell video games for play on home consoles, handheld devices and PCs to mass merchandisers, video rental retailers, software specialty retailers, internet-based retailers and entertainment software distributors. We sell games primarily in North America, Europe and Australia for the major video game platforms and handheld devices, including Sony' s *PlayStation 2* ("*PS2*"), *PlayStation 3* ("*PS3*") and *PlayStation Portable* ("*PSP*"); Microsoft' s *Xbox* and *Xbox 360;* Nintendo' s *Wii*, and the *Nintendo DS* ("*NDS*"); and also for personal computers ("PCs"). Most of our video games currently have suggested retail prices on the initial release date in North America ranging from $19.99 to $59.99 for home console games, $19.99 to $29.99 for handheld games and $19.99 to $49.99 for PC games. Most of our video games currently have suggested retail prices on the initial release date in international markets ranging from $30.00 to $80.00 for home console games, $30.00 to $50.00 for handheld games and $30.00 to $50.00 for PC games. We are currently developing games for all of the current generation home console platforms, including the *PS3*, the *Xbox 360* and the *Wii.* Retail price ranges for our current generation video games on the initial release date are higher than those for our previous generation platform releases. Additionally, we earn license and royalty revenue from licensing the rights to some of our video games and intellectual property to third parties.

Increasing Costs to Develop Video Games

Video games take longer to develop and have become increasingly more expensive to produce as the platforms on which they are played continue to advance technologically, and consumers demand continual improvements in the overall game play experience. We believe our internal product development will be more cost efficient for development of video games for the current generation consoles as we will be able to share and reuse technologies as opposed to creating technologies and developed assets across our internal studios.

Handheld Market

In November 2004, Nintendo launched a dual-screened, portable game system, the *NDS.* Sony also entered the handheld market with the introduction of the *PSP.* The *PSP* was released in Japan in December 2004, in the United States in March 2005 and in Europe in September 2005. We released our first games for the *PSP* and *NDS* in the fourth quarter of 2005 and fourth quarter of 2006, respectively. We have devoted more resources toward the handheld market as it has continued to become a larger part of the video game industry in recent years. During 2008, we released two new titles for the *NDS* and during 2007, we released one title for the *PSP* and six titles for the *NDS*.

PC Market

In addition to *Wheelman* starring Vin Diesel, which was released in March 2009, *This Is Vegas* is expected to be released for the PC in 2009. In July 2008, we launched www.midwayarcade.com where end users can download versions of our arcade classics and touch screen favorites. More than 25 classic titles, such as *Defender*, *Joust*, *Spy Hunter*, and *Mahki*, are now available for download, starting at $5.00 for three games. In addition, Midway also launched a digital storefront at www.midway.com. The new site is intended for the North American market and features ten recent Midway releases, starting at $9.99 per game. Revenues decreased in 2008 as we released fewer games played on the PC compared to 2007. Additionally in 2007, we had successful releases of *The Lord of the Rings Online: Shadows of Angmar*, *Stranglehold* and *Unreal Tournament 3* along with a number of additional titles for PCs.

Children' s Market

During 2005, we signed publishing agreements with Warner Bros. Interactive Entertainment, licensing several properties to develop video games based on both television programs and films in the children' s market. These agreements are multi-territory arrangements that include games for console, handheld and PC platforms. Video

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game sales for the children' s market had historically performed well, particularly on the older video game consoles and the handheld platforms, during a console transition period. We released the first title under these agreements, *Ed, Edd n' Eddy*, in the fourth quarter of 2005. In 2006, we released three titles under these agreements: *The Ant Bully, The Grim Adventures of Billy & Mandy* and *Happy Feet,* and in 2007 we released one more title under these agreements for the children' s market: *Foster' s Home for Imaginary Friends: Imagination Invaders.* There were no new releases for the children' s market in 2008.

Strategic Alliances

During 2005, we announced a strategic relationship with MTV Networks to jointly market three video game titles and collaborate on soundtrack development for two of these titles. *L.A. RUSH,* released in the fourth quarter of 2005 on the *PS2* and *Xbox,* was the first of the three titles to be released under the relationship. The second title under the MTV alliance, *Wheelman*, featuring the talents of Vin Diesel, was released in March 2009. This alliance with MTV is expected to help increase the overall marketing reach and exposure of our titles released under the agreement.

MTV is a subsidiary of Viacom Inc. Our largest stockholder until November 28, 2008, Sumner M. Redstone, served as Executive Chair of the board of directors of Viacom and is the Chair of the board of directors and Chief Executive Officer of National Amusements, Inc. ("NAI"). NAI is the parent company of Viacom. See Note 18 to the consolidated financial statements for further details on transactions with MTV and other entities controlled by Mr. Redstone.

Also during 2005, we announced a licensing agreement to release future video games based upon TNA Entertainment' s *Total NonStop Action Wrestling*, a professional wrestling alternative which airs weekly television programs and monthly pay-per-view specials. *TNA iMPACT!* was released in 2008.

In February 2006, we announced the broadening of our in-game advertising strategy and executed a multi-year, multi-game agreement with Double Fusion Inc. to provide dynamic, in-game advertising in future titles. We expect to work together with Double Fusion to integrate advertising campaigns into multiple next-generation titles. This agreement is expected to generate incremental revenue in addition to revenue from our existing static advertising placement strategy. Under this agreement, certain of our titles are slated to incorporate Double Fusion' s dynamic ad-serving technology to serve advertising campaigns which will be sold by Double Fusion' s worldwide sales force.

Issuance of Convertible Senior Notes

In 2005 and 2006 we completed private placements of convertible senior notes to fund general corporate expenditures. The first issuance was $75 million of 6.0% convertible senior notes due 2025 (the "6.0% Notes") resulting in net proceeds of approximately $72.3 million, and the second issuance consisted of $75 million of 7.125% convertible senior notes due 2026 (the "7.125% Notes," and together, the "Notes") resulting in net proceeds of approximately $72.7 million. The filing of the Chapter 11 Cases constituted an event of default under the Indentures for these notes and upon such event of default the aggregate principal amount of the Notes of $150 million, and any premium and accrued and unpaid interest, became immediately due and payable.

See Note 10 to the consolidated financial statements for details on the Notes.

Stock-based Compensation

We adopted the provisions of Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") SFAS No. 123R (revised 2004), *Share-Based Payment* ("SFAS No. 123R"), as amended by SFAS No. 148, *Accounting for Stock-Based Compensation − Transition and Disclosure − An Amendment of FASB No. 123*, on January 1, 2006, which requires that compensation cost relating to share-based payment transactions, including grants of stock options to employees, be recognized in financial statements based on the fair value of the award on its grant date. We adopted the modified-prospective application method allowed under SFAS No. 123R which requires compensation cost to be recognized for all stock awards issued subsequent to adoption, as well as the unvested portion of awards outstanding on the date of adoption. Prior to January 1, 2006, we accounted for stock-based awards under the provisions of Accounting Principles Board Opinion No. 25 and

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disclosed pro forma compensation expense quarterly and annually by calculating the stock option grants' fair value using the Black-Scholes model and disclosing the impact on loss applicable to common stock and the related per share amounts in a note to the consolidated financial statements. Upon adoption of SFAS No. 123R, pro forma disclosure is no longer an alternative.

See Note 13 to the consolidated financial statements for details on stock-based compensation and the impact of SFAS No. 123R.

Majority Stockholder

On November 28, 2008, each of Mr. Sumner M. Redstone, NAI, of which Mr. Redstone is the Chairman, and Sumco, Inc., which is owned jointly by both NAI and Mr. Redstone (collectively, the "Sellers") entered into a Stock Purchase Agreement with Acquisition Holdings Subsidiary I LLC (the "Purchaser"), pursuant to which the Sellers sold to the Purchaser, and the Purchaser purchased from the Sellers, all of the shares of common stock, $0.01 par value (the "Common Shares") of the Company beneficially owned by the Sellers immediately prior to such sale, representing, collectively, approximately 87.2% of the total issued and outstanding Common Shares of Midway.

Concurrently with the execution of the Stock Purchase Agreement, NAI and the Purchaser entered into a Participation Agreement, pursuant to which NAI granted to the Purchaser, and the Purchaser acquired from NAI, (i) an undivided interest and participation in certain of the loans and advances made by NAI, whether before or after the date of the Participation Agreement, pursuant to the Loan and Security Agreement (as defined below) and the Unsecured Loan Agreement (as defined below) and (ii) all of NAI' s right, title and interest in, to and under the Loan and Security Agreement and the Unsecured Loan Agreement including guarantees, collateral, pledges, distributions, claims and causes of actions against the borrowers thereunder, all on the terms and conditions set forth in the Participation Agreement. The consideration paid by the Purchaser for the interests acquired under the Stock Purchase Agreement and the Participation Agreement was $100,000. NAI transferred its ownership of the Loan and Security Agreement and the Unsecured Loan Agreement to the Purchaser, who now acts as our lender under these agreements. See "Financial Resources and Liquidity − Financing Arrangements and Factoring Agreement" for definitions of the various loan agreements with NAI.

As the majority voting stockholder of Midway, the Purchaser has the power, if exercised, and subject to the Chapter 11 Cases, to change our business strategies and policies, select all of the members of our Board of Directors and control all other stockholder votes. Under the bankruptcy statutes, these powers are now shared with certain creditors and the Bankruptcy Court. If the Purchaser were to sell its shares, the purchaser or purchasers of those shares might change our business strategies

Also as noted above, on February 12, 2009, the Company and its U.S. subsidiaries filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware seeking relief under the provisions of Chapter 11 of the United States Bankruptcy Code. The Company is operating as a debtor-in-possession.

Management and Business Developments

In January 2009, Peter C. Brown resigned from the Company' s Board of Directors (the "Board") and the Board appointed Matthew V. Booty, the Company' s President and Chief Executive Officer, to serve as the Board' s Chairman.

In December 2008, Mr. Robert J. Steele resigned as a director of the Company, effective immediately.

In November 2008, Shari E. Redstone resigned from Midway' s Board of Directors. In November 2008, the Board appointed Mr. Peter C. Brown to serve as the Board' s Chairman. Mr. Brown has served on the Company' s Board since 2005.

In October 2008, Matthew V. Booty was appointed by the Board of Directors as President and Chief Executive Officer of Midway. Mr. Booty has served as Interim President and Chief Executive Officer of Midway since March 2008. Prior to being named President and Chief Executive Officer of Midway, Mr. Booty served as the Company' s Senior Vice-President − Worldwide Studios, a position he held since June 2005. Since June 2004, he served as

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Senior Vice President − Product Development, and since June 1991, Mr. Booty has also served in various capacities with Midway Amusement Games, LLC (“MAG”), a wholly-owned subsidiary of the Company.

In October 2008, Ryan G. O’ Desky was appointed by the Board of Directors as Chief Financial Officer and Treasurer of Midway. Mr. O’ Desky had served as the Interim Chief Financial Officer and Treasurer since February 2008, and has held a variety of positions including Vice President Finance, Controller and Assistant Treasurer. He joined Midway in early 2007 as Chief Internal Auditor. From 2002 to 2007, Mr. O’ Desky gained senior management experience within the Audit and Enterprise Risk Services Division of Deloitte & Touche LLP, a professional services firm. Prior to joining Deloitte & Touche LLP, he acted as a Senior Auditor within the Assurance & Business Advisory Department of Arthur Andersen LLP.

In March 2008, David F. Zucker ceased to be the President and Chief Executive Officer of Midway. Mr. Zucker remained an employee of Midway until April 2008. In accordance with Mr. Zucker’ s employment agreement, he is entitled to receive an amount equal to two times his base salary in effect on the date of termination of employment, which is payable 25% on the date of termination and an additional 25% on each of 121 days, 242 days and 365 days thereafter. Mr. Zucker is also eligible to receive the pro-rata portion of his annual bonus earned in the year of his termination. During 2008, Mr. Zucker’ s severance payment of $1,200,000 was recorded as administrative expense in the consolidated statements of operations and accrued compensation and related benefits on the consolidated balance sheet.

In accordance with Mr. Zucker’ s stock option agreement, his outstanding vested stock options were to be cancelled three months following his April 2008 termination if not exercised. As of December 31, 2008, all of Mr. Zucker’ s stock options that were unexercised were cancelled. In addition, Mr. Zucker forfeited 80,000 unvested performance-based restricted shares granted under the 2005 Long Term Incentive Plan as a result of his termination.

In September 2008, Midway attained mutually beneficial terms with certain licensing partners resulting in the cancellation of future versions of related game properties and the future development costs associated with these games. The resolution of these licenses resulted in additional accelerated royalty and marketing expenses of $10,577,000 during 2008. These charges were primarily recorded as royalties and product development within cost of sales in the consolidated statements of operations and in accrued royalties on the consolidated balance sheet.

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (“GAAP”) 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. The policies discussed below are considered by management to be critical to our business operations. The interpretation of these policies requires management judgments and estimates of matters which ultimately may differ from actual results. For a discussion of other significant accounting policies, refer to Note 1 to the consolidated financial statements.

Revenue recognition

We recognize revenue in accordance with the provisions of Statement of Position 97-2, *Software Revenue Recognition.* Accordingly, revenue is recognized when there is persuasive evidence that an arrangement exists, the software is delivered, the selling price is fixed or determinable and collectibility of the customer receivable is probable. Generally, these conditions are met upon delivery of the product to the customer. We do not provide any significant customization of software or postcontract customer support. Additionally, all online features are considered incidental to our overall product offering. As a result, we currently do not defer any revenue related to products containing online features.

If consumer demand for a product falls below expectations, we often grant price protection to spur further sales and sometimes accept product returns. Therefore, revenue is recorded net of an allowance for price protection, returns and discounts.

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Price protection, returns and discounts

We grant price protection or discounts to, and sometimes allow product returns from, our customers under certain conditions. Therefore, we record an allowance for price protection, returns and discounts at each balance sheet date. Price protection refers to credits relating to retail price markdowns on our products previously sold by us to customers. We base these allowances on expected trends and estimates of potential future price protection, product returns and discounts related to current period product revenue. Several factors are used in developing these estimates, including: (a) prior experience with price protection, returns and discounts; (b) historical and expected sell-through rates for particular games; (c) historical and expected rates of requests for such credits; (d) specific identification of problem accounts; (e) existing field inventories; (f) shipments by geography as price protection, returns and discounts experience differs by geography; (g) terms of sale; (h) sales rates or trends for similar products; (i) consideration of price points that would encourage future sell-through at the retail level and corresponding price protection credits that would be granted to appropriate customers; (j) the net price paid by our customers for products on which previous price protection has been granted, and (k) other relevant factors. Sell-through refers to consumer purchases of our products at retail from our customers. Actual price protection, product returns and discounts may materially differ from our estimates as our products are subject to changes in consumer preferences, technological obsolescence due to the introduction of new platforms, or competing products. Changes in these factors could change our judgments and estimates and result in variances in the amount of allowance required. This may impact the amount and timing of our revenue for any period. For example, if customers request price protection in amounts exceeding the rate expected and if management agrees to grant it, then we will incur additional charges.

During 2008, 2007 and 2006, we recorded provisions for price protection, returns and discounts of $51,987,000, $45,989,000 and $33,900,000, respectively. Such amounts are reflected as a reduction of revenues. Our accounts receivable balance is reported net of an allowance for estimated future price protection and discounts to be issued and estimated future product returns to be accepted from sales made prior to the balance sheet date. At December 31, 2008, and 2007, our allowances for price protection, returns and discounts were $23,817,000 and $32,160,000, respectively. The decrease in the allowance in 2008 was primarily due to the greater success of games released in the fourth quarter of 2008, primarily *Mortal Kombat vs. DC Universe*, than in the fourth quarter of 2007. We believe these allowances are adequate based on historical experience and our current estimate of future price protection, returns and discounts.

Doubtful accounts

We evaluate the collectibility of our trade receivables and establish an allowance for doubtful accounts based on a combination of factors. We analyze significant customer accounts and current economic trends when evaluating the adequacy of our allowance for doubtful accounts. Additionally, we may record allowances for doubtful accounts related to customers based on length of time the receivable balance is outstanding, financial health of the customer and historical experience. This analysis requires management to make estimates of collectibility which may materially differ from actual collections. If circumstances related to our customers change, the amount and timing of bad debt expense for any period may be impacted.

During 2008, 2007 and 2006, we recorded provisions for doubtful accounts of $4,585,000, $320,000 and $241,000, respectively. Our accounts receivable balance is reported net of an allowance for doubtful accounts from sales made prior to the balance sheet date. At December 31, 2008, and 2007, our allowances for doubtful accounts were $4,626,000 and $350,000, respectively. We believe this allowance is adequate based on historical experience and our current estimate of doubtful accounts. Increases in both the provision and allowance for doubtful accounts in 2008 were primarily due to the financial difficulties of three separate customers, which caused us to reserve all receivables from those customers as of December 31, 2008.

Capitalized product development costs

Our capitalized product development costs consist of software development costs for video games that will be sold. We account for software development costs in accordance with SFAS No. 86, *Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed* (“SFAS No. 86”). Software development costs

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incurred prior to the establishment of technological feasibility are expensed when incurred and are included in research and development expense. Once a software product has reached technological feasibility, all subsequent software development costs are capitalized until that product is released for sale. Technological feasibility is evaluated on a product-by-product basis and can occur early in the development cycle or later depending on required technology to complete the product and the availability to us of such technology.

After a product is released for sale, the capitalized product development costs are amortized to expense based on the ratio of actual cumulative revenues to the total of actual cumulative revenues plus projected future revenues for each game. This expense is recorded as a component of cost of sales. This typically results in an amortization period of less than one year. In accordance with SFAS No. 86, included in the amortization amounts are writedowns of capitalized costs associated with video games for which the estimated future net realizable value of products were less than their corresponding capitalized product development costs. If a revised game sales forecast is less than management' s current game sales forecast, or if actual game sales are less than management' s forecast, it is possible we could accelerate the amortization of software development costs previously capitalized. In this event, subsequent amortization of capitalized product development costs for a game is based on the ratio of current period sales to the previous period' s projected future revenue.

We evaluate the recoverability of capitalized software development costs on a product-by-product basis. Capitalized costs for products that are cancelled are expensed in the period of cancellation. In addition, a charge to cost of sales is recorded when our forecast for a particular game indicates that unamortized capitalized costs exceed the estimated future net realizable value of that asset. The estimated future net realizable value is the estimated future revenues from that game reduced by the estimated future cost of completing and selling the game.

As a result, the forecasted sales for a given game are a sensitive factor in this calculation. Critical factors evaluated in estimating forecasted sales include, among other things: historical sales of similar titles, pre-launch awareness, game ratings from publications and websites, current demand and sell-through rates. Management judgments and estimates are used in the assessment of when technological feasibility is established and in the ongoing assessment of the recoverability of capitalized costs. Different estimates or assumptions could result in materially different reported amounts of capitalized product development costs, research and development expense or cost of sales.

During 2008, 2007 and 2006, we recorded capitalized product development cost impairment charges in cost of sales and, where appropriate, restructuring and other charges of $35,946,000, $11,136,000 and $1,696,000, respectively. Our total capitalized product development costs balances at December 31, 2008 and 2007 were $37,022,000 and $54,199,000, respectively. We believe our capitalized product development costs balance at December 31, 2008 is recoverable from future revenue activity.

Goodwill

Goodwill represents the excess purchase price over the fair market value of net identifiable assets acquired. In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets* ("SFAS No. 142"), we do not recognize amortization expense on goodwill. Instead, SFAS No. 142 requires that goodwill be subject to at least an annual assessment of impairment by applying a fair value-based test. We also evaluate whether any event has occurred which might indicate that the carrying value of goodwill is impaired. We use October 1 as the date of our annual review of impairment of goodwill and use market capitalization as an initial indicator of fair value. We completed our annual impairment test on October 1, 2008 and found no impairment of goodwill.

The carrying amount of goodwill at December 31, 2008 and 2007 was $40,822,000 and $41,307,000, respectively. Future goodwill impairment tests may result in a material charge to earnings if, for example, our enterprise fair value falls below our net book value.

Valuation of deferred tax assets

Deferred tax assets and liabilities are recognized for the future tax consequences attributed to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases.

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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.

We record a valuation allowance to reduce our deferred tax assets to the net amount we expect to realize in future periods. Our deferred tax assets result primarily from tax loss carryforwards. The amount of tax loss carryforward expected to be used within the carryforward period is limited to sources of future taxable income that are more likely than not to be generated within the carryforward period. The valuation allowance recorded is a reduction to the deferred tax asset, with a corresponding charge to the statement of operations. In the event we determine that we will realize our deferred tax asset in the future in excess of our net recorded amount, an increase to the net deferred tax asset would be recorded in the period such determination was made. Generating taxable income in subsequent periods and changes in estimates of future taxable income could affect the amounts of the net deferred tax assets and valuation allowances.

Because of our losses in recent years, through 2006 we recorded valuation allowances against our net deferred tax assets. During 2007, we determined that it was more likely than not that we would realize the majority of our deferred tax assets relating to our foreign operations. Thus, we released the valuation allowance recorded against all of the deferred tax assets of our foreign entities except Australia. At December 31, 2008 and 2007, we had valuation allowances of $245,044,000 and $193,329,000, respectively. Stockholder ownership change(s), as defined under Section 382 of the Internal Revenue Code of 1986, as amended, may limit the annual amount of net operating loss carryforward we may use to offset future taxable income. See Note 9 to the consolidated financial statements for more information.

Stock-Based Compensation

On January 1, 2006, we adopted the provisions of SFAS No. 123R, using the modified-prospective transition method. Under this method, stock-based compensation expense was recognized in the 2008, 2007 and 2006 consolidated financial statements for all stock option awards granted during 2008, 2007 and 2006, and also for stock option awards that were both outstanding and not fully vested at January 1, 2008, January 1, 2007 and January 1, 2006, respectively. Compensation expense recognized in our 2008, 2007 and 2006 consolidated financial statements includes the estimated expense for stock options granted on and subsequent to January 1, 2006, based on the grant date fair value estimated in accordance with the provisions of SFAS No. 123R, and the estimated expense for the portion vesting in the current period for options granted prior to, but not vested as of, January 1, 2008, January 1, 2007 and January 1, 2006, respectively, based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*. Results for prior periods have not been restated in accordance with the provisions of the modified-prospective transition method. Recognition of compensation expense related to our restricted stock outstanding did not change upon the adoption of SFAS No. 123R. See Note 13 for details on our stock-based awards and stock-based compensation.

SFAS No. 123R requires the benefits of tax deductions in excess of the compensation cost recognized for those options to be classified as financing cash inflows rather than operating cash inflows (previously allowed), on a prospective basis. Stock option activity did not result in a tax benefit during the years ended December 31, 2008 and 2007, due to our current tax loss position.

Upon adoption of SFAS 123R, the Company elected to value share-based payment transactions using a Black-Scholes valuation model. This model requires assumptions regarding a number of complex and subjective variables. The variables include the Company' s expected stock price volatility over the term of the awards, expected forfeitures, time of exercise, risk-free interest rate and expected dividends. Different assumptions could create different results.

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The Company used the assumptions shown in the table below in valuing stock options granted in 2008, 2007 and 2006:

	2008		2007		2006	
Expected life	5.0 Years		5.0 Years		5.0 Years	
Expected volatility	0.60		0.58		0.70	
Dividend yield	0	%	0	%	0	%
Risk-free interest rate	3.17	%	4.06	%	4.54	%
Estimated annual forfeiture rate	16	%	15	%	15	%

Under the provisions of SFAS 123R, stock-based compensation cost recognized during the period is based on the portion of the share-based payment awards that are expected to ultimately vest. The estimated forfeiture rates used by the Company are based primarily on historical experience.

Results of Operations

The following table sets forth our operating results in dollars and expressed as a percentage of net revenues for the years ended December 31, 2008, 2007 and 2006.

	Years Ended December 31,					
	2008		2007		2006	
			(Dollars in thousands)			
Net revenues	$219,556	100.0%	$157,195	100.0%	$165,574	100.0%
Cost of sales:						
Product costs and distribution	87,400	39.8	56,413	35.9	67,331	40.7
Royalties and product development	118,114	53.8	90,400	57.5	68,883	41.6
Total cost of sales	205,514	93.6	146,813	93.4	136,214	82.3
Gross profit	14,042	6.4	10,382	6.6	29,360	17.7
Research and development expense	32,900	15.0	25,373	16.1	37,022	22.4
Selling and marketing expense	52,297	23.8	42,960	27.3	43,150	26.1
Administrative expense	28,032	12.8	21,226	13.5	21,297	12.8
Restructuring and other charges (benefits)	14,299	6.5	(783)	(0.5)	(130)	(0.1)
Operating loss	(113,486)	(51.7)	(78,394)	(49.8)	(71,979)	(43.5)
Interest income	426	0.2	2,313	1.5	4,384	2.7
Interest expense	(70,878)	(32.3)	(27,165)	(17.3)	(11,241)	(6.8)
Other income (expense), net	(5,329)	(2.4)	2,902	1.8	2,699	1.6
Loss before income taxes	(189,267)	(86.2)	(100,344)	(63.8)	(76,137)	(46.0)
Provision (benefit) for income taxes	1,707	0.8	(752)	(0.5)	1,646	1.0
Net loss	$(190,974)	(87.0)%	$(99,592)	(63.3)%	$(77,783)	(47.0)%

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We seek to develop video games that are engaging and entertaining and then market these games to a broad audience in order to attract a loyal fan base. We hope to create titles that will sell at least one million copies worldwide. Since 2002, we released the following titles that have exceeded one million units in sales:

Video Game Title	Year Released
Mortal Kombat vs. DC Universe	2008
TNA iMPACT!	2008
Unreal Tournament 3	2008
Game Party	2007
Stranglehold	2007
Rampage: Total Destruction	2007
Happy Feet	2006
Mortal Kombat: Armageddon	2006
Blitz: The League	2005
Mortal Kombat: Shaolin Monks	2005
Mortal Kombat: Deception	2004
NBA Ballers	2004
Midway Arcade Treasures	2003
Mortal Kombat: Deadly Alliance	2002

2008 Compared with 2007

The following table provides a comparison of operating results from year-to-year (dollars in thousands):

		Years Ended December 31,					
	See Explanation	2008	% of Net Revenues	2007	% of Net Revenues	Increase/ (Decrease)	% Change
Consolidated net revenues	A	$219,556	100.0 %	$157,195	100.0 %	$62,361	39.7 %
North American net revenues	B	143,733	65.5 %	96,700	61.5 %	47,033	48.6 %
International net revenues	C	75,823	34.5 %	60,495	38.5 %	15,328	25.3 %
Cost of sales:							
Product costs and distribution	D	87,400	39.8 %	56,413	35.9 %	30,987	54.9 %
Royalties and product development	E	118,114	53.8 %	90,400	57.5 %	27,714	30.7 %
Research and development expense	F	32,900	15.0 %	25,373	16.1 %	7,527	29.7 %
Selling and marketing expense	G	52,297	23.8 %	42,960	27.3 %	9,337	21.7 %
Administrative expense	H	28,032	12.8 %	21,226	13.5 %	6,806	32.1 %
Restructuring and other charges (benefits)	I	14,299	6.5 %	(783)	(0.5)%	15,082	1926.2 %
Interest income	J	426	0.2 %	2,313	1.5 %	(1,887)	(81.6)%
Interest expense	K	(70,878)	(32.3)%	(27,165)	(17.3)%	43,713	160.9 %
Other income (expense), net	L	(5,329)	(2.4)%	2,902	1.8 %	(8,231)	(283.6)%
Provision (benefit) for income taxes	M	1,707	0.8 %	(752)	(0.5)%	2,459	327.0 %

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A. Consolidated Net Revenues

The following table sets forth our total consolidated net revenues by platform for the periods indicated (dollars in thousands):

	Years Ended December 31,			
	2008		2007	
Sony *PlayStation 3*	$60,783	27.7 %	$26,811	17.1 %
Microsoft *Xbox 360*	65,721	29.9	45,555	29.0
Nintendo *Wii*	52,323	23.8	15,762	10.0
Sony *PlayStation 2*	12,642	5.8	12,843	8.2
Microsoft *Xbox*	(18)	–	834	0.5
Nintendo *GameCube*	(11)	–	875	0.6
Sony *PlayStation Portable*	2,614	1.2	3,769	2.4
Nintendo *DS*	15,816	7.2	13,138	8.4
Nintendo *Game Boy Advance*	30	–	1,680	1.1
Personal Computer	2,799	1.3	30,961	19.7
Royalties and other	6,857	3.1	4,967	3.0
Total Consolidated Net Revenues	$219,556	100.0%	$157,195	100.0%

The increase in net revenues was primarily attributable to a 42.7% increase in unit sales volume, partially offset by a 1.2% decrease in our per-unit net selling price. The increase in our unit sales volume was largely due to the release of *Mortal Kombat vs. DC Universe* in both North America and internationally and was partially offset by decreased game sales for the personal computer. Personal computer sales in 2007 were elevated by popular releases of *Unreal Tournament 3* and *The Lord of the Rings Online: Shadows of Angmar*. The decrease in our per-unit net selling price in 2008 was due to the increase in casual game sales which have a lower average initial selling price than our other major title releases. See Item 1 of this Report on Form 10-K for a listing of video game titles that we released for sale by platform and territory.

Partially offsetting the increase in net revenues was an increase in revenue provisions of $6,181,000 during 2008. The increase is primarily due to higher price protection for our 2008 releases of *TNA iMPACT!*, *Unreal Tournament 3* (for the *Xbox 360*), *Mortal Kombat vs. DC Universe,* and *NBA Ballers: Chosen One*. Price protection increases were driven by lower sell-through rates for the 2008 releases than the rates for the 2007 releases of *Stranglehold*, *Unreal Tournament 3* (for the *PS3* and PC), *Blacksite: Area 51,* and *The Lord of the Rings: Shadows of Angmar*. The decline in market demand for sports games during 2008 negatively impacted sales of these types of games in 2008.

B. North American Net Revenues

In North America, we released 11 new video games in 2008 compared to 21 new video games in 2007. Our top three selling titles in North America for 2008, representing $84,013,000 of current period net revenues, included *Mortal Kombat vs. DC Universe, Game Party*, and *TNA iMPACT!.* Our top three selling titles in North America for 2007, representing $49,618,000 of current period net revenues, included *Stranglehold, Unreal Tournament 3*, and *Blacksite: Area 51.* North American net revenues also included royalties and other revenues for the twelve months ended December 31, 2008 and 2007.

C. International Net Revenues

Internationally, we released 15 new video games in 2008 compared to 17 video games in 2007. Our top three selling titles internationally for 2008, representing $36,984,000 of current period net revenues, included *Mortal Kombat vs. DC Universe, Game Party*, and *Unreal Tournament 3* (for the *Xbox 360* and *PS3*). Our top three selling titles internationally for 2007, representing $35,816,000 of current period net revenues, included *Stranglehold, Unreal Tournament 3,* and *Blacksite: Area 51*.

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D. and E. Cost of Sales

Product Costs and Distribution

Product costs and distribution increased primarily as a result of a 42.7% increase in unit sales volume and also an 8.6% increase in our per-unit disk costs and distribution costs. The increase in our unit sales volume and costs was largely due to the release of *Mortal Kombat vs. DC Universe* in both North America and internationally. The disk costs include royalties payable to the platform manufacturers.

Royalties and Product Development

The increase in royalties and product development costs was primarily attributable to greater writedowns of capitalized product development costs in 2008 compared to 2007. We recorded $25,704,000 of total writedowns for certain future and current releases in 2008 compared to total writedowns of $11,136,000 in 2007. These charges were recorded because our revised forecasts for each release indicated that the unamortized capitalized costs exceeded the estimated future net realizable value of the assets. Our forecasts were primarily impacted by estimated changes in market demand for these games. Royalty expense incurred on our video games sold increased $23,519,000 from $23,356,000 in 2007 to $46,875,000 in 2008. In September 2008, we reached terms with certain licensing partners resulting in the cancellation of future versions of related game properties and the future development costs associated with these games. These cancellations resulted in additional royalty expense of $10,314,000. The remaining increase is due to royalty fees incurred for *Mortal Kombat vs. DC Universe* and third party development fees for *Game Party* and *Unreal Tournament 3*.

Amortization and writedowns of capitalized product development costs were as follows:

Description	Years Ended December 31, 2008	Years Ended December 31, 2007
Amortization of capitalized product development costs	$43,710,000	$55,092,000
Writedowns related to future releases	16,259,000	8,732,000
Writedowns related to current releases	9,445,000	2,404,000
Total	$69,414,000	$66,228,000

F. Research and Development Expense

Research and development expense represents product development overhead and software development costs incurred prior to a product reaching technological feasibility, after which such costs are capitalized until that product is released for sale. Research and development costs were as follows:

Description	Years Ended December 31, 2008	Years Ended December 31, 2007
Gross research and development costs	$95,379,000	$104,187,000
Research and development costs capitalized	(62,479,000)	(78,814,000)
Research and development expense	$32,900,000	$25,373,000

The decrease in capitalized research and development costs is primarily due to fewer titles reaching technological feasibility in 2008 and a major game cancellation. Gross research and development costs decreased primarily due to a $7,954,000 reduction in milestone payments in 2008.

G. Selling and Marketing Expense

Selling and marketing expense includes direct costs of advertising and promoting our games as well as personnel-related costs incurred in operating our sales and marketing departments. Selling and marketing expense increased $9,337,000 from $42,960,000 in 2007 to $52,297,000 in 2008 due to TV and other advertising that primarily supported the major releases in 2008 of *Mortal Kombat vs. DC Universe* and *TNA iMPACT!*.

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H. Administrative Expense

Administrative expense increased $6,806,000 from $21,226,000 in 2007 to $28,032,000 in 2008. Significant changes included a $4,485,000 increase in bad debt expense, primarily due to financial difficulties at three of our major customers, a $2,934,000 increase in legal expenses, primarily related to increased litigation and costs incurred to assess financing options, and a $1,200,000 increase in severance incurred for the prior Chief Executive Officer. Partially offsetting these increases was a $977,000 decrease in stock compensation expense.

I. Restructuring and Other Charges (Benefits)

In August 2008, we cancelled a specific game which resulted in a workforce reduction in our Austin, Texas facility. The majority of the headcount reduction of 86 employees occurred in August 2008. The cancelled game resulted in total charges, including impairment and writedown of related software development costs, severance pay, accrued vacation pay and licensing and other charges, totaling approximately $11.7 million during the third quarter of 2008. Approximately $10.2 million of the total charges were non-cash in nature.

In December 2008, we announced a reduction in force affecting approximately 180 full-time employees, or 25% of our workforce. The employee terminations affected substantially all of our functional groups, including all remaining employees at our Austin, Texas, studio and substantial reductions in force in our Chicago, Illinois, and San Diego, California, locations. Also, we suspended several of our non-core prototype games in development.

The cancelled game resulted in an impairment and writedown of $10,242,000 of related software development costs. There are no expected future cash expenditures related to such impairment charge; however, the strategic workforce reductions implemented in 2008 created additional current cash expenditures related to severance costs totaling $3,034,000 that were recorded in 2008. Additionally, $825,000 of accrued vacation and $276,000 of licensing and other charges were recorded during 2008.

In 2005 we incurred restructuring costs to close our Adelaide, Australia facility, and the benefits in 2008 and 2007 represent net adjustments from estimated costs incurred related to the 2005 restructuring plan. For further details see Note 15 to the consolidated financial statements. Restructuring and other charges (benefits) incurred were as follows:

Description	Years Ended December 31, 2008	2007
Game cancellation − reversal of research and development costs capitalized	$10,242,000	$−
Expense reduction programs and severance	4,135,000	−
Reversals of previously accrued charges, net	(78,000)	(783,000)
Total	$14,299,000	$(783,000)

J. Interest Income

The decrease in interest income from 2007 to 2008 was primarily attributable to lower average cash balances.

K. Interest Expense

The increase in interest expense from 2007 to 2008 was related to the 6.0% Notes and the 7.125% Notes which are discussed in "Overview − Issuance of Convertible Senior Notes" above and Note 10 to the consolidated financial statements. The increase in interest expense was primarily due to the amortization of discounts associated with beneficial conversion features of the 6.0% and 7.125% Notes ($39,532,000 of the increase). Additionally, due to the change in ownership of the Company and acceleration of redemption features, the period of amortization was shortened to reflect the new redemption date. See Note 10 to the consolidated financial statements for an explanation of the accounting for these discounts and the subsequent amortization. Also included in interest expense is amortization of deferred financing costs incurred in issuing the Notes, which totaled $1,974,000 and $1,304,000 in 2008 and 2007, respectively.

We also have term loans totaling $88,931,000 and $19,167,000 at December 31, 2008 and 2007, respectively. On June 29, 2007, we entered into an Amended and Restated Loan and Security Agreement ("Amended LSA") with Wells Fargo Foothill, Inc. ("WFF"). On February 29, 2008, the Company terminated the Amended LSA and entered

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into the Loan and Security Agreement, the Unsecured Loan Agreement and a Subordinated Unsecured Loan Agreement with NAI (the "Subordinated Unsecured Loan Agreement," together with the Loan and Security Agreement and the Unsecured Loan Agreement, the "NAI Agreements"). See Note 8 to the consolidated financial statements for details on our Amended LSA and the NAI Agreements.

L. Other Income, net

Other income, net primarily includes $5,148,000 and $2,751,000 of foreign currency transaction losses and gains, respectively, during 2008 and 2007.

M. Provision for Income Taxes

For the years ended December 31, 2008 and 2007, we recorded a provision for income taxes of $1,707,000 and an income tax benefit of $752,000, respectively. The change is primarily due to the 2007 release of foreign valuation allowances. Because of our losses in recent years, through 2006 we recorded valuation allowances against our net deferred tax assets. During 2007, we determined that it was more likely than not that we would realize the majority of our deferred tax assets relating to our foreign operations. Thus, we released the valuation allowances recorded against all of the deferred tax assets of our foreign entities except Australia. The release of the valuation allowances resulted in a 2007 income tax benefit of $2,842,000. Partially offsetting the tax benefit in 2007 was income tax expense of $1,313,000 relating to an increase in the difference between book and tax basis of goodwill and $777,000 of current income tax expense in foreign jurisdictions.

2007 Compared with 2006

The following table provides a comparison of operating results from year-to-year (dollars in thousands):

		Years Ended December 31,					
	See Explanation	2007	% of Net Revenues	2006	% of Net Revenues	Increase/ (Decrease)	% Change
Consolidated net revenues	A	$157,195	100.0 %	$165,574	100.0 %	$(8,379)	(5.1)%
North American net revenues	B	96,700	61.5 %	124,112	75.0 %	(27,412)	(22.1)%
International net revenues	C	60,495	38.5 %	41,462	25.0 %	19,033	45.9 %
Cost of sales:							
Product costs and distribution	D	56,413	35.9 %	67,331	40.7 %	(10,918)	(16.2)%
Royalties and product development	E	90,400	57.5 %	68,883	41.6 %	21,517	31.2 %
Research and development expense	F	25,373	16.1 %	37,022	22.4 %	(11,649)	(31.5)%
Selling and marketing expense	G	42,960	27.3 %	43,150	26.1 %	(190)	(0.4)%
Administrative expense	H	21,226	13.5 %	21,297	12.8 %	(71)	(0.3)%
Restructuring and other charges (benefits)	I	(783)	(0.5)%	(130)	(0.1)%	653	502.3 %
Interest income	J	2,313	1.5 %	4,384	2.7 %	(2,071)	(47.2)%
Interest expense	K	(27,165)	(17.3)%	(11,241)	(6.8)%	15,924	141.7 %
Other income, net	L	2,902	1.8 %	2,699	1.6 %	203	7.5 %
Provision for income taxes	M	(752)	(0.5)%	1,646	1.0 %	(2,398)	(145.7)%

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A. *Consolidated Net Revenues*

The following table sets forth our total consolidated net revenues by platform for the periods indicated (dollars in thousands):

	Years Ended December 31,			
	2007		2006	
Sony *PlayStation 3*	$26,811	17.1 %	$–	– %
Microsoft *Xbox 360*	45,555	29.0	3,469	2.1
Nintendo *Wii*	15,762	10.0	11,456	6.9
Sony *PlayStation 2*	12,843	8.2	75,955	45.8
Microsoft *Xbox*	834	0.5	14,602	8.8
Nintendo *GameCube*	875	0.6	11,184	6.8
Sony *PlayStation Portable*	3,769	2.4	13,845	8.4
Nintendo *DS*	13,138	8.4	9,870	6.0
Nintendo *Game Boy Advance*	1,680	1.1	9,417	5.7
Personal Computer	30,961	19.7	9,307	5.6
Royalties and other	4,967	3.0	6,469	3.9
Total Consolidated Net Revenues	$157,195	100.0%	$165,574	100.0%

The decrease in net revenues was primarily attributable to a 23.9% decrease in unit sales volume, partially offset by a 24.8% increase in our per-unit net selling price. The decrease in our unit sales volume was largely due to split release shipments of *Xbox 360* and *PlayStation 3* titles in both North America and internationally. The increase in our per-unit net selling price was due to the current generation releases of *Stranglehold, Blacksite: Area 51,* and *Unreal Tournament 3*. These titles had a higher average initial selling price than our previous generation title releases in 2006. See Item 1 of this report on Form 10-K for a listing of video game titles that we released for sale by platform and territory.

Adding to the decrease in net revenues was an increase in revenue provisions of $11,691,000 during 2007. The increase is primarily due to higher price protection for our 2007 releases of *Stranglehold*, *Unreal Tournament 3* (for the *PS3* and PC), *Blacksite: Area 51,* and *The Lord of the Rings: Shadows of Angmar*. Price protection increases were driven by lower sell-through rates for the 2007 releases than the rates for the 2006 releases of *Happy Feet*, *The Ant Bully*, *Rise and Fall: Civilizations at War,* and *Mortal Kombat: Armageddon* (for *PS2* and *Xbox*).

B. *North American Net Revenues*

In North America we released 21 new video games in 2007 compared to 35 new video games in 2006. Our top three selling titles in North America for 2007, representing $49,618,000 of current period net revenues, included *Stranglehold, Unreal Tournament 3*, and *Blacksite: Area 51.* Our top three selling titles of 2006, representing $55,974,000 of net revenues, included *Mortal Kombat: Armageddon*, *Happy Feet,* and *Rampage: Total Destruction*. North American net revenues also included royalties and other revenues for the twelve months ended December 31, 2007 and 2006.

C. *International Net Revenues*

The increase in international net revenues is due in part to the opening of a new sales center in France. Internationally, we released 17 new video games in 2007 compared to 23 video games in 2006. Our top three selling titles internationally for 2007, representing $35,816,000 of current period net revenues, included the current year releases of *Stranglehold, Unreal Tournament 3,* and *Blacksite: Area 51*. Our top three selling titles internationally for 2006, representing $23,024,000 of net revenues, included *Happy Feet, Rise & Fall: Civilizations at War* and *Mortal Kombat: Armageddon.*

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D. and E. Cost of Sales

Product Costs and Distribution

Product costs and distribution decreased primarily as a result of a 23.9% decline in unit sales volume, partially offset by a 10.1% increase in our per-unit disk costs. The decline in our unit sales volume was largely due to split release shipments of *Xbox 360* and *PlayStation 3* titles in both North America and internationally. The disk costs include royalties payable to the platform manufacturers. We sold console games with a higher average retail price upon first release in 2007 compared to 2006, for which we are charged a higher royalty by platform manufacturers.

Royalties and Product Development

The increase in royalties and product development costs was primarily attributable to higher product development costs for certain video games released in 2007 compared to those released in 2006 and an increase in amortization and writedowns of capitalized product development costs in 2007 compared 2006. We recorded $11,136,000 of total writedowns for certain future and current releases in 2007 compared to a $1,696,000 writedown in 2006. Also, royalty expense incurred on our video games sold increased $12,046,000 from $11,310,000 in 2006 to $23,356,000 in 2007. The increase is due primarily to licensing fees incurred on the 2007 releases of *Unreal Tournament 3*, *Stranglehold*, and *Lord of the Rings Online: Shadows of Angmar* versus titles released in 2006.

Amortization and writedowns of capitalized product development costs were as follows:

Description	Years Ended December 31, 2007	2006
Amortization of capitalized product development costs	$55,092,000	$53,628,000
Writedowns related to future releases	8,732,000	–
Writedowns related to current releases	2,404,000	1,696,000
Total	$66,228,000	$55,324,000

F. Research and Development Expense

Research and development expense represents product development overhead and software development costs incurred prior to a product reaching technological feasibility, after which such costs are capitalized until that product is released for sale. Research and development costs were as follows:

Description	Years Ended December 31, 2007	2006
Gross research and development costs	$104,187,000	$106,364,000
Research and development costs capitalized	(78,814,000)	(69,342,000)
Research and development expense	$25,373,000	$37,022,000

The increase in capitalized research and development costs is primarily due to more titles reaching technological feasibility in 2007 and increased production costs demanded by our next-generation titles. In 2007, we capitalized $73,563,000 in product development costs for 14 current generation titles, while in 2006, we capitalized $33,642,000 in product development costs for seven current generation titles. We recorded $11,136,000 of total writedowns for certain future and current releases in 2007 compared to total writedowns of $1,696,000 in 2006. These charges were recorded because our revised forecasts for each release indicated that the unamortized capitalized costs exceeded the estimated future net realizable value of the assets. Our forecasts were primarily impacted by estimated changes in market demand for these games.

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G. Selling and Marketing Expense

Selling and marketing expense includes direct costs of advertising and promoting our games as well as personnel-related costs incurred in operating our sales and marketing departments. Selling and marketing expense remained relatively consistent from 2006 to 2007.

H. Administrative Expense

Administrative expense remained relatively stable from 2006 to 2007. Significant changes include a $909,000 increase in directors' fees, from $660,000 in 2006 to $1,569,000 in 2007, and a $670,000 increase in insurance, from $954,000 in 2006 to $1,624,000 in 2007. Offsetting these increases is a $1,717,000 decrease in stock compensation expense, from $2,906,000 in 2006 to $1,189,000 in 2007, which is primarily due to the Chief Executive Officer's remaining unvested stock options becoming fully vested in May 2007.

I. Restructuring and Other Charges (Benefits)

In 2005 we incurred restructuring costs incurred to close our Adelaide, Australia facility and consolidate certain product development operations to our other development studios. Restructuring and other charges (benefits) in 2007 and 2006 represent net adjustments from estimated costs incurred from the 2005 restructuring plan. For further details regarding our restructuring activities see "Overview" above and Note 12 to the consolidated financial statements. Restructuring and other charges (benefits) incurred were as follows:

Description	Years Ended December 31, 2007	2006
Reversals of previously accrued charges, net	(783,000)	(130,000)
Total	$(783,000)	$(130,000)

J. Interest Income

The decrease in interest income from 2006 to 2007 for the twelve months ended December 31 was primarily attributable to lower average cash balances.

K. Interest Expense

The increase in interest expense was due primarily to interest expense incurred on the issuance of our 6.0% Notes completed in September 2005 and the 7.125% Notes completed in May 2006 which are discussed in "Overview − Issuance of Convertible Senior Notes" above and Note 8 to the consolidated financial statements. In addition, the increase in interest expense was primarily due to the amortization of discounts associated with beneficial conversion features of the 6.0% and 7.125% Notes ($13,148,000 of the increase) and coupon interest on the 7.125% Notes ($2,212,000 of the increase). The 7.125% Notes were outstanding for the entire twelve months during 2007, compared to seven months during 2006. See Note 10 to the consolidated financial statements for an explanation of the accounting for these discounts and the subsequent amortization. Included in interest expense is amortization of deferred financing costs incurred in issuing the Notes, which totaled $1,304,000 and $1,065,000 in 2007 and 2006, respectively.

We also have term loans totaling $19,167,000 and $6,944,000 at December 31, 2007 and 2006, respectively. On June 29, 2007, we entered into the Amended LSA with WFF which replaced our existing loan and security agreement with WFF. See Note 8 to the consolidated financial statements for details on our Amended LSA. In June 2007, the Amended LSA provided us with $14,722,000 of cash proceeds as our term loan was increased from a remaining principal balance of $5,278,000 to $20,000,000. The additional principal balance caused interest expense on the term loan to increase $427,000 from 2006 to 2007.

L. Other Income, net

Other income, net primarily includes $2,751,000 and $2,670,000 of foreign currency transaction gains during 2007 and 2006, respectively.

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M. Provision for Income Taxes

For the years ended December 31, 2007 and 2006, we recorded an income tax benefit of $752,000 and a provision for income taxes of $1,646,000, respectively. The change is primarily due to the 2007 release of foreign valuation allowances. Because of our history of losses in recent years, through 2006 we recorded valuation allowances against our net deferred tax assets. During 2007, we determined that it was more likely than not that we would realize the majority of our deferred tax assets relating to our foreign operations. Thus, we released the valuation allowances recorded against all of the deferred tax assets of our foreign entities except Australia. The release of the valuation allowances resulted in a current year income tax benefit of $2,842,000. Partially offsetting the tax benefit in 2007 was income tax expense of $1,313,000 relating to an increase in the difference between book and tax basis of goodwill and $777,000 of current income tax expense in foreign jurisdictions.

Impact of Recently Issued Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* (“SFAS No. 157”). This standard provides guidance for using fair value to measure assets and liabilities. SFAS No. 157 applies whenever other standards require or permit assets or liabilities to be measured at fair value but does not expand the use of fair value in any new circumstances. Under SFAS No. 157, fair value refers to the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants based upon the assumptions market participants would use when pricing the asset or liability. The provisions of this statement were adopted for our year beginning January 1, 2008 and the initial application did not have a material effect on the values reported by the Company.

On October 10, 2008, the FASB issued FASB Staff Position (“FSP”) SFAS No. 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active* (“FSP SFAS No. 157-3”). FSP SFAS No. 157-3 does not change the fair value measurement principles in SFAS No. 157, but rather provides guidance of the application of those measurement principles in the extreme inactive markets that currently exist.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* (“SFAS No. 159”). This standard permits entities to elect to report eligible financial assets and liabilities at fair value. SFAS No. 159 intends to reduce the complexity in accounting by eliminating the need to apply hedge accounting provisions and mitigates volatility in earnings by measuring related assets and liabilities consistently. This statement helps expand the use of fair value measurement and achieves further convergence with the International Financial Reporting Standards which permits a fair value option. On January 1, 2008, the Company adopted SFAS No. 159 and elected not to apply the provisions of SFAS No. 159 to its eligible financial assets and financial liabilities on the date of adoption. Accordingly, the initial application of SFAS No. 159 had no effect on the Company.

In April 2008, the FASB issued FSP SFAS No. 142-3, *Determination of the Useful Life of Intangible Assets* (“FSP SFAS No. 142-3”). FSP SFAS No. 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142. Previously, under the provisions of SFAS No. 142, an entity was precluded from using its own assumptions about renewal or extension of an arrangement where there was likely to be substantial cost or material modifications. FSP SFAS No. 142-3 removes the requirement of SFAS No. 142 for an entity to consider whether an intangible asset can be renewed without substantial cost or material modification to the existing terms and conditions and requires an entity to consider its own experience in renewing similar arrangements. FSP SFAS No. 142-3 also increases the disclosure requirements for a recognized intangible asset to enable a user of financial statements to assess the extent to which the expected future cash flows associated with the asset are affected by the entity’ s intent or ability to renew or extend the arrangement. FSP SFAS No. 142-3 is effective for fiscal years beginning after December 15, 2008 and interim periods within those fiscal years. Early adoption is prohibited. The guidance for determining the useful life of a recognized intangible asset is applied prospectively to intangible assets acquired after the effective date. Accordingly, the Company does not anticipate that the initial application of FSP SFAS No. 142-3 will have an impact on the Company. The disclosure requirements must be applied prospectively to all intangible assets recognized as of, and subsequent to, the effective date.

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In April 2008, the FASB issued FSP SOP 90-7-1, *An Amendment of AICPA Statement of Position 90-7* ("FSP SOP 90-7-1"). FSP SOP 90-7-1 nullifies certain requirements regarding changes in accounting principles that will be applicable to the financial statements of an entity emerging from bankruptcy. Any changes in accounting principles required within the twelve months following the implementation of fresh start accounting by such an entity are no longer required to be adopted at the time fresh start accounting is implemented. Entities emerging from bankruptcy that implement fresh start accounting should only follow accounting standards in effect at the date fresh start accounting is implemented, including any standards eligible for early adoption. The Company will assess the impact of the application of this standard when and if fresh start accounting is required upon resolution of its bankruptcy issues.

Liquidity and Capital Resources

Overview

Midway continues to face significant challenges with respect to liquidity and capital resources, particularly in view of the Chapter 11 Cases filed on February 12, 2009. Due to the uncertainties from the Chapter 11 Cases and the current state of the financing and credit markets, our discussion of liquidity and capital resources for 2008 and 2007 is likely not indicative of future financing activities or of our future financial condition. See also Notes 2 and 3 to our consolidated financial statements for further details.

Delays in the release dates to 2009 from 2008 of two of our new video games led to a negative impact on our 2008 revenues and our current working capital. Any further delays in game releases will cause additional constraints on liquidity and would require us to take additional steps to manage our working capital. At this time, under Bankruptcy protection, the Company believes that current cash and cash equivalents and our operations will provide adequate resources through the second quarter of 2009. The Company does not have any available funds from third parties. The Company continues to use the amounts borrowed under the NAI Agreements pursuant to a cash collateral order entered in the Bankruptcy Court.

The Company continues to assess strategic and financing opportunities, including a possible restructuring of its debt obligations, raising of additional debt, or selling the Company or portions of the Company. Any projections of future cash inflows and outflows are subject to substantial uncertainty, including risks and uncertainties relating to approval of our business plan by the Bankruptcy Court.

Operating Activities

Our principal source of operating cash is from the distribution and sale of our video games. Our principal uses of cash are for payments associated with both internal and third-party developers of our software, manufacturers of our video game inventory, royalties to video game platform manufacturers and intellectual property owners, costs incurred to sell and market our video games, and administrative expenses. As of December 31, 2008, our primary source of liquidity was $23,021,000 of cash and cash equivalents, compared to $27,524,000 at December 31, 2007, and $73,422,000 at December 31, 2006. Our working capital (deficit) at December 31, 2008, totaled ($202,387,000), compared to $69,117,000 at December 31, 2007, and $129,750,000 at December 31, 2006. The working capital (deficit) in 2008 is primarily due to the classification of all debt as short-term, resulting from the change in control, as discussed in the "Majority Stockholder" section above.

For the years ended December 31, 2008, 2007 and 2006, net cash used in operating activities was $73,504,000, $51,903,000 and $92,902,000, respectively. The increase in net cash used in 2008 was driven primarily by the increased operating loss, as increases in net revenues were more than offset by higher operating expenses, and a greater increase in receivables in 2008 than in 2007 as holiday sales volumes were higher in 2008. In the fourth quarter of 2008, the Factoring Agreement (as defined in "Financing Arrangements and Factoring Agreement" below) allowed us to realize cash on an expedited basis, reducing the increase in cash used in 2008. The decrease in net cash used in 2007 was primarily due to a decrease in receivables, as holiday sales volumes were lower in 2007 than in 2006, and an increase in accounts payable, accrued liabilities and deferred revenue due to the favorable timing of payments in 2007 compared to 2006.

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Investing Activities

Net cash provided by (used in) investing activities totaled $1,703,000, ($5,696,000) and ($8,676,000) in 2008, 2007 and 2006, respectively. Cash provided in 2008 was primarily impacted by the sale and leaseback of three of our properties, for which we received cash totaling $5,100,000. Net cash provided by and used by investing activities in 2008 and 2007, respectively, was also favorably impacted by decreases in cash used for capital expenditures in both years. The decreases in capital expenditures were primarily due to declining amounts of current generation software development tools purchased in 2008 and 2007, as the current generation console platforms were new to the marketplace in 2006. Restricted cash represents the amount of cash and cash equivalents required to be maintained by Midway under letters of credit to comply with the requirements of two office space lease agreements.

Financing Activities

Net cash provided by financing activities was $69,308,000, $11,054,000 and $75,342,000 during 2008, 2007 and 2006, respectively. The increase in net cash provided during 2008 compared to 2007 is primarily due to increased borrowings under the NAI Agreements in 2008 compared to borrowings under the WFF facility in 2007. The decrease in net cash provided in 2007 compared to 2006 is primarily due to the issuance of the 7.125% Notes in 2006, which provided cash of $75,000,000.

Financing Arrangements and Factoring Agreement

In June 2007, we entered into the Amended LSA with WFF which replaced our existing loan and security agreement with WFF. The Amended LSA provided for a credit facility initially of up to $30,000,000 under which we had a $20,000,000 term loan and a revolving line of credit of up to $10,000,000. The term loan under the Amended LSA increased from a remaining principal balance of $5,278,000 to $20,000,000, and as a result we received $14,722,000 of cash proceeds in June 2007.

The term loan had a five-year term and was to be repaid in equal monthly installments of $166,668 beginning August 1, 2007 and ending on June 1, 2012 with a final payment of $10,167,000 due on June 29, 2012. The term loan bore interest at our election of either the bank’ s base rate (8.75% at December 31, 2007) plus 1.5% or a one to three-month LIBOR rate plus 2.75%, but in no event less than 4.0%. At December 31, 2007, the interest rate on the term loan was 7.57%, which represents the one-month LIBOR rate plus 2.75% and the remaining outstanding principal balance was $19,167,000.

The initial maximum availability under our revolving line of credit was $10,000,000. Maximum availability under the revolving line of credit in future periods was equal to $30,000,000 less the outstanding principal balance of the term loan. The credit facility allowed for the issuance of up to $7,500,000 in aggregate letters of credit. Further, the revolving line of credit could have been increased up to an additional $10,000,000 upon our written request to WFF and WFF’ s acceptance of such request. However, the maximum availability under the revolving line of credit at any time was limited by the borrowing base, which is a function of eligible accounts receivable and collections as defined under the Amended LSA. Any letters of credit outstanding further reduce availability under the revolving line of credit. The revolving line of credit also had a five-year term and bore interest at our election of either the bank’ s base rate (8.75% at December 31, 2007) plus 1.5% or a one to three-month LIBOR rate plus 2.75%, but in no event less than 4.0%. A fee of 4.5% per annum multiplied by the daily balance of the undrawn portion of the available letters of credit was due and payable on a monthly basis. A fee of 0.5% per annum multiplied by the daily balance of the availability under the revolving line of credit was due and payable on a monthly basis. During June 2007, $150,000 of bank fees were charged to our revolving line of credit as a result of the Amended LSA. This amount was repaid in July and August 2007. At December 31, 2007, we had two letters of credit outstanding totaling $1,250,000, and we had no outstanding balance on the revolving line of credit. At December 31, 2007, we had $9,583,000 available for borrowings under the revolving line of credit.

On February 29, 2008, Midway Home Entertainment Inc. and Midway Amusement Games, LLC (“Borrowers”), and Midway Games Inc., Midway Games West Inc., Midway Interactive Inc., Midway Sales Company, LLC, Midway Home Studios Inc., Surreal Software Inc., Midway Studios-Austin Inc., and Midway Studios-Los Angeles Inc. (“U.S. Credit Parties”) terminated the Amended and Restated Loan and Security Agreement by and among the

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Borrowers, U.S. Credit Parties, the Lenders that are signatories thereto and WFF (as the Arranger and Administrative Agent, and UK Security Trustee) and entered into a Loan and Security Agreement by and among the Borrowers and U.S. Credit Parties and NAI (the "Loan and Security Agreement"). Also on February 29, 2008, Midway Games Inc. entered into an Unsecured Loan Agreement with NAI (the "Unsecured Loan Agreement") and a Subordinated Unsecured Loan Agreement with NAI (the "Subordinated Unsecured Loan Agreement," together with the Loan and Security Agreement and the Unsecured Loan Agreement, the "NAI Agreements"). The NAI Agreements provide for up to $90,000,000 in total availability. The Loan and Security Agreement provides up to $30,000,000, under which we have a $20,000,000 term loan and a revolving line of credit of up to $10,000,000. The Unsecured Loan Agreement provides for a $40,000,000 revolving line of credit and the Subordinated Unsecured Loan Agreement provides for up to a $20,000,000 revolving line of credit. At December 31, 2008, borrowings outstanding on the Loan and Security Agreement term loan and revolving line of credit totaled $20,000,000 and $8,952,000, respectively. Outstanding letters of credit totaled $1,048,000 at December 31, 2008, which reduce the available borrowings under the Loan and Security Agreement. Borrowings outstanding under the Unsecured Loan Agreement revolving line of credit totaled $40,000,000, and borrowings outstanding under the Subordinated Unsecured Loan Agreement revolving line of credit totaled $19,979,000. At December 31, 2008, we had $21,000 in available borrowings under the Subordinated Unsecured Loan Agreement. The Company may elect to increase the then outstanding principal amount of the borrowings by the amount of all accrued and unpaid interest rather than paying the interest currently (paid in kind interest) under the Subordinated Unsecured Loan Agreement.

The Loan and Security Agreement has a 52 month term with no required amortization of the term loan until the term ends on June 29, 2012. The Loan and Security Agreement bears interest at our election of either prime rate ("Base Rate") plus 1.5% per annum or a one, two, three, or six month LIBOR rate plus 3.75% per annum, as provided by Bank of America. At December 31, 2008, the interest rate on the Loan and Security Agreement was 5.93%, which represents the three month LIBOR rate plus 3.75%.

The Unsecured Loan Agreement has a 13 month term which was scheduled to end on March 31, 2009, and bears interest at our election of either the Base Rate plus 2.75% per annum or a one, two, three or six month LIBOR rate plus 5.0% per annum. At December 31, 2008, the Company had $40,000,000 drawn on four borrowings under the Unsecured Loan Agreement. The interest rates on the Unsecured Loan Agreement ranged from 7.10% to 7.19%, which represents the three month LIBOR rate plus 5.0%. Interest under the Unsecured Loan Agreement is payable in kind to the extent such interest amount plus the outstanding loans is less than or equal to $40,000,000.

The Subordinated Unsecured Loan Agreement has a 27 month term which ends on May 31, 2010, and bears interest at our election of either the Base Rate plus 5.75% per annum or a one, two, three or six month LIBOR rate plus 8.0% per annum. At December 31, 2008, the Company had three borrowings under the Subordinated Unsecured Loan Agreement. The interest rates on the borrowings ranged from 9.47% to 10.19%. Interest under the Subordinated Unsecured Loan Agreement is payable in kind.

If the total amount of borrowings under the NAI Agreements is greater than $40,000,000 as of the close of business on the business day immediately preceding the last business day of any calendar week, available cash and cash equivalents in excess of $10,000,000 ($13,500,000 from June 18, 2008 through August 31, 2008 and $14,000,000 beginning September 15, 2008) must be swept weekly to the applicable lender first to repay the advances under the Subordinated Unsecured Loan Agreement and then under the Unsecured Loan Agreement until the outstanding borrowings under the Unsecured Loan Agreement are reduced to $10,000,000. Available cash and cash equivalents excludes certain foreign accounts (Japan and Australia) as well as the letters of credit. As of December 31, 2008, there was $162,000, $263,000 and $168,000 in accrued interest on the Loan and Security Agreement, the Unsecured Loan Agreement, and the Subordinated Unsecured Loan Agreement, respectively. The cash sweep activities have been suspended since the commencement of the Chapter 11 Cases.

The maximum availability under the revolving line of credit of the Loan and Security Agreement is equal to $30,000,000 less the outstanding principal balance of the term loan less the aggregate amount of letters of credit outstanding. As of December 30, 2008, there were no available borrowings under the Loan and Security Agreement.

A fee of 0.5% per annum multiplied by maximum revolver amounts under the NAI Agreements less the average daily balance of advances that were outstanding during the preceding month is due and payable on a monthly basis.

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Debt issuance costs incurred and capitalized for the NAI Agreements totaled approximately $515,000 during 2008. The debt issuance costs incurred with the NAI Agreements have been allocated among the Loan and Security Agreement, the Unsecured Loan Agreement and the Subordinated Unsecured Loan Agreement. The fees allocated to the Loan and Security Agreement are being deferred and amortized over the life of the Loan and Security Agreement using the effective interest method. The fees allocated to the Unsecured and Subordinated Unsecured Loan Agreements are being deferred and amortized on a straight-line basis over the term of the respective arrangements.

Under the Loan and Security Agreement, substantially all of the assets of the Company and its United States subsidiaries are pledged as collateral. Under the Unsecured Loan Agreement and Subordinated Unsecured Loan Agreement, there are no pledges of collateral or guarantees. The NAI Agreements have restrictions on the following:

1. Our ability to make payments, including dividends and other distributions on our capital stock;

2. Our ability to make acquisitions;

3. Our capital expenditures; and

4. Our ability to repurchase or redeem any shares of our capital stock.

In January 2009, all rights related to the Loan and Security Agreement and the Unsecured Loan Agreement were fully assigned to the Purchaser.

On February 12, 2009, the filing of the Chapter 11 Cases constituted an event of default under the NAI Agreements. Under the terms of the NAI Agreements, upon an event of default the Purchaser may declare all amounts outstanding under immediately due and payable.

On September 15, 2008, two of the Company' s wholly-owned subsidiaries, Midway Home Entertainment Inc. ("MHE") and Midway Amusement Games, LLC ("MAG"), entered into an accounts receivable factoring arrangement (the "Factoring Agreement") with NAI, which at the time of the agreement was a related party. Pursuant to the Factoring Agreement, NAI purchased from MHE certain accounts receivable invoices. MHE sold these accounts receivable invoices to NAI on an as-needed basis for the purpose of creating sufficient cash flow for working capital to finance inventory and fund operations related to the Company' s product offerings in the fourth quarter of 2008. The period during which MHE sold accounts receivable invoices under the Factoring Agreement expired on December 31, 2008. MHE was not required to sell any accounts receivable invoices, but subject to certain eligibility criteria and certain other conditions, NAI was committed to purchase accounts receivable invoices by paying purchase prices in an aggregate not to exceed $40,000,000, provided that availability under the commitment was replenished to the extent NAI receives collections of accounts receivable invoices it had previously purchased.

Under the Factoring Agreement, MHE submitted accounts receivable invoices to NAI, and NAI paid to MHE a purchase price equal to the face amount of the accounts receivable invoices minus an amount for dilution, a factoring fee, and an interest component. As servicing agent, MAG received a servicing fee of 0.15% on the gross invoice amount of each account receivable invoice purchased.

During 2008, MHE sold receivables in the amount of $47,552,000 (net of $14,972,000 of dilution) to NAI under the Factoring Agreement, recorded $308,000 and $189,000 of factoring fees and interest expense, respectively, and received $94,000 of servicing fees.

Impact of Inflation

In recent years, the level of inflation affecting us has been relatively low. Our ability to pass on future cost increases in the form of higher sales prices will continue to be dependent on the prevailing competitive environment and the acceptance of our products in the marketplace.

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Seasonality

The video game industry is highly seasonal and has generally experienced higher revenues in the quarter ended December 31 due to customer purchases preceding the year-end retail holiday selling season. Significant working capital is required to finance high levels of inventories and accounts receivable during that quarter.

Item 8. Financial Statements and Supplementary Data

Our consolidated financial statements are included in this report immediately following Part IV.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Disclosure Controls and Procedures.

As of the end of the period covered by this report, our Chief Executive Officer and our Chief Financial Officer carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as required by Rule 13a-15(b) under the Securities Exchange Act of 1934. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective.

Internal Control over Financial Reporting.

Management's Annual Report on Internal Control over Financial Reporting. Our management's report on internal control over financial reporting is on page F-2 of this report.

Ernst & Young LLP, the Company's independent registered public accounting firm, has issued an attestation report on the effectiveness of the Company's internal control over financial reporting as set forth on page F-4 of this report.

Changes in Internal Control over Financial Reporting. No change was identified in connection with the evaluation required by Rule 13a-15(d) under the Securities Exchange Act of 1934 that occurred during the quarter ended December 31, 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The sections labeled "Nominees for Directors," "Board Committees and Meetings," "Audit Committee Matters," "Corporate Governance," and "Section 16(a) Beneficial Ownership Reporting Compliance" of our Proxy Statement in connection with the 2009 Annual Meeting of Stockholders (the "2009 Proxy Statement") are incorporated herein by reference. Information concerning our executive officers is set forth in Part I of this Form 10-K.

Item 11. Executive Compensation.

Information about director and executive compensation is incorporated by reference from the discussion under the headings "Compensation of Executive Officers and Directors," "Compensation Committee Interlocks and Insider Participation" and "Reports of the Committees of the Board − Compensation Committee Report" in the 2009 Proxy Statement.

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Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Information about security ownership of certain beneficial owners and management, securities authorized for issuance under equity compensation plans and related shareholder matters is incorporated by reference from the discussion under the headings "Beneficial Ownership of Directors and Executive Officers," "Securities Authorized for Issuance under Equity Compensation Plans" and "Beneficial Ownership of More Than Five Percent of Any Class of Voting Securities" in the 2009 Proxy Statement.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Information regarding transactions with related persons and the review, approval or ratification of transactions with related persons is hereby incorporated by reference to the Company' s Proxy Statement under the heading "Transactions with Related Persons, Promoters and Certain Control Persons." Information regarding director independence is hereby incorporated by reference to the Company' s 2009 Proxy Statement under the heading "Director Independence."

Item 14. Principal Accountant Fees and Services.

Information about the fees for professional services rendered by our independent auditors in 2008 and 2007 and our Audit Committee' s policy on pre-approval of audit and permissible non-audit services of our independent auditors is incorporated by reference from the discussion under the heading "Independent Auditors' Fees" in the 2009 Proxy Statement.

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PART IV

Item 15. Exhibits and Financial Statement Schedule.

(1) *Financial Statements.* See "Index to Financial Information" on page F-1.

(2) *Financial Statement Schedule.* See "Index to Financial Information" on page F-1.

(3) *Exhibits.*

Exhibit No.	Description
3 .1	Amended and Restated Certificate of Incorporation of the Registrant dated October 25, 1996, incorporated herein by reference to the Registrant' s Registration Statement on Form S-1/A, as amended, File No. 333-11919, filed on October 18, 1996 and effective October 29, 1996 (the "S-1 Registration Statement").
3 .2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant dated February 25, 1998, incorporated herein by reference to the Registrant' s Registration Statement on Form 8-A/A, Amendment No. 1, filed on April 20, 1998.
3 .3	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant dated August 5, 2003, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2003.
3 .4	Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Registrant dated February 17, 2004, incorporated herein by reference to the Registrant' s Registration Statement on Form S-3, File No. 333-113077, initially filed on February 25, 2004.
3 .5	Amended and Restated By-laws of the Registrant, incorporated herein by reference to the Registrant' s Registration Statement on Form S-3, File No. 333-116334, initially filed on June 10, 2004 (the "6/10/04 S-3").
3 .6	Composite Amended and Restated By-laws of the Registrant dated June 13, 2007, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on May 3, 2007.
4 .1	Indenture, dated as of September 19, 2005, between the Registrant and Wells Fargo Bank, National Association, incorporated herein by reference to the Registrant' s current report on Form 8-K filed on September 19, 2005 (the "9/19/2005 8-K").
4 .2	Registration Rights Agreement, dated as of September 19, 2005 between the Registrant and Banc of America Securities, LLC, as representative of the Initial Purchasers, incorporated herein by reference to the 9/19/2005 8-K.
4 .3	Indenture, dated as of May 30, 2006, between the Registrant and Wells Fargo Bank, National Association, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on May 30, 2006 (the "5/30/06 8-K").
4 .4	Registration Rights Agreement, dated as of May 30, 2006, between the Registrant and Banc of America Securities, LLC, incorporated herein by reference to the 5/30/06 8-K.
4 .5	Notice of Adjustment, dated July 13, 2006, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on July 14, 2006.
4 .6	Notice of Adjustment, dated April 30, 2007, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on April 30, 2007.
4 .7	Notice of Adjustment, dated August 22, 2007, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on August 27, 2007.
10.1*	1996 Stock Option Plan, incorporated herein by reference to the Registrant' s Registration statement on Form S-1/A, as amended, File No. 333-11919, filed on October 25, 1996 and effective October 29, 1996.
10.2*	1998 Non-Qualified Stock Option Plan, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, filed on June 24, 1998 (File No. 333-57583).
10.3*	1998 Stock Incentive Plan, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, filed on December 4, 1998 (File No. 333-68373).

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Exhibit No.	Description
10.4*	1999 Stock Option Plan, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, filed on March 5, 1999 (File No. 333-73451).
10.5*	2000 Non-Qualified Stock Option Plan, incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the fiscal year ended June 30, 2000, filed on September 26, 2000.
10.6*	Amendment to 1998 Stock Incentive Plan, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2001, filed on November 14, 2001.
10.7*	2002 Stock Option Plan, incorporated herein by reference to the Registrant' s definitive proxy statement filed on December 5, 2001.
10.8*	Letter Agreement dated as of March 21, 2001, between the Registrant and Thomas E. Powell regarding Mr. Powell' s employment by the Registrant, incorporated herein by reference to the Registrant' s Transition Report on Form 10-KT-405 for the six-month transition period ended December 31, 2001, filed on March 28, 2002.
10.9*	2002 Non-Qualified Stock Option Plan, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, filed on August 26, 2002 (File No. 333-98745).
10.10*	Letter Agreement dated as of February 10, 2003 between the Registrant and Thomas E. Powell regarding Mr. Powell' s employment by the Registrant, incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the fiscal year ended December 31, 2002 filed with the SEC on March 28, 2003.
10.11*	Executive Employment Agreement made as of May 6, 2003, between the Registrant and David Zucker, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on May 7, 2003 (the "5/7/03 8-K").
10.12*	Stock Option Agreement made as of May 6, 2003, between the Registrant and David Zucker, incorporated herein by reference to the 5/7/03 8-K.
10.13*	Stock Option Agreement under 2002 Stock Option Plan made as of May 6, 2003, between the Registrant and David Zucker, incorporated herein by reference to the 5/7/03 8-K.
10.14*	Restricted Stock Agreement entered into as of May 6, 2003, between the Registrant and David Zucker, incorporated herein by reference to the 5/7/03 8-K.
10.15	PlayStation® 2 CD-ROM/DVD-ROM Licensed Publisher Agreement dated April 1, 2000 between Sony Computer Entertainment America Inc. and Midway Home Entertainment Inc., incorporated herein by reference to the Registrant' s Registration Statement on Form S-3/A, filed on August 18, 2003 (the "August 2003 S-3/A"). (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 406 under the Securities Act of 1933, as amended.)
10.16	PlayStation® 2 Licensed Publisher Agreement dated November 14, 2000 between Sony Computer Entertainment Europe Limited and Midway Games Limited, incorporated herein by reference to the August 2003 S-3/A. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 406 under the Securities Act of 1933, as amended.).
10.17*	Waiver, dated as of April 5, 2004, by David F. Zucker, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on April 13, 2004.
10.18*	Amendment to Stock Option Plans of the Registrant, incorporated herein by reference to the 6/10/04 S-3.
10.19	Letter Agreement entered into as of September 20, 2004 amending the PlayStation®2 CD-ROM/DVD-ROM Licensed Publisher Agreement effective as of April 1, 2000 between Sony Computer Entertainment America Inc. and Midway Home Entertainment Inc., incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the fiscal quarter ended on September 30, 2004, filed on November 8, 2004 (the "9/30/2004 10-Q"). (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)

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Exhibit No.	Description
10.20*	First Amendment to Restricted Stock Agreement made as of October 18, 2004, between the Registrant and David F. Zucker, incorporated herein by reference to the 9/30/2004 10-Q.
10.21*	2000 Stock Option/Stock Issuance Plan for Midway Studios − Austin Inc. and Form of Stock Option Agreement, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, File No. 333-120347, filed on November 10, 2004.
10.22*	2004 Form of Indemnification Agreement authorized to be entered into between the Registrant and officers and directors of the Registrant, incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed on March 14, 2005 (the "2004 10-K").
10.23*	Form of Stock Option Agreement For Directors used currently by the Registrant for directors under its stock option plans, incorporated herein by reference to the 2004 10-K.
10.24*	Form of Stock Option Agreement For Employees used currently by the Registrant for employees under its stock option plans, incorporated herein by reference to the 2004 10-K.
10.25*	Amended and Restated Midway Incentive Plan, incorporated herein by reference to the 2004 10-K.
10.26*	2005 Long-Term Incentive Plan, incorporated herein by reference to the Registrant' s definitive proxy statement filed on April 29, 2005 (File No. 001-12367).
10.27*	Form of Stock Option Agreement used currently by the Registrant for employees under its 2005 Long-Term Incentive Plan, incorporated herein by reference to the 6/30/2005 10-Q.
10.28*	Form of Restricted Stock Agreement used currently by the Registrant for management under its 2005 Long-Term Incentive Plan, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on October 7, 2005.
10.29*	Form of Non-Employee Director Stock Option Agreement under the 2005 Long-Term Incentive Plan incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on September 12, 2006.
10.30	Xbox 360 Publisher License Agreement entered into as of October 25, 2006 by and between Microsoft Licensing, GP and Midway Home Entertainment Inc., incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the year ended December 31, 2006, filed on March 12, 2007. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.31	Amended and Restated Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, the lenders thereto, and Wells Fargo Foothill, Inc., dated as of June 29, 2007, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, filed on August 2, 2007.
10.32	First Amendment to Amended and Restated Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, the lenders thereto and Wells Fargo Foothill, Inc., dated as of July 31, 2007, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, filed on August 2, 2007.
10.33	Unreal® Engine 3 License Agreement by and between Epic Games, Inc. ("Epic") and Midway Home Entertainment Inc. ("MHEI"), dated as of January 14, 2005, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, filed on August 2, 2007. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.34	Amendment No. 1 to Unreal® Engine 3 License Agreement by and between Epic and MHEI, dated as of December 5, 2005 incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, filed on August 2, 2007. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.35*	Second Form of Restricted Stock Agreement used by the Registrant for management under its 2005 Long-Term Incentive Plan, incorporated herein by reference to Registrant' s Quarterly Report on Form 10-Q for the quarter ended September 30, 2007, filed on November 1, 2007.

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Exhibit No.	Description
10.36	Waiver and Second Amendment to Amended and Restated Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, the lenders thereto and Wells Fargo Foothill, Inc., dated as of January 2, 2008 incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the year ended December 31, 2007, filed on March 14, 2008 (the "2007 10-K").
10.37*	Confidential Settlement Agreement and General Release by and between the Registrant and Steven M. Allison dated January 24, 2008 incorporated herein by reference to the 2007 10-K.
10.38	Amendment to the Xbox 360 Publisher License Agreement effective as of October 12, 2007 between Microsoft Licensing, GP and Midway Home Entertainment Inc. incorporated herein by reference to the 2007 10-K. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.39	Confidential License Agreement for the Wii Console between Nintendo of America Inc. and Midway Home Entertainment Inc. effective November 19, 2006 incorporated herein by reference to the Registrant' s Current Report on Form 10-K/A, Amendment No. 2 filed on October 27, 2008 (the "2007 10-K/A"). (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.40	License Agreement for the Nintendo DS System (EEA, Australia and New Zealand) dated June 18, 2006 between Nintendo Co., Ltd. and Midway Games Limited incorporated herein by reference to the 2007 10-K/A. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.41*	Sales Incentive Bonus Plan for Martin Spiess dated April 20, 2007 incorporated herein by reference to the 2007 10-K/A. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.42	Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, and National Amusements, Inc., dated as of February 29, 2008 incorporated herein by reference to the 2007 10-K.
10.43	Continuing Guaranty dated as of February 29, 2008, between the Registrant and specified subsidiaries in favor of National Amusements, Inc. incorporated herein by reference to the 2007 10-K.
10.44	Intercompany Subordination Agreement dated as of February 29, 2008 among the Registrant, specified subsidiaries of the Registrant and National Amusements, Inc. incorporated herein by reference to the 2007 10-K.
10.45	Unsecured Loan Agreement dated as of February 29, 2008, by and between the Registrant and National Amusements, Inc. incorporated herein by reference to the 2007 10-K.
10.46	Unsecured Subordinated Loan Agreement dated as of February 29 2008, by and between the Registrant and National Amusements Inc. incorporated herein by reference to the 2007 10-K.
10.47*	Letter Agreement dated as of March 19, 2008 between Midway Games Inc. and Matthew V. Booty, incorporated herein by reference to the Registrant' s Current Report on Form 8-K, filed on March 20, 2008.
10.48*	Memorandum to Matthew V. Booty Regarding Performance-Based Bonuses for Interim CEO and President dated April 8, 2008, incorporated herein by reference to the Registrant' s Current Report on Form 8-K/A, Amendment No. 2, filed on October 21, 2008. Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.
10.49*	Midway Games Inc. Memorandum to Ryan O' Desky Regarding Terms of Employment dated April 8, 2008, incorporated herein by reference to the Registrant' s Current Report on Form 8-K, filed on April 11, 2008 (the "4/11/08 8-K").
10.50*	Midway Games Limited Memorandum to Martin Spiess Regarding Terms of Employment dated April 8, 2008, incorporated herein by reference to the 4/11/08 8-K.

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Exhibit No.	Description
10.51*	Midway Games Limited Memorandum to Martin Spiess Regarding Sales Incentive Bonus Plan dated April 8, 2008, incorporated herein by reference to the Registrant' s Current Report on Form 8-K/A, Amendment No. 1, filed on October 21, 2008. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.52	Factoring Agreement by and among National Amusements, Inc., Midway Home Entertainment Inc., and Midway Amusement Games, LLC dated September 15, 2008 incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on September 18, 2008 (the "9/18/08 8-K"). (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.53	Amendment No. 2 to Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, and National Amusements, Inc., dated as of September 15, 2008 incorporated herein by reference to the 9/18/08 8-K. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.54	Amendment No. 2 to Unsecured Loan Agreement, by and between the Registrant and National Amusements Inc., dated as of September 15, 2008 incorporated herein by reference to the 9/18/08 8-K. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.55	Amendment No. 2 to Unsecured Subordinated Loan Agreement by and between the Registrant and National Amusements Inc., dated as of September 15, 2008 incorporated herein by reference to the 9/18/08 8-K. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.56	Global PlayStation 3 Format Licensed Publisher Agreement effective as of September 26, 2008 by and between Sony Computer Entertainment America Inc. and Midway Home Entertainment, Inc. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.57	Amendment No. 1 to Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, and National Amusements, Inc., dated as of August 19, 2008.
10.58	Amendment No. 1 to Unsecured Loan Agreement, by and between the Registrant and National Amusements Inc., dated as of August 19, 2008.
10.59	Amendment No. 1 to Unsecured Subordinated Loan Agreement by and between the Registrant and National Amusements Inc., dated as of August 19, 2008.
21	Subsidiaries of the Registrant.
23	Consent of Ernst & Young LLP.
31	Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32	Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*	Indicates a management contract or compensatory plan or arrangement.

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MIDWAY GAMES INC.

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All other schedules are omitted since the required information is not present in amounts sufficient to require submission of the schedule or because the information required is included in the consolidated financial statements and notes thereto.

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MANAGEMENT REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2008. Management based this assessment on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *"Internal Control − Integrated Framework."*

Based on this assessment, management concluded that, as of December 31, 2008, our internal control over financial reporting is effective.

The independent registered public accounting firm that audited the consolidated financial statements included in this report has issued an attestation report on our internal control over financial reporting. This report appears on page F-4.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
Midway Games Inc.

We have audited the accompanying consolidated balance sheets of Midway Games Inc. (the "Company") as of December 31, 2008 and 2007, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2008. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). 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 financial statements referred to above present fairly, in all material respects, the consolidated financial position of Midway Games Inc. at December 31, 2008 and 2007, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

The accompanying financial statements have been prepared assuming that Midway Games Inc. will continue as a going concern. As discussed in Notes 2 and 3 to the financial statements, on February 12, 2009, Midway Games Inc. filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") and its continuation as a going concern is contingent upon, among other things, Midway Games Inc.'s ability (i) to comply with the orders of the Bankruptcy Court; (ii) to obtain confirmation of a plan of reorganization under the Bankruptcy Code; (iii) to reduce debt through the bankruptcy process; (iv) to return to profitability; (v) to generate sufficient cash flow from operations to fund working capital and debt service requirements; and (vi) to obtain financing sources to meet future obligations. These matters raise substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments relating to the recoverability and classification of asset carrying amounts or the amount and classification of liabilities that may result from the outcome of these uncertainties.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Midway Games Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control − Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated April 6, 2009 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Chicago, Illinois
April 6, 2009

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON INTERNAL CONTROL OVER FINANCIAL REPORTING

The Board of Directors and Stockholders
Midway Games Inc.

We have audited Midway Games Inc.' s internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control − Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Midway Games Inc.' s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management' s Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company' s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company' s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company' s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company' s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Midway Games Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Midway Games Inc. as of December 31, 2008 and 2007, and the related consolidated statements of operations, changes in stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2008 and our report dated April 6, 2009 expressed an unqualified opinion thereon that included an explanatory paragraph regarding Midway Games Inc.' s ability to continue as a going concern.

/s/ Ernst & Young LLP

Chicago, Illinois
April 6, 2009

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MIDWAY GAMES INC.

CONSOLIDATED BALANCE SHEETS

	December 31,	
	2008	2007
	(In thousands, except share and per share amounts)	
ASSETS		
Current assets:		
Cash and cash equivalents	$23,021	$27,524
Restricted cash	213	–
Receivables, less allowances of $28,443 and $32,510 at December 31, 2008 and 2007, respectively	46,246	44,527
Inventories	5,782	3,772
Capitalized product development costs	36,528	51,252
Prepaid expenses and other current assets	13,463	13,362
Total current assets	125,253	140,437
Restricted cash	887	–
Assets held for sale	2,464	–
Capitalized product development costs	494	2,947
Property and equipment, net	9,512	19,298
Goodwill	40,822	41,307
Other assets	1,788	9,372
Total assets	$181,220	$213,361
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable	$31,211	$29,642
Due to factor	2,883	–
Accrued compensation and related benefits	11,308	6,134
Accrued royalties	28,850	12,769
Accrued selling and marketing	6,300	5,645
Deferred revenue	3,471	2,940
Current portion of long-term debt	88,931	–
Convertible senior notes, less unamortized discount of $13,994 at December 31, 2008	136,006	–
Other accrued liabilities	18,680	14,190
Total current liabilities	327,640	71,320
Convertible senior notes, less unamortized discount of $67,802 at December 31, 2007	–	82,198
Long-term debt	–	19,167
Deferred income taxes	12,028	10,715
Other noncurrent liabilities	541	880
Commitments and contingencies (Note 16)		
Stockholders' equity (deficit):		
Preferred stock, $0.01 par value, 5,000,000 shares authorized and undesignated	–	–
Common stock, $0.01 par value, 200,000,000 shares authorized; 93,540,355 and 93,268,699 shares issued at December 31, 2008 and 2007, respectively	935	933
Additional paid-in capital	522,453	521,031
Accumulated deficit	(671,448)	(480,474)
Accumulated translation adjustment	(1,146)	(2,629)
Treasury stock, at cost, 1,445,430 and 1,165,430 shares at 2008 and 2007, respectively	(9,783)	(9,780)
Total stockholders' equity (deficit)	(158,989)	29,081
Total liabilities and stockholders' equity (deficit)	$181,220	$213,361

See notes to consolidated financial statements.

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MIDWAY GAMES INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

	Years Ended December 31,		
	2008	2007	2006
	(In thousands, except per share amounts)		
Net revenues	$219,556	$157,195	$165,574
Cost of sales:			
Product costs and distribution	87,400	56,413	67,331
Royalties and product development	118,114	90,400	68,883
Total cost of sales	205,514	146,813	136,214
Gross profit	14,042	10,382	29,360
Research and development expense	32,900	25,373	37,022
Selling and marketing expense	52,297	42,960	43,150
Administrative expense	28,032	21,226	21,297
Restructuring and other charges (benefits)	14,299	(783)	(130)
Operating loss	(113,486)	(78,394)	(71,979)
Interest income	426	2,313	4,384
Interest expense	(70,878)	(27,165)	(11,241)
Other income (expense), net	(5,329)	2,902	2,699
Loss before income taxes	(189,267)	(100,344)	(76,137)
Provision (benefit) for income taxes	1,707	(752)	1,646
Net loss	$(190,974)	$(99,592)	$(77,783)
Basic and diluted loss per share of common stock	$(2.08)	$(1.09)	$(0.86)
Average number of shares outstanding	91,605	91,167	90,708

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MIDWAY GAMES INC.

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)

	Common Stock							
	Number of Shares	Par Value	Additional Paid-In Capital	Accumulated Deficit	Accumulated Translation Adjustment	Deferred Compensation	Treasury Stock At Cost	Total Stockholders' Equity (Deficit)
				(In thousands)				
Balance at January 1, 2006	92,234	$ 922	$ 431,273	$ (303,099)	$ (439)	$ (3,610)	$ (9,602)	$ 115,445
Net loss				(77,783)				(77,783)
Translation adjustment					(1,232)			(1,232)
Comprehensive loss								(79,015)
Exercise of common stock options	239	3	1,026				7	1,036
Issuance of common stock rights	11							–
Forfeiture of restricted common stock	3		185				(185)	–
Elimination of deferred compensation upon adoption of SFAS No. 123R			(3,610)			3,610		–
Restricted stock compensation cost			2,603					2,603
Stock option compensation cost			3,519					3,519
Discount on convertible senior notes			9,119					9,119
Balance at December 31, 2006	92,487	925	444,115	(380,882)	(1,671)	–	(9,780)	52,707
Net loss				(99,592)				(99,592)
Translation adjustment					(958)			(958)
Comprehensive loss								(100,550)
Long-term incentive plan restricted stock	645	6	(6)					–
Employee stock purchase plan shares issued	82	1	327					328
Employee stock purchase plan discount			73					73
Exercise of common stock options	42	1	137					138
Issuance of common stock rights	13							–
Restricted stock compensation cost			613					613
Stock option compensation cost			1,682					1,682
Discount on convertible senior notes			74,090					74,090
Balance at December 31, 2007	93,269	933	521,031	(480,474)	(2,629)	–	(9,780)	29,081
Net loss				(190,974)				(190,974)
Translation adjustment					1,483			1,483
Comprehensive loss								(189,491)
Exercise of common stock options	25		58					58
Issuance of common stock rights	11							–
Stock option compensation cost			689					689
Employee stock purchase plan shares issued	215	2	417					419
Employee stock purchase plan discount			48					48
Issuance of restricted common stock	20							–
Forfeiture of restricted common stock			3				(3)	–
Restricted stock compensation cost			207					207
Balance at December 31, 2008	93,540	$ 935	$ 522,453	$ (671,448)	$ (1,146)	$ –	$ (9,783)	$ (158,989)

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MIDWAY GAMES INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Years Ended December 31,		
	2008	2007	2006
		(In thousands)	
OPERATING ACTIVITIES			
Net loss	$(190,974)	$(99,592)	$(77,783)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization of long lived assets	6,426	7,645	7,739
Receivables provision	57,290	45,645	34,141
Amortization of capitalized product development costs, including writedowns	79,656	66,228	55,324
Deferred income taxes	1,435	(1,446)	1,316
Stock-based compensation	579	1,631	6,122
Amortization of debt issuance costs	2,596	1,385	1,236
Accretion of convertible senior notes discount	53,809	14,277	1,129
(Gain) loss on disposal of property and equipment	(988)	56	30
Changes in operating assets and liabilities:			
Receivables	(78,157)	(37,804)	(53,587)
Proceeds from accounts receivable factoring facility	47,055	–	–
Payments on accounts receivable factoring facility	(31,348)	–	–
Inventories	(2,742)	(817)	3,013
Capitalized product development costs	(62,115)	(78,076)	(69,342)
Prepaid expenses and other current assets	(987)	732	(1,535)
Accounts payable, accrued liabilities and deferred revenue	35,630	29,185	3,122
Other assets and liabilities	9,331	(952)	(3,827)
Net cash used in operating activities	(73,504)	(51,903)	(92,902)
INVESTING ACTIVITIES			
Purchases of property and equipment	(2,297)	(5,696)	(8,751)
Restricted cash	(1,100)	–	–
Proceeds from the sale of property and equipment	5,100	–	75
Net cash provided by (used in) investing activities	1,703	(5,696)	(8,676)
FINANCING ACTIVITIES			
Proceeds from issuance of convertible senior notes	–	–	75,000
Proceeds from long-term debt	–	14,722	–
Payment of debt issuance costs	(515)	–	(2,269)
Borrowings under Loan and Security Agreement – term loan	20,000	–	–
Borrowings under Loan and Security Agreement – revolver	13,452	–	–
Repayment of borrowings from Loan and Security Agreement – revolver	(4,500)	–	–
Borrowings under Unsecured Loan Agreement – revolver	41,300	–	–
Repayment of borrowings from Unsecured Loan Agreement – revolver	(1,300)	–	–
Borrowings under Subordinated Unsecured Loan Agreement – revolver	27,584	–	–
Repayment of borrowings under Subordinated Unsecured Loan Agreement – revolver	(7,605)	–	–
Payment of borrowings from former credit facilities	(19,167)	(2,650)	(3,333)
Payment of software license financing arrangements	–	(1,156)	(374)
Cash received from exercise of common stock options	59	138	6,318
Net cash provided by financing activities	69,308	11,054	75,342
Effect of exchange rate changes on cash	(2,010)	647	1,282
Decrease in cash and cash equivalents	(4,503)	(45,898)	(24,954)
Cash and cash equivalents at beginning of period	27,524	73,422	98,376
Cash and cash equivalents at end of period	$23,021	$27,524	$73,422
Supplemental Disclosures of Cash Flow Information:			
Interest paid	$13,765	$10,855	$8,519
Income taxes paid	$1,123	$537	$5

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NOTE 1: BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Business

We develop and publish interactive entertainment software for the global video game market. Video games for play on home consoles, handheld devices, and personal computers are sold to mass merchants, video rental retailers and entertainment software distributors. We sell games primarily in North America, Europe and Australia for the major video game platforms, including Sony' s *PlayStation 2*, *PlayStation 3 and PlayStation Portable,* Microsoft' s *Xbox 360,* and Nintendo' s *Wii* and *DS*, as well as for personal computers.

Consolidation Policy

The consolidated financial statements include the accounts of Midway Games Inc. and its wholly-owned subsidiaries (together referred to as "we," "us," "our," "Midway" or the "Company"). All significant intercompany accounts and transactions have been eliminated.

Segment Reporting

We have one operating segment, the Video Game Business, per the definitions of the Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 131, *Disclosures about Segments of an Enterprise and Related Information.* To date, management has not considered discrete geographical or other information to be relevant for purposes of making decisions about allocations of resources. For information about geographic areas and major customers, see "Concentration of Risk" below.

Cash and Cash Equivalents

Cash and cash equivalents include all highly liquid investments with maturities of three months or less when purchased.

Restricted Cash

Restricted cash primarily represents the amount of cash and cash equivalents required to be maintained under letters of credit to comply with the requirements of two office space lease agreements. The restrictions lapse ratably through 2014 unless an event of default on the leases occurs.

Receivable Allowances

Receivables are stated net of allowances for price protection, returns, discounts and doubtful accounts.

We grant price protection or discounts to, and sometimes allow product returns from, our customers under certain conditions. Therefore, we record an allowance for price protection, returns and discounts at each balance sheet date. The provision related to this allowance is reported in net revenues. Price protection means credits relating to retail price markdowns on our products previously sold by us to customers. We base these allowances on expected trends and estimates of potential future price protection, product returns and discounts related to current period product revenue. Several factors are used in developing these estimates, including: (a) prior experience with price protection, returns and discounts; (b) historical and expected sell-through rates for particular games; (c) historical and expected rates of requests for such credits; (d) specific identification of problem accounts; (e) existing field inventories; (f) shipments by geography as price protection, returns and discounts experience differs by geography; (g) terms of sale; (h) sales rates or trends for similar products; (i) consideration of price points that would encourage future sell-through at the retail level and corresponding price protection credits that would be granted to appropriate customers; (j) the net price paid by our customers for products on which previous price protection has been granted and (k) other relevant factors. Sell-through refers to consumer purchases of our product

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at retail from our customers. Actual price protection, product returns and discounts may materially differ from our estimates as our products are subject to changes in consumer preferences, technological obsolescence due to new platforms or competing products. Changes in these factors could change our judgments and estimates and result in variances in the amount of allowance required. This may impact the amount and timing of our revenue for any period. For example, if customers request price protection in amounts exceeding the rate expected and if management agrees to grant it, then we will incur additional charges.

We evaluate the collectibility of our trade receivables and establish an allowance for doubtful accounts based on a combination of factors. The provision related to this allowance is reported in administrative expense. We analyze significant customer accounts and current economic trends when evaluating the adequacy of our allowance for doubtful accounts. Additionally, we may record allowances for doubtful accounts related to customers based on length of time the receivable balance is outstanding, financial health of the customer and historical experience. Once an allowance is established, if repeated efforts to collect from the customer have failed and collection is deemed unlikely, we may write off the customer' s account as uncollectible. In addition, we may suspend shipment to customers deemed to be high credit risk or require cash in advance for shipments. This analysis requires management to make estimates of collectibility which may differ from actual collections. If circumstances related to our customers change, the amount and timing of bad debt expense for any period may be impacted.

Inventories

Inventories are valued at the lower of cost (determined by the first-in, first-out method) or market and consist of finished goods. Components of inventory costs include disk replication, printed materials, game boxes, freight in, security encryption for PC games and platform royalties.

Capitalized Product Development Costs

Our capitalized product development costs consist of software development costs for video games that will be sold. We account for software development in accordance with SFAS No. 86, *Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed* ("SFAS No. 86"). Software development costs incurred prior to the establishment of technological feasibility are expensed when incurred and are included in research and development expense. Once a software product has reached technological feasibility, all subsequent software development costs are capitalized until that product is released for sale. Technological feasibility is evaluated on a product-by-product basis and can occur early in the development cycle or later depending on required technology to complete the product and the availability to us of such technology.

After a product is released for sale, the capitalized product development costs are amortized to expense based on the ratio of actual cumulative revenues to the total of actual cumulative revenues plus projected future revenues for each game. This expense is recorded as a component of cost of sales. This typically results in an amortization period of less than one year. The amortization of capitalized software development costs is recorded as cost of sales in the royalties and product development line item. In accordance with SFAS No. 86, included in the amortization amounts are writedowns of capitalized costs associated with video games for which the estimated future net realizable value of products were less than their corresponding capitalized product development costs. If a revised game sales forecast is less than management' s current game sales forecast, or if actual game sales are less than management' s forecast, it is possible we could accelerate the amortization of software development costs previously capitalized. In this event, subsequent amortization of capitalized product development costs for a game is based on the ratio of current period sales to the previous period' s projected future revenue.

We evaluate the recoverability of capitalized software development costs on a product-by-product basis. Capitalized costs for products that are cancelled are expensed in the period of cancellation. In addition, a charge to cost of sales is recorded when our forecast for a particular game indicates that unamortized capitalized costs exceed the estimated future net realizable value of that asset. The estimated future net realizable value is the estimated future revenues from that game reduced by the estimated future cost of completing and selling the game.

Management judgments and estimates are used in the assessment of when technological feasibility is established and in the ongoing assessment of the recoverability of capitalized costs. Different estimates or assumptions could

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result in different reported amounts of capitalized product development costs, research and development expense or cost of sales. See Note 4 for additional details regarding capitalized product development costs.

Property and Equipment

Property and equipment are stated at cost and depreciated by the straight-line method over their estimated useful lives ranging from three to eight years for furniture, fixtures, equipment and computer software and the lesser of the lease term or ten years for leasehold improvements. Repair and maintenance costs are expensed as incurred.

Long-Lived Assets

Long-lived assets, primarily property and equipment, are reviewed for other-than-temporary impairment as events or changes in circumstances occur indicating that the amount of the asset reflected in our balance sheet may not be recoverable. An estimate of undiscounted cash flows produced by the asset, or the appropriate group of assets, is compared to the carrying value to determine whether impairment exists. We adjust the net book value of the underlying asset, or the appropriate group of assets, if the sum of expected future cash flows is less than book value.

Goodwill

Goodwill represents the excess purchase price over the fair market value of net identifiable assets acquired. In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets* ("SFAS 142"), we do not recognize amortization expense on goodwill. Instead, it is tested for impairment at least annually and if events or changes in circumstances occur that would reduce its fair value below its carrying value. We use October 1 as the date of our annual review of impairment of goodwill. During 2008, 2007 and 2006, we completed this annual review and determined there was no impairment.

Intangible Assets

Intangible assets consist of non-compete agreements executed with employees in conjunction with the prior business acquisitions and are included with other assets (noncurrent) in the consolidated balance sheets. The gross amount of non-compete agreements totaled $887,000 and $891,000 at December 31, 2008 and 2007, respectively. Accumulated amortization of these non-compete agreements totaled $887,000 and $799,000 at December 31, 2008 and 2007, respectively. These intangible assets were amortized by the straight-line method over their contractual lives, typically two to three years. Amortization of intangible assets totaled $88,000, $126,000 and $298,000 during 2008, 2007 and 2006, respectively.

Debt Issuance Costs

As of December 31, 2008 and 2007, debt issuance costs totaled $502,000 and $2,581,000, respectively, net of accumulated amortization of $5,905,000 and $3,309,000, respectively. Debt issuance costs are being amortized over the applicable terms of the Company' s credit facilities and issuances of convertible senior notes. See Note 8 for details of the Company' s credit facilities and Note 10 for details of the Company' s convertible senior notes and acceleration of due dates and related effects on amortization.

Stock-Based Compensation

On January 1, 2006, we adopted the provisions of SFAS No. 123R (Revised 2004), *Share-Based Payment* ("SFAS No. 123R"), using the modified-prospective transition method. Under this method, stock-based compensation expense was recognized in the 2008, 2007 and 2006 consolidated financial statements for all stock option awards granted during 2008, 2007 and 2006, and also for stock option awards that were both outstanding and not fully vested at January 1, 2008, January 1, 2007 and January 1, 2006, respectively. Compensation expense recognized in our 2008, 2007 and 2006 consolidated financial statements includes the estimated expense for stock options granted on and subsequent to January 1, 2006, based on the grant date fair value estimated in accordance with the provisions of SFAS No. 123R, and the estimated expense for the portion vesting in the current period for options granted prior to, but not vested as of, January 1, 2008, January 1, 2007 and January 1, 2006, respectively,

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based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*. Results for prior periods have not been restated, in accordance with the provisions of the modified-prospective transition method. Recognition of compensation expense related to our restricted stock outstanding did not change upon the adoption of SFAS No. 123R. See Note 13 for details on our stock-based awards and stock-based compensation.

SFAS No. 123R requires the benefits of tax deductions in excess of the compensation cost recognized for those options to be classified as financing cash inflows. Stock option activity did not result in a tax benefit during the years ended December 31, 2008 and 2007, due to our current tax loss position.

Revenue Recognition

We recognize revenue in accordance with the provisions of Statement of Position 97-2, *Software Revenue Recognition.* Accordingly, revenue is recognized when there is persuasive evidence that an arrangement exists, the software is delivered, the selling price is fixed or determinable and collectibility of the customer receivable is probable. Generally, these conditions are met upon delivery of the product to the customer. We do not provide any significant customization of software or postcontract customer support. Additionally, all online features are considered incidental to our overall product offering. As a result, we currently do not defer any revenue related to products containing online features.

If consumer demand for a product falls below expectations, we may grant price protection to increase future sell through or accept product returns. Therefore, revenue is recorded net of an allowance for price protection, returns and discounts.

Nonrefundable guaranteed intellectual property licenses are recognized as revenue when the license agreements are signed and we fulfill our obligations, if any, under the agreement. Royalties on sales that exceed the guarantee are recognized as revenues as earned. License and royalty revenues were $6,862,000, $6,369,000, and $6,301,000 during 2008, 2007 and 2006, respectively.

Distribution Costs

Distribution costs, including shipping and handling costs of video games sold to customers, are included in cost of sales.

Advertising Expense

The cost of advertising is charged to selling and marketing expense as incurred, except for costs associated with advertising campaigns which are deferred and charged to expense upon the first use of the advertising campaign. Advertising expenses for 2008, 2007 and 2006 were $34,923,000, $25,988,000, and $27,656,000, respectively. The total amount of advertising costs reported as assets at December 31, 2008 and 2007 were $605,000 and $614,000, respectively, and are included with prepaid expenses and other current assets in the consolidated balance sheets. We also share portions of certain customers' advertising expenses through co-op advertising arrangements. Cooperative advertising allowances provided to customers are recognized as a reduction of revenues, except for cooperative advertising that provides a separate identifiable benefit and the benefit's fair value can be established, in which case the cooperative advertising is recognized as selling and marketing expense. In either case, liabilities are increased in the amount of cooperative advertising recorded.

Income Taxes

Deferred tax assets and liabilities are recognized for the future tax consequences attributed to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. 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 operations in the period that includes the enactment date.

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Foreign Currencies

The local currency is the functional currency for our foreign operations. Assets and liabilities of our foreign operations are translated at the rate of exchange in effect on the balance sheet date; revenues and expenses are translated at the average rates of exchange prevailing during the period. Equity accounts are translated at historical rates. The related translation adjustments are reflected as a foreign currency translation adjustment in stockholders' equity.

Foreign currency transaction gains and losses are a result of the effect of exchange rate changes on transactions denominated in currencies other than the functional currency. We classify foreign currency transaction gains and losses in other income (expense), net in the consolidated statements of operations. Net foreign currency transaction gains (losses) were ($5,148,000), $2,751,000 and $2,670,000 for 2008, 2007 and 2006, respectively.

Comprehensive Loss

SFAS No. 130, *Reporting Comprehensive Income*, requires us to report foreign currency translation adjustments as a component of other comprehensive income or loss. Comprehensive loss is disclosed in the consolidated statements of changes in stockholders' equity (deficit). Foreign currency translation adjustments have been the only component of comprehensive loss to date. Accordingly, accumulated other comprehensive loss is equal to the accumulated translation adjustment of $1,146,000 and $2,629,000 at December 31, 2008 and 2007, respectively.

Loss per Common Share

The following securities exercisable for or convertible into the number of shares of common stock shown were outstanding on each of the following dates (in thousands):

	December 31,		
Type	2008	2007	2006
Stock options	1,388	4,537	3,810
Contingent shares	–	713	1,045
Convertible senior notes	18,864	18,864	12,747
Total	20,252	24,114	17,602

Contingent shares represent those shares of our common stock granted to individuals which have restrictions placed as to transferability that will lapse over a defined period as set at the date of grant. These include shares of restricted common stock granted to employees as compensation or retention incentives, as well as restricted shares issued as part of the purchase price consideration in previous acquisitions.

The calculation of diluted loss per share of common stock for 2008, 2007 and 2006 did not include the effect of stock options, warrants, contingent shares or convertible senior notes because to do so would have been antidilutive. Accordingly, the average number of shares outstanding for the reported periods was used in their respective calculations of basic and diluted loss per share of common stock.

Registration Rights

We have issued financial instruments that are convertible into or exchangeable for our common stock. In some cases, in conjunction with the issuance of these financial instruments, we issued rights that under certain circumstances provide that we will register the underlying common stock shares with the Securities and Exchange Commission ("SEC") so that such common stock shares may be resold by the holders ("registration rights"). For purposes of determining the accounting treatment for the financial instruments and any related registration rights, we assess whether the financial instrument and related registration rights represent one combined instrument or whether the financial instrument and related registration rights represent separate instruments. This determination is based on whether the financial instrument may be transferred without the registration rights. Specifically, if the financial instrument may be transferred without the registration rights, then the financial instrument and registration rights are accounted for as two separate instruments. If the registration rights are attached to the financial instrument

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such that they are automatically transferred along with transfer of the financial instrument, then both the registration rights and related financial instrument are accounted for as one combined instrument.

As of December 31, 2008, we had the following two convertible instruments outstanding:

$75,000,000 of convertible senior notes that are convertible into common stock at a current conversion rate of 100 shares per $1,000 principal amount of the notes; and

$75,000,000 of convertible senior notes that are convertible into common stock at a current conversion rate of 151.5152 shares per $1,000 principal amount of the notes.

The registration rights associated with both convertible senior note issuances automatically transfer with these instruments, and accordingly, these instruments and the related registration rights are accounted for as one combined instrument.

Concentration of Risk

Financial instruments that potentially subject us to concentrations of credit and market risk consist primarily of cash and cash equivalents and receivables from the sale of games. We invest our cash and cash equivalents only in high credit quality securities and limit the amounts invested in any one security.

The following table discloses information about geographic areas and our top two major customers for the respective reporting periods (in thousands):

	Years Ended December 31,		
	2008	2007	2006
Geographic areas			
Net revenues outside of the United States	$84,477	$70,802	$48,860
Major customers			
Net revenues from GameStop	$32,586	$23,348	$24,175
Net revenues from Wal-Mart	$26,134	$15,998	$27,596

Net assets located outside of the United States, after elimination of intercompany accounts and excluding goodwill, totaled $14,117,000 and $22,781,000 as of December 31, 2008 and 2007, respectively.

Receivables from customers representing 10% or more of our gross receivables balance totaled $21,934,000 and $20,135,000 (GameStop and Best Buy) at December 31, 2008 and 2007, respectively. Such amounts are prior to applying any allowances for doubtful accounts, price protection, returns or discounts.

Historically, a limited number of products have generated a large amount of our net revenues. In 2008, 2007 and 2006, our *Mortal Kombat* video games accounted for 34.8%, 13.3% and 22.4% of our net revenues, respectively.

We are substantially dependent on Sony, Microsoft and Nintendo as they are the sole manufacturers of the games we develop for their consoles and they are the owners of the proprietary information and technology we need to develop the software for their game consoles.

Warranties

We warrant to our customers that the medium on which our software is recorded is free from defects for a period of 90 days from the date of purchase. We provide for an estimate of such warranty claims based on historical experience at the time of sale.

Fair Value of Financial Instruments

The carrying amount for all of our financial instruments, except for the convertible senior notes, approximates their fair values at the balance sheet dates due to either their short-term length to maturity or the existence of variable interest rates underlying such financial instruments that approximate prevailing market rates at each balance sheet date. The estimated fair value of our convertible senior notes at December 31, 2008 is not

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determinable at the balance sheet date. This is due to significant unobservable inputs that place this security within level 3 of the fair value hierarchy which management considered as inputs to measure fair value. The nonperformance risk (the risk that the obligation will not be fulfilled) due to the technical insolvency of the Company was significant at December 31, 2008. To management' s knowledge, the security is not listed and did not trade in 2008. The noteholders' ability to liquidate and fully recover the stated value may be limited or not exist. See Notes 2, 3, 8 and 10 to our consolidated financial statements.

The estimated fair value of our convertible senior notes at December 31, 2007, based on available market prices, was approximately $120,047,000 compared to a stated value of $150,000,000, excluding the impact of the debt discounts recorded on the 6.0% convertible senior notes issued in 2005 and the 7.125% convertible senior notes issued in 2006.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Recently Issued Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS No. 157"). This standard provides guidance for using fair value to measure assets and liabilities. SFAS No. 157 applies whenever other standards require or permit assets or liabilities to be measured at fair value but does not expand the use of fair value in any new circumstances. Under SFAS No. 157, fair value refers to the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants based upon the assumptions market participants would use when pricing the asset or liability. The provisions of this statement were adopted for our year beginning January 1, 2008 and the initial application did not have a material effect on the values reported by the Company.

On October 10, 2008, the FASB issued FASB Staff Position ("FSP") SFAS No. 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active* ("FSP SFAS No. 157-3"). FSP SFAS No. 157-3 does not change the fair value measurement principles in SFAS No. 157, but rather provides guidance of the application of those measurement principles in the extreme inactive markets that currently exist.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS No. 159"). This standard permits entities to elect to report eligible financial assets and liabilities at fair value. SFAS No. 159 intends to reduce the complexity in accounting by eliminating the need to apply hedge accounting provisions and mitigates volatility in earnings by measuring related assets and liabilities consistently. This statement helps expand the use of fair value measurement and achieves further convergence with the International Financial Reporting Standards which permits a fair value option. On January 1, 2008, the Company adopted SFAS No. 159 and elected not to apply the provisions of SFAS No. 159 to its eligible financial assets and financial liabilities on the date of adoption. Accordingly, the initial application of SFAS No. 159 had no effect on the Company' s financial results.

In April 2008, the FASB issued FSP SFAS No. 142-3, *Determination of the Useful Life of Intangible Assets* ("FSP SFAS No. 142-3"). FSP SFAS No. 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142. Previously, under the provisions of SFAS No. 142, an entity was precluded from using its own assumptions about renewal or extension of an arrangement where there was likely to be substantial cost or material modifications. FSP SFAS No. 142-3 removes the requirement of SFAS No. 142 for an entity to consider whether an intangible asset can be renewed without substantial cost or material modification to the existing terms and conditions and requires an entity to consider its own experience in renewing similar arrangements. FSP SFAS No. 142-3 also increases the disclosure requirements for a recognized intangible asset to enable a user of financial statements to assess the extent to which the expected future cash flows associated with the asset are affected by the entity' s intent or ability to renew or extend the arrangement. FSP SFAS No. 142-3 is effective for fiscal years beginning after December 15, 2008 and interim periods within those fiscal years. Early adoption is prohibited. The guidance for determining the useful life of a recognized intangible asset is applied prospectively to intangible assets acquired after the effective

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date. Accordingly, the Company does not anticipate that the initial application of FSP SFAS No. 142-3 will have an impact on the Company' s financial results. The disclosure requirements must be applied prospectively to all intangible assets recognized as of, and subsequent to, the effective date.

In April 2008, the FASB issued FSP SOP 90-7-1, *An Amendment of AICPA Statement of Position 90-7* ("FSP SOP 90-7-1"). FSP SOP 90-7-1 nullifies certain requirements regarding changes in accounting principles that will be applicable to the financial statements of an entity emerging from bankruptcy. Any changes in accounting principles required within the twelve months following the implementation of fresh start accounting by such an entity are no longer required to be adopted at the time fresh start accounting is implemented. Entities emerging from bankruptcy that implement fresh start accounting should only follow accounting standards in effect at the date fresh start accounting is implemented, including any standards eligible for early adoption. The Company will assess the impact of the application of this standard when and if fresh start accounting is required upon resolution of its bankruptcy issues.

NOTE 2: CHAPTER 11 REORGANIZATION PROCEEDINGS

On February 12, 2009 (the "Petition Date"), the Company and its U.S. subsidiaries ("the Debtors") filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") seeking relief under the provisions of Chapter 11 of the United States Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Debtors are operating as debtors-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court. The Company' s foreign subsidiaries were not included in the Chapter 11 Cases.

On November 28, 2008, each of Mr. Sumner M. Redstone, National Amusements, Inc. ("NAI"), of which Mr. Redstone is the Chairman, and Sumco, Inc., which is owned jointly by both NAI and Mr. Redstone (collectively, the "Sellers") entered into a Stock Purchase Agreement with Acquisition Holdings Subsidiary I LLC (the "Purchaser"), pursuant to which the Sellers sold to the Purchaser, and the Purchaser purchased from the Sellers, all of the shares of common stock, $0.01 par value (the "Common Shares") of the Company beneficially owned by the Sellers immediately prior to such sale, representing, collectively, approximately 87.2% of the total issued and outstanding Common Shares of Midway.

Concurrently with the execution of the Stock Purchase Agreement, NAI and the Purchaser entered into a Participation Agreement, pursuant to which NAI granted to the Purchaser, and the Purchaser acquired from NAI, (i) an undivided interest and participation in certain of the loans and advances made by NAI, whether before or after the date of the Participation Agreement, pursuant to the Loan and Security Agreement (as defined in Note 8 below) and the Unsecured Loan Agreement (as defined in Note 8 below) and (ii) all of NAI' s right, title and interest in, to and under the Loan and Security Agreement and the Unsecured Loan Agreement including guarantees, collateral, pledges, distributions, claims and causes of actions against the borrowers thereunder, all on the terms and conditions set forth in the Participation Agreement. The consideration paid by the Purchaser for the interests acquired under the Stock Purchase Agreement and the Participation Agreement was $100,000.

The sale of a majority interest in the Company triggered change in control provisions with respect to the Company' s 6.0% Notes (as defined in Note 10) and the 7.125% Notes (as defined in Note 10, and together, the "Notes"). This provision gave holders of the Notes the option to require the Company to repurchase their Notes in January 2009 at the principal amount of the Notes plus accrued and unpaid interest, aggregating approximately $153 million. Through separate waivers and forbearances signed by holders of the Notes, the repurchase date was extended until February 12, 2009. As of that date, the Company did not have the liquidity to satisfy its obligation with respect to the repurchase of the Notes at the holders' option, and a failure to repurchase the Notes would constitute an Event of Default which would allow the Trustee under each Indenture or the holders of 25% of each series of the Notes to declare all of the Notes of that series immediately due and payable.

Additionally, any failure of the Company to satisfy its obligation to repurchase the Notes would have consequences under the February 29, 2008 (i) Loan and Security Agreement (as defined in Note 8), between certain of Midway' s affiliates as borrowers and NAI, as lender, (ii) Unsecured Loan Agreement (as defined in Note 8), between the Company as borrower and NAI as lender and (iii) Subordinated Unsecured Loan Agreement (as defined in Note 8), between the Company as borrower and NAI as lender (collectively, the "NAI Agreements").

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Specifically, NAI would have the ability in such a circumstance to declare all amounts outstanding under the NAI Agreements immediately due and payable. Borrowings under the NAI Agreements totaled approximately $90 million as of February 12, 2009. As of the accelerated due date, the Company did not have the ability to satisfy its obligations to repay these amounts. In January 2009, all rights related to the Loan and Security Agreement and the Unsecured Loan Agreement were fully assigned to the Purchaser.

As of December 31, 2008, the Company recorded charges of (i) approximately $19.9 million related to additional non-cash interest expense as a result of the change of control that triggered an accelerated repurchase schedule with respect to the Company' s 6.0% Notes and 7.125% Notes, and (ii) approximately $0.2 million of accelerated expenses related to unamortized debt issue costs with respect to the Company' s outstanding debts under the NAI Agreements. The amounts due at December 31, 2008 under both the Notes and the NAI Agreements have been classified as current liabilities.

The liquidity deficiency and extensive amount of indebtedness resulted in the Company seeking Chapter 11 protection. The objective of the bankruptcy filing is to provide relief from all of its creditors, which will allow the Company time to review its strategic alternatives.

The filing of the Chapter 11 Cases constituted an event of default under both the Notes and the NAI Agreements. Under the Notes, the $150 million of principal and accrued and unpaid interest became immediately due and payable. Under the NAI Agreements, the lenders may declare $70 million immediately due and payable of which $30 million is secured, and also may declare the remaining $20 million immediately due and payable.

As part of the Chapter 11 Cases, the Company also filed with the Bankruptcy Court motions that would allow it to continue to operate its business in the ordinary course with uninterrupted performance of agreements with customers in accordance with existing business terms during the Chapter 11 Cases.

Subsequent to the Petition Date, the provisions in FSP SOP 90-7-1 apply to the Debtors' financial statements while the Debtors operate under the provisions of Chapter 11. FSP SOP 90-7-1 does not change the application of generally accepted accounting principles in the preparation of financial statements. However, FSP SOP 90-7-1 does require that the financial statements, for periods including and subsequent to the filing of the Chapter 11 petition, distinguish transactions and events that are directly associated with the reorganization from the ongoing operations of the business.

The accompanying financial statements do not reflect the effects of the Chapter 11 filing.

NOTE 3: GOING CONCERN

As discussed in Note 2, the Company is operating under Chapter 11 of the Bankruptcy Code and continuation of the Company as a going concern is contingent upon, among other things, the Company' s ability (i) to comply with the orders of the Bankruptcy Court; (ii) to obtain confirmation of a plan of reorganization under the Bankruptcy Code; (iii) to reduce debt through the bankruptcy process; (iv) to return to profitability; (v) to generate sufficient cash flow from operations to fund working capital and debt service requirements; and (vi) to obtain financing sources to meet the Company' s future obligations. These matters create substantial doubt relating to the Company' s ability to continue as a going concern.

As a result of the Chapter 11 filings, a filing of a plan of reorganization and other possible events could materially change amounts reported in the Company' s consolidated financial statements in the future. Balances as of December 31, 2008, do not give effect to any adjustments of the carrying value of assets and liabilities that may be necessary as a consequence of reorganization under Chapter 11.

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NOTE 4: CAPITALIZED PRODUCT DEVELOPMENT COSTS

The following table reconciles the beginning and ending capitalized product development cost balances for the following periods (in thousands):

	Years Ended December 31,		
	2008	2007	2006
Beginning balance	$54,199	$41,613	$27,595
Additions	62,479	78,814	69,342
Amortization, including writedowns	(69,414)	(66,228)	(55,324)
Restructuring charges	(10,242)	–	–
Ending balance	$37,022	$54,199	$41,613

During 2008, we recorded certain impairment charges for capitalized product development costs in restructuring and other charges (benefits) in our consolidated statements of operations. See Note 15 for details regarding these impairment charges.

NOTE 5: PROPERTY AND EQUIPMENT

Property and equipment, net of accumulated depreciation and amortization, consisted of (in thousands):

	December 31,	
	2008	2007
Land, land improvements, buildings and building improvements	$–	$6,034
Leasehold improvements	6,375	6,829
Furniture, fixtures, equipment and software	47,992	46,789
Construction-in-progress	180	714
	54,547	60,366
Less accumulated depreciation and amortization	(45,035)	(41,068)
Property and equipment, net	$9,512	$19,298

Depreciation and amortization expense related to property and equipment was $6,334,000, $7,519,000 and $7,441,000 for 2008, 2007 and 2006, respectively. The Company sold its land, land improvements, buildings and building improvements in 2008. See Note 14 for details of these sales.

NOTE 6: OTHER ACCRUED LIABILITIES

Other accrued liabilities consisted of (in thousands):

	December 31,	
	2008	2007
Product development advance	$5,351	$5,351
Deposit on sale-leaseback property (Note 14)	2,425	–
Other taxes payable	2,413	3,044
Convertible notes interest payable	1,582	1,598
Other	6,909	4,197
Total	$18,680	$14,190

NOTE 7: FACTORING AGREEMENT

On September 15, 2008, two of the Company' s wholly-owned subsidiaries, Midway Home Entertainment Inc. ("MHE") and Midway Amusement Games, LLC ("MAG"), entered into an accounts receivable factoring arrangement (the "Factoring Agreement") with NAI, which at the time of the agreement was a related party.

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Pursuant to the Factoring Agreement, NAI purchased from MHE certain accounts receivable invoices. MHE sold these accounts receivable invoices to NAI on an as-needed basis for the purpose of creating sufficient cash flow for working capital to finance inventory and fund operations related to its product offerings in the fourth quarter of 2008. The period during which MHE sold accounts receivable invoices under the Factoring Agreement expired on December 31, 2008. MHE was not required to sell any accounts receivable invoices, but subject to certain eligibility criteria and certain other conditions, NAI was committed to purchase accounts receivable invoices by paying purchase prices in an aggregate not to exceed $40,000,000, provided that availability under the commitment was replenished to the extent NAI receives collections of accounts receivable invoices it had previously purchased.

Under the Factoring Agreement, MHE submitted accounts receivable invoices to NAI, and NAI paid to MHE a purchase price equal to the face amount of the accounts receivable invoices minus an amount for dilution, a factoring fee, and an interest component. As servicing agent, MAG received a servicing fee of 0.15% on the gross invoice amount of each account receivable invoice purchased.

During 2008, the Company sold receivables in the amount of $47,552,000 (net of $14,972,000 of dilution) to NAI under the Factoring Agreement; recorded $308,000 and $189,000 of factoring fees and interest expense, respectively; and received $94,000 of servicing fees. As of December 31, 2008, the Company owed $2,883,000 to NAI for collections from customers that had not yet been remitted to NAI. The amount collected is included in Prepaid expenses and other current assets and the amount owed to NAI is included in Due to factor on the consolidated balance sheets.

NOTE 8: CREDIT FACILITIES

Wells Fargo Foothill Credit Facility

In June 2007, the Amended and Restated Loan and Security Agreement was entered into by and among Midway Home Entertainment Inc. and Midway Amusement Games, LLC (“Borrowers”), and Midway Games Inc., Midway Games West Inc., Midway Interactive Inc., Midway Sales Company, LLC, Midway Home Studios Inc., Surreal Software Inc., Midway Studios-Austin Inc., and Midway Studios-Los Angeles Inc. (“U.S. Credit Parties”), the Lenders that are signatories thereto and Wells Fargo Foothill, Inc. (“WFF”) (as the Arranger and Administrative Agent, and UK Security Trustee) (the “Amended LSA”), which modified the existing loan and security agreement with WFF. The Amended LSA provided for a credit facility initially of up to $30,000,000 under which we had a $20,000,000 term loan (the “WFF Term Loan”) and a revolving line of credit of up to $10,000,000 (the “WFF Credit Facility”). The term loan under the Amended LSA increased from a remaining principal balance of $5,278,000 to $20,000,000, and as a result the Company received $14,722,000 of cash proceeds in June 2007.

The WFF Term Loan had a five-year term and was to be repaid in equal monthly installments of $166,668 beginning August 1, 2007 and ending on June 1, 2012 with a final payment of $10,167,000 due on June 29, 2012. The WFF Term Loan bore interest at our election of either the bank’ s base rate (8.75% at December 31, 2007) plus 1.5% or a one to three-month LIBOR rate plus 2.75%, but in no event less than 4.0%. At December 31, 2007, the interest rate on the WFF Term Loan was 7.57%, which represents the one-month LIBOR rate plus 2.75%, and the remaining outstanding principal balance was $19,167,000.

The initial maximum availability under the WFF Credit Facility was $10,000,000. Maximum availability under the WFF Credit Facility in future periods was equal to $30,000,000 less the outstanding principal balance of the WFF Term Loan. The WFF Credit Facility allowed for the issuance of up to $7,500,000 in aggregate letters of credit. Further, the WFF Credit Facility could have been increased up to an additional $10,000,000 upon our written request to WFF and WFF’ s acceptance of such request. However, the maximum availability under the WFF Credit Facility at any time was limited by the borrowing base, which was a function of eligible accounts receivable and collections as defined under the Amended LSA. Any letters of credit outstanding further reduced availability under the WFF Credit Facility. The WFF Credit Facility had a five-year term and bore interest at our election of either the bank’ s base rate (8.75% at December 31, 2007) plus 1.5% or a one to three-month LIBOR rate plus 2.75%, but in no event less than 4.0%. A fee of 4.5% per annum multiplied by the daily balance of the undrawn portion of the available letters of credit was due and payable on a monthly basis. A fee of 0.5% per annum multiplied by the daily balance of the availability under the WFF Credit Facility was due and payable on a monthly basis. During June 2007, $150,000 of bank fees were charged to the WFF Credit Facility as a result of the Amended LSA. This amount

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was repaid in July and August 2007. At December 31, 2007, we had two letters of credit outstanding totaling $1,250,000, and we had no outstanding balance on the WFF Credit Facility. At December 31, 2007, we had $9,583,000 available for borrowings under the WFF Credit Facility.

Substantially all of our assets were pledged as collateral under the WFF Credit Facility, which required, among other things, that we maintained minimum levels of cash and availability under the facility. The WFF Credit Facility also had restrictions on the following:

1. Our ability to make payments, including dividends and other distributions on our capital stock;

2. Our ability to make acquisitions;

3. Our capital expenditures; and

4. Our ability to repurchase or redeem any shares of our capital stock.

An uncured default in payment or an unrescinded acceleration of the amounts borrowed under the WFF Credit Facility could have resulted in the 6.0% Notes and the 7.125% Notes being declared immediately due and payable in full. The term loan could have been prepaid at any time without premium or penalty. If the WFF Credit Facility was terminated before the expiration of the five-year term, the lender was entitled to receive prepayment penalties equal to 2.0% of the amount of the facility if the Amended LSA was terminated prior to June 29, 2008 and 1.0% of the amount of the facility if the Amended LSA was terminated on or after June 29, 2008.

As of February 29, 2008, the WFF Term Loan and Credit Facility were terminated. Prepayment penalties of $233,000 were paid upon termination. Unamortized debt issuance costs related to the Amended LSA of $202,000 were fully expensed upon termination of the Amended LSA.

NAI Credit Facilities

On February 29, 2008, MHE and MAG (“Borrowers”), and Midway Games Inc., Midway Games West Inc., Midway Interactive Inc., Midway Sales Company, LLC, Midway Home Studios Inc., Surreal Software Inc., Midway Studios-Austin Inc., and Midway Studios-Los Angeles Inc. (“U.S. Credit Parties”) terminated the Amended LSA with WFF and entered into a Loan and Security Agreement by and among the Borrowers and U.S. Credit Parties and NAI (the “Loan and Security Agreement”). Also on February 29, 2008, Midway Games Inc. entered into an Unsecured Loan Agreement with NAI (the “Unsecured Loan Agreement”) and a Subordinated Unsecured Loan Agreement with NAI (the “Subordinated Unsecured Loan Agreement,” together with the Loan and Security Agreement and the Unsecured Loan Agreement, the “NAI Agreements”).

The NAI Agreements provide for up to $90,000,000 in total availability. The Loan and Security Agreement provides up to $30,000,000, under which we have a $20,000,000 term loan and a revolving line of credit of up to $10,000,000. The Unsecured Loan Agreement provides for a $40,000,000 revolving line of credit and the Subordinated Unsecured Loan Agreement provides for up to a $20,000,000 revolving line of credit. At December 31, 2008, borrowings outstanding on the Loan and Security Agreement term loan and revolving line of credit totaled $20,000,000 and $8,952,000, respectively. Outstanding letters of credit totaled $1,048,000 at December 31, 2008, which reduce the available borrowings under the Loan and Security Agreement. At December 31, 2008, borrowings outstanding under the Unsecured Loan Agreement revolving line of credit totaled $40,000,000, and borrowings outstanding under the Subordinated Unsecured Loan Agreement revolving line of credit totaled $19,979,000. At December 31, 2008, we had $21,000 in available borrowings under the Subordinated Unsecured Loan Agreement. The Company may elect to increase the then outstanding principal amount of the borrowings by the amount of all accrued and unpaid interest rather than paying the interest currently (paid in kind interest) under the Subordinated Unsecured Loan Agreement.

The Loan and Security Agreement has a 52 month term with no required amortization of the term loan until the term ends on June 29, 2012. The Loan and Security Agreement bears interest at our election of either prime rate (“Base Rate”) plus 1.5% per annum or a one, two, three, or six month LIBOR rate plus 3.75% per annum, as provided by Bank of America. At December 31, 2008, the interest rate on the Loan and Security Agreement was 5.93%, which represents the three month LIBOR rate plus 3.75%.

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The Unsecured Loan Agreement has a 13 month term which ends on March 31, 2009, and bears interest at our election of either the Base Rate plus 2.75% per annum or a one, two, three or six month LIBOR rate plus 5.0% per annum. At December 31, 2008, the Company had $40,000,000 drawn on four borrowings under the Unsecured Loan Agreement. The interest rates on the Unsecured Loan Agreement ranged from 7.10% to 7.19%, which represents the three month LIBOR rate plus 5.0%. Interest under the Unsecured Loan Agreement is payable in kind to the extent such interest amount plus the outstanding loans is less than or equal to $40,000,000.

The Subordinated Unsecured Loan Agreement has a 27 month term which ends on May 31, 2010, and bears interest at our election of either the Base Rate plus 5.75% per annum or a one, two, three or six month LIBOR rate plus 8.0% per annum. At December 31, 2008, the Company had three borrowings under the Subordinated Unsecured Loan Agreement. The interest rates on the borrowings ranged from 9.47% to 10.19%. Interest under the Subordinated Unsecured Loan Agreement is payable in kind.

If the total amount of borrowings under the NAI Agreements is greater than $40,000,000 as of the close of business on the business day immediately preceding the last business day of any calendar week, available cash and cash equivalents in excess of $10,000,000 ($13,500,000 from June 18, 2008 through August 31, 2008 and $14,000,000 beginning September 15, 2008) must be swept weekly to the applicable lender first to repay the advances under the Subordinated Unsecured Loan Agreement and then under the Unsecured Loan Agreement until the outstanding borrowings under the Unsecured Loan Agreement are reduced to $10,000,000. Available cash and cash equivalents excludes certain foreign accounts (Japan and Australia) as well as the letters of credit. As of December 31, 2008, there was $162,000, $263,000 and $168,000 in accrued interest on the Loan and Security Agreement, the Unsecured Loan Agreement, and the Subordinated Unsecured Loan Agreement, respectively. The cash sweep activities have been suspended since the commencement of the Chapter 11 Cases.

The maximum availability under the revolving line of credit of the Loan and Security Agreement is equal to $30,000,000 less the outstanding principal balance of the term loan less the aggregate amount of letters of credit outstanding. As of December 30, 2008, there were no available borrowings under the Loan and Security Agreement.

A fee of 0.5% per annum multiplied by maximum revolver amounts under the NAI Agreements less the average daily balance of advances that were outstanding during the preceding month is due and payable on a monthly basis.

Debt issuance costs incurred and capitalized for the NAI Agreements totaled approximately $515,000 during 2008. The debt issuance costs incurred with the NAI Agreements have been allocated among the Loan and Security Agreement, the Unsecured Loan Agreement and the Subordinated Unsecured Loan Agreement. The fees allocated to the Loan and Security Agreement are being amortized over the life of the Loan and Security Agreement using the effective interest method. The fees allocated to the Unsecured and Subordinated Unsecured Loan Agreements are being amortized on a straight-line basis over the term of the respective arrangements.

Under the Loan and Security Agreement, substantially all of the assets of the Company and its United States subsidiaries are pledged as collateral. Under the Unsecured Loan Agreement and Subordinated Unsecured Loan Agreement, there are no pledges of collateral or guarantees. The NAI Agreements have restrictions on the following:

1. Our ability to make payments, including dividends and other distributions on our capital stock;

2. Our ability to make acquisitions;

3. Our capital expenditures; and

4. Our ability to repurchase or redeem any shares of our capital stock.

An uncured default may result in the 6.0% and 7.125% Notes being declared immediately due and payable in full. All amounts under each of the NAI Agreements can be repaid or terminated at any time without premium or penalty. See Note 10 for further information regarding the 6.0% and 7.125% Notes.

The failure to satisfy our obligation to repurchase the Notes also had consequences under the NAI Agreements. Specifically, the lenders would have the option in such a circumstance to declare all amounts outstanding under the NAI Agreements immediately due and payable. Borrowings under the NAI Agreements totaled approximately

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$90 million as of February 12, 2009. In January 2009, all rights related to the Loan and Security Agreement and the Unsecured Loan Agreement were fully assigned to the Purchaser.

The filing of the Chapter 11 Cases constitutes an Event of Default under the NAI Agreements. The lenders may declare $70 million immediately due and payable of which $30 million is secured, and may also declare the remaining $20 million immediately due and payable. We did not have the ability to satisfy our obligations to repay these amounts.

The acceleration of the due dates of the Notes and debt under the NAI Agreements resulted in additional non-cash expenses of approximately $20.1 million during 2008. These expenses represented the accelerated amortization of deferred debt discounts and debt issuance costs. See Note 10 for additional details regarding the Notes.

NOTE 9: INCOME TAXES

Valuation Allowance

Because of our operating losses in recent years, we recorded a valuation allowance against our net deferred tax assets. During 2007, we determined that it was more likely than not that we would realize the majority of our deferred tax assets relating to our foreign operations. As a result, we released the valuation allowance recorded against all of the deferred tax assets of our foreign entities except Australia. In making this determination, we analyzed the foreign entities' recent history of earnings, forecasts of future earnings, and the nature and timing of future deductions and benefits. The release of the valuation allowance resulted in an income tax benefit of $2,842,000 recorded in 2007. We continue to maintain a valuation allowance against our domestic deferred tax assets. The total valuation allowance increased by $51,715,000, $7,783,000 and $24,924,000 in 2008, 2007 and 2006, respectively.

Pretax Loss

Domestic and foreign components of loss before income taxes consisted of the following:

		December 31,	
	2008	2007	2006
		(In thousands)	
Domestic	$(192,643)	$(105,227)	$(78,687)
Foreign	3,376	4,883	2,550
Total pretax book loss	$(189,267)	$(100,344)	$(76,137)

Income Tax Provision (Benefit)

Significant components of the provision (benefit) for income taxes were as follows:

	Years Ended December 31,		
	2008	2007	2006
		(In thousands)	
Current:			
Federal	$–	$–	$–
State	2	1	–
Foreign	163	776	330
Total current	165	777	330
Deferred:			
Federal	(66,243)	(36,191)	(23,855)
State	(4,182)	(2,285)	(1,506)
Foreign	230	1,299	564
Total deferred	(70,195)	(37,177)	(24,797)
Valuation allowance	71,737	35,648	26,113
Total provision (benefit) for income taxes	$1,707	$(752)	$1,646

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The income tax provision differed from the amount computed using the statutory federal income tax rate as follows:

	Years Ended December 31,		
	2008	2007	2006
		(In thousands)	
Federal at statutory rate of 35%	$(66,243)	$(35,121)	$(26,648)
State income taxes, net of federal benefit	(4,182)	(2,218)	(1,683)
Valuation allowance	71,737	35,648	26,113
Other, net	395	939	3,864
Total provision (benefit) for income taxes	$1,707	$(752)	$1,646

Income Taxes Payable (Refundable)

Current income taxes payable (refundable) by jurisdiction were as follows:

	December 31,	
	2008	2007
	(In thousands)	
Federal	$−	$−
State	2	1
Foreign	(310)	609
Income taxes payable (refundable)	$(308)	$610

Deferred Income Taxes

Deferred income taxes reflect the net tax effects of a loss carryforward and temporary differences between the amount of assets and liabilities for financial reporting purposes and the amounts used for income taxes.

Significant components of deferred tax assets and liabilities were as follows:

	December 31,	
	2008	2007
	(In thousands)	
Deferred tax assets resulting from:		
Tax loss carryforward	$279,109	$221,127
Accrued liabilities not currently deductible	5,506	9,232
Receivable allowance	9,653	10,337
Tax over book depreciation	1,585	827
Other	10,870	69
Gross deferred tax assets	306,723	241,592
Deferred tax liabilities resulting from:		
Goodwill	12,028	10,715
Capitalized product development costs	13,776	20,168
Discount on convertible senior notes	45,251	25,229
Other	400	33
Gross deferred tax liabilities	71,455	56,145
Valuation allowance	(245,044)	(193,329)
Net deferred tax liabilities	$(9,776)	$(7,882)

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The deferred tax assets and liabilities recognized in our consolidated balance sheets were as follows:

	Years Ended December 31,	
	2008	2007
	(In thousands)	
Deferred tax assets − current	$1,164	$1,260
Deferred tax assets − non-current	1,088	1,573
Total deferred tax assets	2,252	2,833
Deferred tax liabilities − current	−	−
Deferred tax liabilities − non-current	(12,028)	(10,715)
Total deferred tax liabilities	(12,028)	(10,715)
Net deferred tax liabilities	$(9,776)	$(7,882)

The current and non-current deferred tax assets are included within the "Prepaid expenses and other current assets" and "Other assets" line items, respectively, on our consolidated balance sheet. Deferred tax liabilities related to goodwill are not offset against deferred tax assets since it is uncertain as to if and when amounts attributable to goodwill will be recognized as expenses in the statement of operations. Therefore, deferred tax assets and deferred tax liabilities by jurisdiction are recognized in the consolidated balance sheets. We will be required to provide additional valuation allowances in future periods should domestic tax losses occur. To the extent a deferred tax liability related to indefinite-lived assets increases in future periods, expense will be recognized.

We paid foreign income taxes of $500,000, $537,000, and $5,000 for 2008, 2007 and 2006, respectively. In 2007 we received a foreign tax refund of $2,000. At December 31, 2008, we had a net operating loss carryforward of $750,092,000 for federal income tax purposes which expires from 2021 to 2028, and aggregate net operating loss carry forwards of $204,025,000 for state income tax purposes which expire from 2011 to 2023. Stockholder ownership changes, as defined under Section 382 of the Internal Revenue Code of 1986, as amended, may limit the annual amount of net operating loss carryforward we may use to offset future taxable income. Deferred tax assets (liabilities), prior to affecting these amounts for the valuation allowance, include a net amount of ($449,000) at December 31, 2008, 2007 and 2006, related to net operating losses and deferred tax liabilities that transferred to us in conjunction with the business combinations consummated in 2005 and 2004. If and when we realize the benefit of these net operating losses included in the deferred tax assets, this benefit will be recorded as a decrease to goodwill. If and when we realize the expense of these acquired deferred tax liabilities, this expense will be recorded as an increase to goodwill.

Undistributed earnings of one of our foreign subsidiaries amounted to approximately $1,159,000 and $628,000 as of December 31, 2008 and 2007, respectively. Those earnings are considered to be indefinitely reinvested and accordingly, no U.S. income taxes have been provided thereon. Upon distribution of those earnings in the form of dividends or otherwise, we would be subject to U.S. income taxes (adjusted for foreign tax credits).

To the extent we incur income tax related interest and penalties in future periods, we will record such amounts as a component of the provision for income taxes. Income tax returns for the fiscal tax year ended June 30, 2000 to the present are subject to examination by tax jurisdictions.

NOTE 10: CONVERTIBLE SENIOR NOTES

We have had two separate convertible senior note financing transactions. Also, see Note 2 to the consolidated financial statements for further discussion of the change in control provisions and the acceleration of the redemption date to February 12, 2009.

September 2005 Issuance

In September 2005, we issued $75,000,000 of convertible senior notes due September 30, 2025 ("6.0% Notes"). The 6.0% Notes are senior unsecured obligations and are subordinate to all secured debt obligations. The 6.0% Notes bear interest at 6.00% per annum that is payable semi-annually on March 30 and

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September 30 of each year. We recognized $4,500,000 of interest expense related to the stated interest rate for the 6.0% Notes during 2008, 2007 and 2006.

The holders of the 6.0% Notes may convert the notes into shares of our common stock at any time prior to the maturity date or require redemption of the 6.0% Notes at an initial conversion rate of 56.3253 shares per $1,000 principal amount of notes, which represents an initial conversion price of approximately $17.75 per share. The conversion rate may be adjusted upon the occurrence of certain events, including the following:

Our controlling stockholder and his affiliates become the beneficial owner, directly or indirectly, of 90% or more of the aggregate fair value of our outstanding capital stock. In this event, the conversion rate will increase by 4.4177 shares per $1,000 principal amount of the notes. This conversion rate increase is subject to future adjustment in accordance with the provisions of the indenture governing the 6.0% Notes.

On April 30, 2007, or in some circumstances, September 30, 2007, if the daily volume weighted average price of our common stock for the period that is 20 consecutive trading days prior to April 30, 2007, or in some circumstances, September 30, 2007, is less than $16.14, as adjusted for capital changes ("$10.00 Reset Feature"). In this event, the conversion rate will increase at varying amounts. However, after adjustment, the conversion rate cannot exceed 100 shares per $1,000 principal amount of the 6.0% Notes.

We effect certain business combinations, asset sales or changes in ownership where the consideration paid to the common stockholders includes securities (or other property) that are neither traded on a U.S. national securities exchange nor quoted on the Nasdaq National Market nor scheduled to be so traded or quoted immediately after such transaction. In these events, the conversion rate will increase at varying amounts with a maximum increase of 5.63 shares per $1,000 principal amount of the 6.0% Notes.

Issuance of additional rights to holders of our common stock, such as stock splits, declaration of dividends and certain other distributions and capital changes.

Effective April 30, 2007, the conversion rate was adjusted in accordance with the $10.00 Reset Feature so that the conversion price was adjusted to $10.00 per share of common stock. As a result of this conversion rate adjustment, we recorded a $46,050,000 discount on the 6.0% Notes that is being amortized by applying the effective interest method over the period from the date the conversion price was adjusted (April 30, 2007) to April 30, 2009, the date at which the holders may first require us to redeem the 6.0% Notes. Amortization related to this discount totaled $30,798,000 during 2008 and $9,965,000 during 2007, and is included in interest expense in the consolidated statements of operations. As a result of the debt discount and debt issuance costs, the effective interest rate on the 6.0% Notes approximated 61% from April 30, 2007, the date of the conversion price adjustment to $10.00 per share of common stock, to April 30, 2009. As noted in Note 2 to the consolidated financial statements, the change in control ultimately changed the redemption date to February 12, 2009 and the amortization of discount was adjusted to this end date. This conversion date adjustment resulted in the recognition of $6,469,000 of additional discount and interest expense during 2008, and resulted in a further increase in the effective interest rate to approximately 178% from November 28, 2008 to February 12, 2009.

On each of April 30, 2009, September 30, 2010, September 30, 2015 and September 30, 2020, the holders may require us to repurchase all or a portion of their notes at a repurchase price in cash equal to 100% of the principal amount of the 6.0% Notes to be repurchased, plus any accrued and unpaid interest. In addition, the holders may require us to repurchase all or a portion of their 6.0% Notes upon certain fundamental changes (as defined in the indenture governing the notes as a change in control or if our common stock is neither listed for trading on a U.S. national securities exchange nor quoted on the Nasdaq National Market), at a repurchase price in cash equal to 100% of the principal amount of the notes to be repurchased, plus any accrued and unpaid interest.

The terms of the 6.0% Notes do not prohibit our ability to declare or pay dividends on our common stock, but the payment of dividends may result in an adjustment to the conversion rate of the 6.0% Notes as described above. Also, the holders of the 6.0% Notes are not entitled to voting rights until they elect to convert their notes into shares of our common stock.

The issuance of the 6.0% Notes has no impact on our calculation of weighted average shares outstanding in our computation of basic earnings per share. In periods of net income, the conversion feature of the 6.0% Notes will be

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included in our calculation of diluted earnings per share based on the "if-converted" method, as prescribed in SFAS No. 128, *Earnings per Share*, to the extent the effect of including the 6.0% Notes is dilutive.

Total costs related to the issuance of the 6.0% Notes incurred in 2005 of $2,682,000 were capitalized and are being amortized by applying the effective interest method over the period from the issuance date to January 12, 2009, the revised date from the change in control date, at which the holders may require us to repurchase the 6.0% Notes. Amortization related to these costs totaled $891,000, $742,000 and $734,000 during 2008, 2007 and 2006, respectively, and is included in interest expense in the consolidated statement of operations.

May 2006 Issuance

In May 2006, we issued $75,000,000 of 7.125% convertible senior notes due May 31, 2026 (the "7.125% Notes"). The 7.125% Notes are senior unsecured obligations and are subordinate to all secured debt obligations. The 7.125% Notes bear interest at 7.125% per annum that is payable semi-annually on May 31 and November 30 of each year. We recognized $5,344,000, $5,344,000 and $3,132,000 of interest expense related to the stated interest rate for the 7.125% Notes during 2008, 2007 and 2006, respectively.

The holders of the 7.125% Notes could initially convert the notes into shares of our common stock at any time prior to the maturity date or redemption of the 7.125% Notes at a conversion rate of 92.0810 shares per $1,000 principal amount of notes, which represented an initial conversion price of approximately $10.86 per share. The conversion rate would be adjusted upon the occurrence of certain events, including the following:

Our controlling stockholder and his affiliates become the beneficial owner, directly or indirectly, of 90% or more of the aggregate fair market value, as defined, of our outstanding capital stock. In this event, the conversion rate will increase by 7.2495 shares per $1,000 principal amount of the notes. This conversion rate increase is subject to future adjustment in accordance with the provisions of the indenture governing the 7.125% Notes.

On any date prior to May 31, 2008, if (1) the arithmetic average of the daily volume-weighted average price of our common stock for any 20 trading days within a period of 30 consecutive trading days ending on such date, is less than $8.00, as may be adjusted for capital changes, and (2) 110% of the closing sale price is less than or equal to $8.80, as may be adjusted, then the conversion rate will increase on that date such that the conversion price would be $8.80 per share of common stock ("$8.80 Reset Feature").

On any date prior to May 31, 2008, if (1) the arithmetic average of the daily volume-weighted average price of our common stock for any 20 trading days within a period of 30 consecutive trading days ending on such date, is less than $6.00, as may be adjusted for capital changes, and (2) 110% of the closing sale price is less than or equal to $6.60, as may be adjusted, then the conversion rate will increase on that date such that the conversion price would be $6.60 per share of common stock ("$6.60 Reset Feature").

On May 31, 2008 or May 31, 2009, if 110% of the arithmetic average of the daily volume-weighted average price of our common stock for any 20 trading days within a period of 30 consecutive trading days ending on such dates is less than the conversion price in effect at that time, then the conversion rate will be increased so that the conversion price would be 110% of the daily volume-weighted average price calculated at these respective dates. The conversion rate will not be adjusted on these dates if 110% of the daily volume-weighted average price for such 20 trading days within such period of 30 consecutive trading days ending on such dates is equal to or greater than the conversion price in effect at that time. In no event shall the conversion rate be adjusted such that the conversion price would be less than $6.60 per share, as may be adjusted for capital changes.

We effect certain business combinations, asset sales or changes in ownership where the consideration paid to the common stockholders includes securities (or other property) that are neither traded on a U.S. national securities exchange nor quoted on the Nasdaq National Market nor scheduled to be so traded or quoted immediately after such transaction. In these events, the conversion rate will increase at varying amounts with a maximum increase of 9.23 shares per $1,000 principal amount of the notes.

Issuance of additional shares of common stock, convertible securities, rights to holders of our common stock, such as stock splits, declaration of dividends and certain other distributions and capital changes.

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Effective June 26, 2006, the conversion rate was adjusted in accordance with the $8.80 Reset Feature so that the conversion price was adjusted to $8.80 per share of common stock. As a result of this conversion rate adjustment, we recorded a $9,119,000 discount on the 7.125% Notes that is being amortized by applying the effective interest method over the period from the date the conversion price was adjusted (June 26, 2006) to May 31, 2010, the date at which the holders may first require us to redeem the 7.125% Notes.

Effective August 8, 2007, the conversion rate was adjusted in accordance with the $6.60 Reset Feature so that the conversion price was adjusted to $6.60 per share of common stock. As a result of this conversion rate adjustment, we recorded an additional $28,040,000 discount on the 7.125% Notes that is being amortized by applying the effective interest method over the period from the date the conversion price was adjusted (August 8, 2007) to May 31, 2010, the original date at which the holders may require us to redeem the 7.125% Notes.

Amortization related to the discounts on the 7.125% Notes totaled $23,011,000, $4,312,000 and $1,129,000 during 2008, 2007 and 2006, respectively, and is included in interest expense in the consolidated statements of operations. As a result of these debt discounts and debt issuance costs, the effective interest rate on the 7.125% Notes will approximate 34% from August 8, 2007, the date of the most recent conversion price adjustment to $6.60 per share of common stock, to May 31, 2010. As noted in Note 2 to the consolidated financial statements, the change in control ultimately changed the redemption date to February 12, 2009 and the amortization of discount was adjusted to this end date. This conversion date adjustment resulted in the recognition of $12,779,000 of additional discount and interest expense during 2008, and resulted in a further increase in the effective interest rate, to approximately 302% from November 28, 2008 to February 12, 2009.

On or after June 6, 2013, subject to certain notification provisions, we may from time to time, at our option, redeem some or all of the 7.125% Notes for cash equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest.

On each of May 31, 2010, May 31, 2016, and May 31, 2021, the holders may require us to repurchase all or a portion of their 7.125% Notes at a repurchase price in cash equal to 100% of the principal amount of the notes to be repurchased, plus any accrued and unpaid interest. In addition, the holders may require us to repurchase all or a portion of their 7.125% Notes upon certain fundamental changes (as defined in the indenture governing the 7.125% Notes as a change in control or if our common stock is neither listed for trading on a U.S. national securities exchange nor quoted on the Nasdaq National Market), at a repurchase price in cash equal to 100% of the principal amount of the notes to be repurchased, plus any accrued and unpaid interest.

The terms of these 7.125% Notes do not prohibit our ability to declare or pay dividends on our common stock, but the payment of dividends may result in an adjustment to the conversion rate of the 7.125% Notes as described above. Also, the holders of the 7.125% Notes are not entitled to voting rights until they elect to convert their notes into shares of our common stock. The terms of the 7.125% Notes limit our ability to incur additional indebtedness and perform certain other business activities.

The issuance of the 7.125% Notes has no impact on our calculation of weighted average shares outstanding in our computation of basic earnings per share. In periods of net income, the conversion feature of the 7.125% Notes will be included in our calculation of diluted earnings per share based on the "if-converted" method, as prescribed in SFAS No. 128, *Earnings per Shar*e, to the extent the effect of including the 7.125% Notes is dilutive.

Total costs related to the issuance of the 7.125% Notes incurred in 2006 of $2,269,000 were capitalized and are being amortized by applying the effective interest method over the period from the issuance date to January 12, 2009, the revised date from the change in control date. Amortization related to these costs totaled $1,083,000, $562,000 and $331,000 during 2008, 2007 and 2006, respectively, and is included in interest expense in the consolidated statement of operations.

NOTE 11: PREFERRED STOCK AND WARRANTS

We have 5,000,000 authorized shares of preferred stock issuable in series, and the relative rights and preferences and number of shares in each series are to be established by the Board of Directors at the time of designation of each series.

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In conjunction with the issuance of our Series B redeemable convertible preferred stock in 2001, we issued 678,982 common stock warrants which had five-year terms and could be used to purchase 555,161 shares of our common stock at an exercise price of $9.33 per share, and 123,821 shares of our common stock at an exercise price of $10.60 per share. In November 2005, the 123,821 warrants with an exercise price of $10.60 per share were exercised, resulting in net proceeds of $1,312,000. All 555,161 of the warrants with an exercise price of $9.33 per share expired unexercised in May 2006.

NOTE 12: COMMON STOCK

Common Stock

We have 200,000,000 shares of common stock, $0.01 par value per share, authorized for issuance, of which 93,540,355 shares were outstanding on December 31, 2008 (excluding 1,445,430 treasury shares). The following amounts have been reserved for future issuance as of December 31, 2008 (in thousands):

Description	Number of Shares
Common stock option and long-term incentive plans	3,190
Employee stock purchase plan	2,703
Convertible senior notes	20,854
Total	26,747

Savings Plan

Most employees are eligible to participate in a Company sponsored qualified defined contribution plan in the US and in Europe. Most participants may contribute up to 50% of their annual compensation to the plan in the US and 100% of their annual compensation to the plan in Europe. The Company matches the participants' contributions, up to $1,000 in the US for annual salaries up to $90,000, and up to 7% of the participants' annual salary in Europe. Matching contributions made by the Company were $583,000, $600,000, and $180,000 for the years ended December 31, 2007, 2006, and 2005, respectively.

Employee Stock Purchase Plan

In January 2007, our Board of Directors approved an employee stock purchase plan (the "Plan") which became effective on March 1, 2007. The Plan allows eligible employees of Midway, as defined by the Plan, to defer through normal payroll deductions a maximum amount of the lesser of a) $10,000 per six-month defined purchase period (not to exceed $25,000 per year) or b) 50% of their compensation, in order to purchase shares of Midway's common stock at the discounted purchase price of 85% of the fair market value (the closing price as quoted per the New York Stock Exchange) of Midway's common stock on the last day of each defined purchase period. Each purchase period beginning March 1 and September 1 shall last six months and eligible employees are allowed to join the Plan up through the first day of each purchase period or at which point they meet the eligibility requirements. The maximum number of shares that may purchased by employees under the plan is 3,000,000. During 2008 and 2007, 215,001 and 81,652 shares, respectively, were purchased by eligible employees. At December 31, 2008 and 2007, 2,703,347 and 2,918,348 shares, respectively, were available under the plan. Compensation expense related to the discounted purchase price totaled $48,000 and $73,000 during 2008 and 2007, respectively, and is included in additional paid-in capital on the consolidated balance sheet. The Plan was discontinued in January 2009.

Rights Agreement

Until December 31, 2006 we had a Rights Agreement, pursuant to which each share of our common stock had an accompanying Right to purchase, under certain conditions, including a takeover attempt, one one-hundredth of a share of our Series A Preferred Stock at an exercise price of $100, permitting each holder (other than the acquiring person) to receive $200 worth of our common stock valued at the then current market price. The Rights were redeemable by us at $0.01 per Right, subject to certain conditions. The Rights also accompanied the underlying shares of our common stock to which the holders of our convertible instruments would have been entitled to if

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conversion or exercise had taken place. Sumner Redstone, who owned more than 15% of our common stock at the time of our spin-off from our former parent company, WMS Industries Inc., was exempt from the anti-takeover restrictions of the Rights Agreement. The Rights Agreement expired pursuant to its terms on December 31, 2006. Subsequent to the expiration of the Rights Agreement, we notified the New York Stock Exchange to withdraw the Rights from listing and de-registered the Rights with the Securities and Exchange Commission.

Stock-Based Awards

We currently maintain one plan that provides for stock-based compensation, the Midway Games Inc. 2005 Long-Term Incentive Plan (the "2005 Plan"), under which we may grant both incentive stock options and nonqualified stock options, as well as shares of restricted stock and various other types of stock-based awards. The 2005 Plan was approved by our stockholders in June 2005 and replaced all of our previous stock option plans. The shares available for grants under those earlier plans are no longer available under those plans, but are instead available under the 2005 Plan. Awards previously issued under the earlier plans remain in effect under those plans. The 2005 Plan is intended to encourage stock ownership by our directors, officers, employees, consultants and advisors and thereby enhance their proprietary interest in us. Subject to the provisions of the 2005 Plan, the Compensation Committee of our Board of Directors determines which of the eligible directors, officers, employees, consultants and advisors will receive stock-based awards and the terms of such awards, including applicable vesting periods. The 2005 Plan provides that stock options and restricted shares cannot have a term in excess of ten years.

See Note 13 for details on our stock-based awards and stock-based compensation.

NOTE 13: STOCK-BASED COMPENSATION

Stock-Based Compensation Under SFAS No. 123R

Total stock-based compensation for 2008, 2007 and 2006 was $948,000, $2,368,000 and $6,122,000, respectively, of which $365,000, $738,000 and $943,000 of costs were capitalized during 2008, 2007 and 2006, respectively. These costs are added to capitalized product development costs in the consolidated balance sheet and then amortized after general release of the respective product that is directly related to such costs. Total stock-based compensation consisted of $209,000, $613,000 and $2,603,000 related to Restricted Stock in 2008, 2007 and 2006, respectively; $691,000, $1,682,000 and $3,519,000 related to stock options in 2008, 2007 and 2006, respectively; and $48,000, $73,000 and $0 related to the employee stock purchase plan discount in 2008, 2007 and 2006, respectively.

As of December 31, 2008, we had $1,126,000 of total unrecognized compensation cost related to non-vested stock option awards granted under all equity compensation plans and $0 of total unrecognized compensation cost related to non-performance-based restricted stock awards for which the periods of restriction have not yet lapsed. Total unrecognized compensation cost will be adjusted for any future changes in estimated and actual forfeitures. We expect to recognize this cost over a weighted average period of 1.5 years for both stock options and restricted stock. See the discussion of performance-based restricted stock below.

Determining Fair Value of Stock Options Under SFAS No. 123R

Valuation Method. We estimate the fair value of stock options granted using the Black-Scholes option valuation model. We amortize the fair value of all awards on a straight-line basis over the requisite service periods, which are generally the vesting periods.

Expected Term. The expected term of awards granted represents the period of time that they are expected to be outstanding. We determine the expected term based on historical experience with similar awards, giving consideration to the contractual terms, vesting schedules and pre-vesting and post-vesting cancellations.

Expected Volatility. We estimate the volatility of our common stock at the date of grant based on the historical volatility of our common stock. The volatility factor we use in the Black-Scholes option valuation model is based on our historical stock prices over the most recent period commensurate with the estimated expected term of the award.

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Risk-Free Interest Rate. We base the risk-free interest rate used in the Black-Scholes option valuation model on the implied yield currently available on U.S. Treasury zero-coupon issues with a remaining term commensurate with the expected term of the award.

Expected Dividend Yield. We have never paid any cash dividends on our common stock, and we do not anticipate paying any cash dividends in the foreseeable future. Consequently, we use an expected dividend yield of zero in the Black-Scholes option valuation model.

Expected Forfeitures. We use historical data to estimate pre-vesting option forfeitures. We record stock-based compensation only for those awards that are expected to vest. We applied estimated 16%, 15% and 15% forfeiture rates to all awards still vesting during the years ended December 31, 2008, 2007 and 2006, respectively.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model. A summary of the weighted average assumptions and results for options granted during the periods presented is as follows:

	Years Ended December 31,		
	2008	**2007**	**2006**
Dividend yield	0.0 %	0.0 %	0.0 %
Expected stock price volatility	0.60	0.58	0.70
Risk-free interest rate	3.17 %	4.06 %	4.54 %
Expected lives	5 years	5 years	5 years

Stock Option Activity

The following table summarizes all of our stock option activity for 2008, 2007 and 2006 (shares in thousands):

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life	Aggregate Intrinsic Value (in thousands)
Outstanding at January 1, 2006	4,877	9.65		
Granted	104	8.88		
Exercised	(240)	4.31		$2,826
Expired	(913)	19.84		
Forfeited	(18)	3.52		
Outstanding at December 31, 2006	3,810	7.56	5.6 years	$6,961
Granted	968	5.85		
Exercised	(42)	3.23		$126
Expired	(77)	13.73		
Forfeited	(122)	8.10		
Outstanding at December 31, 2007	4,537	$7.12	5.5 years	$138
Granted	60	2.60		
Exercised	(25)	2.35		$7
Expired	(2,907)	5.28		
Forfeited	(277)	5.87		
Outstanding at December 31, 2008	1,388	$6.03	5.7 years	$−
Exercisable at December 31, 2008	854	$6.29	4.4 years	$−

	Years Ended December 31,		
	2008	**2007**	**2006**
Weighted average grant date fair value of options granted	$1.39	$3.09	$5.37

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The aggregate intrinsic value of options outstanding and exercisable at December 31, 2008 is calculated as the difference between the market price of the underlying common stock at December 31, 2008 and the exercise price of the options for the options that had exercise prices that were lower than the $0.19 closing market price of our common stock at December 31, 2008. The total intrinsic value of options exercised during 2008, 2007 and 2006 was determined as of the date of the respective exercises.

The following table summarizes information about outstanding and exercisable stock options as of December 31, 2008 (shares in thousands):

Exercise Prices	Shares Covered by Options		Weighted Average Exercise Price		Weighted Average Remaining Contractual Life
	Outstanding	Exercisable	Outstanding	Exercisable	Outstanding
$2.25 − $3.15	305	248	$2.42	$2.43	4.7
3.60 − 6.55	756	307	5.76	5.63	6.6
6.61 − 9.25	191	168	8.39	8.43	6.0
9.99 − 13.04	72	67	10.91	10.87	3.1
13.70 − 16.57	64	64	13.97	13.97	1.6
	1,388	854	6.03	6.29	5.7

During 2008, 2007 and 2006, the stock option exercise activity above resulted in total proceeds of $59,000, $138,000 and $1,036,000, respectively. Amounts reflected in the consolidated statements of cash flows differ from these amounts due to the timing of cash received related to the exercises. There were no amounts receivable from employee stock option exercises at December 31, 2008 and 2007.

We issue new shares for all option exercises except for those options that were granted as part of our 2004 acquisition of Inevitable Entertainment Inc. (“Inevitable”). Shares for the Inevitable options are issued out of treasury.

Restricted Stock

We have also granted restricted shares of our common stock and common stock rights in the past to employees as compensation for performance or as retention incentives to key employees. These common stock shares are restricted as to transferability until prescribed future dates and/or until we reach certain future financial targets. These restricted shares are subject to forfeiture should these employees terminate for certain reasons prior to vesting in their awards, or upon the occurrence of certain other events. The value of these restricted shares is based on the market price of our common stock on the date of grant and compensation expense is recorded on a straight-line basis over the awards’ vesting periods.

Restricted stock − non-performance-based awards

Total stock-based compensation cost related to the non-performance-based restricted stock awards was $207,000, $613,000 and $2,603,000 during 2008, 2007 and 2006 respectively.

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The following tables summarize our non-performance-based restricted stock amounts and activity for 2008, 2007 and 2006 (shares in thousands):

	Shares	Weighted Average Grant Price
Outstanding at January 1, 2006	430	$9.89
Granted	–	–
Vested	(303)	8.86
Forfeited	(20)	9.41
Outstanding at December 31, 2006	107	11.47
Granted	–	–
Vested	(73)	10.31
Forfeited	–	–
Outstanding at December 31, 2007	34	13.92
Granted	–	–
Vested	(34)	13.92
Forfeited	–	–
Outstanding at December 31, 2008	–	–

The total value of awards vesting was $468,000, $747,000 and $2,691,000 during 2008, 2007 and 2006, respectively.

Restricted stock – performance-based awards

We granted 20,000 and 645,000 shares of restricted stock to certain key members of management under the Plan in 2008 and 2007, respectively. In addition, thirteen employees forfeited a total of 280,000 shares and four employees forfeited a total of 50,000 shares as a result of terminating their employment with the Company during 2008 and 2007, respectively. The remaining 335,000 shares of restricted stock are restricted as to transfer until the date we file our Annual Report on Form 10-K for the year ending December 31, 2008 with the Securities and Exchange Commission. Some or all of the restricted stock may be forfeited on such date if certain financial targets are not achieved for the year ending December 31, 2008. Upon achieving the financial targets, up to one-third of the restricted stock vests upon the filing date, and another one-third of the restricted stock vests on the first anniversary and on the second anniversary of the filing date. The restricted stock will also be forfeited if we cease to be subject to the reporting obligations under the Securities Exchange Act of 1934, upon certain changes in control or upon termination of employment of the person holding such restricted stock. No compensation expense was recorded in 2008 nor in 2007 related to this grant since the achievement of the 2008 financial targets was not probable. These awards have a weighted average grant date fair value of $5.60 and could result in the recognition of a maximum of $1,877,000 of compensation expense in future periods should the performance conditions be achieved. Such compensation expense would be recognized during the period from January 2009 through March 2009. At the end of fiscal year December 31, 2008, it was assessed that the achievement of the performance conditions did not occur.

NOTE 14: SALE AND LEASEBACK AGREEMENTS

During January 2008, Midway' s Board of Directors approved sale and leaseback transactions for four of its properties located in Chicago, Illinois. As a result, in January 2008 Midway reclassified the properties from property and equipment to assets held for sale on the consolidated balance sheet and ceased depreciation of these assets.

On April 1, 2008, Midway entered into a sale and leaseback agreement with Williams Electronics Games, Inc. ("WMS") for three of these properties. Two of the properties were sold and leased back from WMS to Midway for a lease term through May 31, 2010 at a monthly rental fee of $20,000. The third property is a leasehold property

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which was leased to Midway from a third party. As part of the agreement, WMS assumed this lease from Midway and is subleasing the property back to Midway for a lease term through January 31, 2010 at a monthly rental fee of $10,000. The leasehold property contains an option to purchase the property at the end of the lease term which was sold as part of the agreement. The purchase price of the properties was $6,250,000 less the option price of $1,150,000 for the leasehold property.

Midway realized a $2,188,000 gain on the sale of these properties in April 2008, of which $770,000 was recognized immediately upon the execution of the agreement and was allocated among the research and development, selling and marketing, and administrative expense line items in the consolidated statements of operations. The remaining gain of $1,418,000 was deferred and is being amortized in equal monthly amounts over the lease terms of the properties as a reduction of rent expense.

On November 6, 2008, Midway entered into a sale and leaseback agreement for the remaining property. The property was sold and leased back for a lease term through November 6, 2010 at a monthly rental fee of $20,000. The sale price of the property was $2,500,000, plus a potential sale price premium valued at a minimum of $4,860,000 if certain criteria are met. The sale price premium is expected to be determined on or before August 6, 2009.

As of the date of the agreement for the remaining property, Midway had received $2,385,000 in cash (the total purchase price, excluding the sale price premium, less $115,000 of closing costs) and recorded writedowns on the property totaling $1,518,000. The writedowns were included in research and development, selling and marketing, and administrative expense on the consolidated statement of operations. The cash received less rental payments made, totaling $2,425,000, was included in other accrued liabilities on the consolidated balance sheet. The net realizable value of the assets sold, totaling $2,464,000, is recorded in assets held for sale on the consolidated balance sheet as of December 31, 2008 pending the determination of the sale price premium.

NOTE 15: RESTRUCTURING AND OTHER CHARGES (BENEFITS)

In August 2008, we cancelled a specific game which resulted in a workforce reduction in our Austin, Texas facility. The majority of the headcount reduction of 86 employees occurred in August 2008. The cancelled game resulted in total charges, including impairment and writedown of related software development costs, severance pay, accrued vacation pay and licensing and other charges, totaling approximately $11.7 million during the third quarter of 2008. Approximately $10.2 million of the total charges were non-cash in nature.

In December 2008, we announced a reduction in force affecting approximately 180 full-time employees, or 25% of our workforce. The employee terminations affected substantially all of our functional groups, including all remaining employees at our Austin, Texas, studio and substantial reductions in force in our Chicago, Illinois, and San Diego, California, locations. Also, we suspended several of our non-core prototype games in development.

With respect to the cancelled game and restructuring plan, we incurred the following aggregate amounts which are reflected in the restructuring and other charges (benefits) line item within the statement of operations for 2008 (in thousands). There are no anticipated future expenses related to the cancelled game or 2008 restructuring plan.

Late in 2005, we evaluated our operating results and internal product development strategy as we continued our preparation for the current console transition and next-generation video game development. In December 2005, we announced our plan to close and terminate all employees at our Adelaide, Australia (Ratbag) studio, as well as our plan to consolidate certain product development activity to our other existing studios, in an effort to reduce our cost structure and improve operating efficiency. This plan resulted in the termination of 71 employees, all of whom had been notified as of December 31, 2005. We incurred charges for severance costs related to these employees, as well as accrued charges for operating leases and other commitments for which we will receive no future economic benefit, fixed asset disposals, impairment of capitalized product development costs and the write-off of recorded goodwill related to the acquisition.

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A reconciliation of the January 1, 2006 to December 31, 2008 liability balances arising from restructuring activities is summarized as follows (in thousands):

	Impairment of Capitalized Product Development Costs	Severance and Accrued Vacation Costs	Lease and Long-Term Commitments and Other Costs	Impairment of Fixed and Intangible Assets and Goodwill	Total
Balances at January 1, 2006	$–	$–	$1,286	$–	$1,286
Provision (benefits)(a)	–	–	(130)	–	(130)
Usage/payouts	–	–	(245)	–	(245)
Balances at December 31, 2006	–	–	911	–	911
Provision (benefits)(b)	–	–	(783)	–	(783)
Other	–	–	(128)	–	(128)
Balances at December 31, 2007	–	–	–	–	–
Provision	10,242	3,859	198	–	14,299
Usage/payouts(c)	(10,242)	(1,297)	(198)	–	(11,737)
Balances at December 31, 2008	$–	$2,562	$–	$–	$2,562

(a) During 2006, we recorded reversals of previously accrued charges totaling $251,000 related to changes in estimates of accrued facility lease expense and sublease income.

(b) During 2007, the benefit recorded relates to a change in the estimated amount of previously awarded grants that may be required to be refunded by our subsidiary to the Commonwealth of Australia.

(c) During 2008, we paid severance totaling $1,297,000 to employees affected by restructuring activities.

Accrued severance and vacation costs are included in accrued compensation and related benefits on the consolidated balance sheets.

NOTE 16: COMMITMENTS

We lease various office facilities, a warehouse and equipment under non-cancelable operating leases with net future lease commitments for minimum rentals at December 31, 2008 as follows (in thousands):

2009	$3,383
2010	2,791
2011	2,528
2012	2,399
2013	1,549
Thereafter	172
	$12,822

Rent expense for 2008, 2007, and 2006 was $3,857,000, $4,497,000 and $4,935,000, respectively. This gross rent expense was reduced by sublease income in each period of $0, $144,000 and $58,000, respectively.

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Additionally, we enter into certain licenses and development agreements that require non-cancelable payments in future periods. Some of these agreements provide for advance payments or guarantee minimum payments of royalties and marketing expenses. Future minimum payments due under these agreements at December 31, 2008 are as follows (in thousands):

2009	$883
2010	–
2011	–
2012	50
2013	–
Thereafter	–
	$933

NOTE 17: LEGAL PROCEEDINGS

We currently and from time to time are involved in litigation and disputes incidental to the conduct of our business, none of which, in our opinion, is likely to have a material adverse effect on us. No amounts have been accrued related to legal proceedings at December 31, 2008.

On February 12, 2009, the Debtors filed the Chapter 11 Cases in the Bankruptcy Court. The Chapter 11 Cases are being jointly administered under the caption "Midway Games Inc., et al., Debtors, Case No. 09-10465(KG)." Included in the Consolidated Financial Statements are subsidiaries operating outside of the United States, which are not involved in the Chapter 11 Cases or other similar proceedings elsewhere, and are not Debtors. The assets and liabilities and results of operations of such non-filing subsidiaries are not considered material to the Consolidated Financial Statements. As debtors-in-possession, the Debtors are authorized under Chapter 11 to continue to operate as an ongoing business, but may not engage in transactions outside the ordinary course of business without the prior approval of the Bankruptcy Court. As of the Petition Date, virtually all pending litigation (including some of the actions described below) is stayed, and absent further order of the Bankruptcy Court, no party, subject to certain exceptions, may take any action, again subject to certain exceptions, to recover on pre-petition claims against the Debtors. In addition, Debtors may reject pre-petition executory contracts and unexpired lease obligations, and parties affected by these rejections may file claims with the Bankruptcy Court. At this time, it is not possible to predict the outcome of the Chapter 11 Cases or their effect on the Company' s business.

Beginning on June 1, 2007, two shareholders' derivative lawsuits were filed against certain directors and officers of Midway Games Inc. ("Midway") and nominally against Midway in the Circuit Court of Cook County, Illinois: Rosenbaum Capital, LLC, Derivatively and on Behalf of Midway Games Inc., Plaintiff, vs. David F. Zucker, Thomas E. Powell, Deborah K. Fulton, Steven M. Allison, James R. Boyle, Miguel Iribarren, Kenneth D. Cron, Shari E. Redstone, William C. Bartholomay, Peter C. Brown, Joseph A. Califano, Jr., Ira S. Sheinfeld and Robert N. Waxman, Defendants, and Midway Games Inc., a Delaware corporation, Nominal Defendant and Murray Zucker, Derivatively and on Behalf of Midway Games Inc., Plaintiff, v. Thomas E. Powell, David F. Zucker, Deborah K. Fulton, Steven M. Allison, James R. Boyle, Miguel Iribarren, Kenneth D. Cron, Shari E. Redstone, William C. Bartholomay, Peter C. Brown, Joseph A. Califano, Jr., Ira S. Sheinfeld, and Robert N. Waxman, Defendants, and Midway Games Inc., a Delaware corporation, Nominal Defendant. The complaints allege that, between April 2005 and the present, defendants made misrepresentations to the investing public through their involvement in drafting, producing, reviewing, approving, disseminating, and or controlling the dissemination of statements that plaintiffs claim were false and misleading in violation of the securities laws, and that certain defendants sold Midway common stock on the basis of the alleged misrepresentations. Plaintiff also allege that defendants breached their fiduciary duties to Midway and its shareholders by failing in their oversight responsibility and by making or permitting to be made material false and misleading statements concerning Midway' s business prospects and financial condition. Plaintiffs seek to recover damages and to institute corporate governance reforms on behalf of Midway. On December 13, 2007, the Court dismissed the Zucker v. Powell, et al. lawsuit as duplicative of the Rosenbaum Capital LLC v. Zucker, et al. lawsuit, which remains pending. On February 22, 2008, Rosenbaum Capital, LLC filed an Amended Complaint, adding Sidney Kallman as an additional plaintiff and naming Robert

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Steele and Sumner Redstone as additional defendants. On May 22, 2008, all of the Defendants responded to the Amended Complaint with Motions to Dismiss. On July 16, 2008, the Plaintiffs filed a motion for an extension of time to respond to the directors' Motion to Dismiss in order to take discovery. By agreed order, briefing on the Motions to Dismiss and all discovery was stayed pending resolution of the Plaintiffs' motion. That motion was denied on October 20, 2008. On December 4, 2008, the Plaintiffs voluntarily dismissed the action, without prejudice.

Beginning on July 6, 2007, a number of putative securities class actions were filed against Midway, Steven M. Allison, James R. Boyle, Miguel Iribarren, Thomas E. Powell and David F. Zucker in the United States District Court, Northern District of Illinois. The lawsuits are essentially identical and purport to bring suit on behalf of those who purchased the Company's publicly traded securities between August 4, 2005 and May 24, 2006 (the "Class Period"). Plaintiffs allege that defendants made a series of misrepresentations and omissions about Midway's financial well-being and prospects concerning its financial performance, including decisions regarding reductions in force, our need to seek additional capital, and decisions by Sumner Redstone and his related parties with respect to their ownership or trading of our common stock, that had the effect of artificially inflating the market price of the Company's securities during the Class Period. Plaintiffs also claim that defendants lacked a reasonable basis for our earnings projections, which plaintiffs alleged were materially false and misleading. Plaintiffs seek to recover damages on behalf of all purchasers of our common stock during the Class Period. The actions have all been consolidated, and on October 16, 2007, the Court appointed lead plaintiffs and lead counsel. Lead plaintiffs filed a Consolidated Amended Complaint on December 17, 2007, making the same allegations and asserting the same claims. Midway and the individual defendants filed motions to dismiss the Consolidated Amended Complaint in its entirety on February 15, 2008. Plaintiffs' filed a response to the motions on March 20, 2008 and the defendants filed replies on April 8, 2008. On February 20, 2009, Midway filed a suggestion of bankruptcy, informing the Court of Midway's February 12, 2009 bankruptcy petition in the Bankruptcy Court. In response, Plaintiffs filed a notice on March 3, 2009 voluntarily dismissing Midway from the action, without prejudice. The Court dismissed Midway from the case on March 11, 2009, terminating the action as to Midway. The action remains pending against the remaining defendants.

NOTE 18: RELATED PARTY TRANSACTIONS

Majority Shareholder and Directors

Sumner M. Redstone, our controlling shareholder until November 28, 2008, is Chairman of the board and Chief Executive Officer of NAI. In addition, two former members of our Board of Directors also serve as directors or executives for NAI. Shari E. Redstone (Mr. Redstone's daughter), who served as the Chair of our Board of Directors until her resignation in November 2008, currently serves as President and a director of NAI and Robert J. Steele, who served as a member of our Board of Directors until his resignation in December 2008, serves as Vice President − Strategy and Corporate Development of NAI.

On February 29, 2008, Midway Home Entertainment Inc. and Midway Amusement Games, LLC (as Borrowers), and Midway Games Inc., Midway Games West Inc., Midway Interactive Inc., Midway Sales Company, LLC, Midway Home Studios Inc., Surreal Software Inc., Midway Studios-Austin Inc., and Midway Studios-Los Angeles Inc. (as U.S. Credit Parties) terminated the Amended LSA with WFF and entered into the NAI Agreements. See Note 8 for details regarding the NAI Agreements.

On September 15, 2008, the Company entered into the Factoring Agreement with NAI. See Note 7 for details regarding the Factoring Agreement.

As noted above, Sumner M. Redstone is Chairman of the board and Chief Executive Officer of NAI, Ms. Redstone currently serves as President and a director of NAI and Mr. Steele serves as Vice President − Strategy and Corporate Development of NAI. NAI is the parent company of both Viacom Inc. ("Viacom") and CBS Corporation ("CBS"), a company spun off from Viacom late in 2005. Mr. Redstone serves as Chairman of the board for both Viacom and CBS and Ms. Redstone serves as Vice Chair of the board for both Viacom and CBS. Also, Joseph A. Califano, Jr., a member of our Board of Directors, serves as a director of CBS. Mr. Califano also served as a director of Viacom from 2003 until the split of Viacom and CBS in 2005.

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Midway has historically conducted business with Viacom and companies affiliated with Viacom and Mr. Redstone. During 2005, we announced a strategic relationship with MTV Networks ("MTV"), a subsidiary of Viacom, to jointly market three video game titles, and collaborate on soundtrack development for two of these titles. Under the terms of the agreement, MTV has the option to provide us with varying levels of marketing and promotional support for these video games. We may then include various agreed-upon MTV properties and trademarks within the respective video games. Also, we will be required to then pay to MTV varying levels of marketing and production costs based upon the amount of support provided by MTV, as well as royalties from game sales based upon the amount of support provided by MTV and the number of units sold and profitability of the game. *L.A. RUSH,* initially released in October 2005, was the first of the three titles to be released under the relationship. Selling and marketing purchases from MTV totaled $236,000, $256,000, and $460,000 in 2008, 2007 and 2006, respectively. Royalties owed to MTV based upon game sales of *L.A. RUSH* totaled $3,000 and $89,000 in 2008 and 2007, respectively. At December 31, 2008 and 2007, we had amounts outstanding of $105,000 and $3,000 due to MTV, respectively, included in accounts payable.

Selling and marketing expenses incurred from advertising purchases with other Viacom affiliates totaled $4,454,000, $1,943,000, and $3,708,000 during 2008, 2007 and 2006, respectively. We also had amounts outstanding of $1,881,000 and $498,000 due to other Viacom affiliates included in accounts payable at December 31, 2008 and 2007, respectively. Net revenues generated from Viacom affiliates totaled $0, $0, and $13,000 in 2008, 2007 and 2006, respectively. There were no amounts outstanding from Viacom affiliates at either December 31, 2008 or 2007.

William C. Bartholomay, a member of our Board of Directors, was President of Near North National Group, insurance brokers, which we retained to provide insurance brokerage services. He is currently Group Vice Chairman of Willis Group Holdings, Ltd. and Vice Chairman of Willis North America, Inc., insurance brokers which we retain to provide insurance brokerage services. We have retained these companies or their affiliates as insurance brokers and have paid premiums to obtain insurance placed by these brokers totaling in the aggregate $1,125,000, $1,865,000, and $1,715,000 for 2008, 2007 and 2006, respectively. No amounts were owed to Willis Group Holdings, Ltd. and affiliates or Near North National Group at December 31, 2008 or 2007.

In addition to the Board members discussed above, see Note 19 to the consolidated financial statements for changes to our related party relationships that occurred since December 31, 2008.

Consolidated German Subsidiary Management

We operate a wholly-owned subsidiary in Munich, Germany, Midway Games GmbH ("MGG"). Two members of MGG' s management are the sole shareholders of F+F Publishing GmbH ("F+F"). F+F is primarily in the business of distributing video games and other products to retailers. One of these MGG employees is also the Managing Director of F+F. We sell products directly to retailers, distributors and F+F. F+F sells our products to various retailers. We generated net revenues of $0, $0 and $37,000 from sales to F+F during 2008, 2007 and 2006, respectively. In addition, we purchase certain products, primarily video games developed by third parties, from F+F and in turn sell these products to retailers and distributors. We incurred costs of sales of $1,068,000, $1,001,000 and $488,000 related to this activity during 2008, 2007 and 2006, respectively. During 2008, 2007 and 2006, we made payments of approximately $1,174,000, $993,000 and $341,000, respectively, related to purchases from F+F. Also, the full amount due to us from sales of our products to F+F during 2006 was settled against the outstanding payable to F+F as of December 31, 2006. As a result, we had net payables of $49,000 and $162,000 due to F+F at December 31, 2008 and 2007, respectively, which are included in accounts payable.

NOTE 19: SUBSEQUENT EVENTS

On January 15, 2009, the Company entered into an Amended and Restated Waiver and Forbearance Agreement dated January 14, 2009 with the Holders of the 7.125% Notes (the "7.125% Agreement") and (ii) a Waiver and Forbearance Agreement with the Holders of the 6.0% Notes (the "6.0% Agreement" and together with the 7.125% Agreement, the "Agreements"). All of the Holders of the 7.125% Notes entered into the 7.125% Agreement and Holders representing approximately 98% of the 6.0% Notes entered into the 6.0% Agreement (collectively the "Signing Holders").

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Pursuant to the Agreements, the Signing Holders deferred their rights under the 6.0% and 7.125% Notes Indentures to require the Company to repurchase the 6.0% and 7.125% Notes and forbear from taking any action under such Indentures through the close of business on February 12, 2009. As a condition to the effectiveness of the Agreements, the Company was required to, and did, enter into an agreement with National Amusements Inc. ("NAI") and Acquisition Holdings Subsidiary I LLC ("AHS" and together, the "Lenders"), pursuant to which the Lenders (including NAI and AHS) agreed to (i) suspend, until and including February 12, 2009, the cash sweep features under the Unsecured Loan Agreement dated February 29, 2008, and (ii) forbear, until and including February 12, 2009, from exercising any rights they may have with respect to any default or event of default under the Loan and Security Agreement dated February 29, 2008, the Loan Agreements and the Factoring Agreement, dated September 15, 2008 that may arise as a result of the failure of the Company to pay on January 16, 2009 the Fundamental Change Repurchase Price to Tendering Holders.

On January 29, 2009, Peter C. Brown resigned from the Company' s Board of Directors (the "Board") and the Board appointed Matthew V. Booty, the Company' s President and Chief Executive Officer, to serve as the Board' s Chairman.

On February 9, 2009, we entered into an agreement with Ubisoft Entertainment, S.A. ("Ubisoft"), a third-party publisher and developer, to publish *Wheelman*, an open-world driving game starring actor Vin Diesel. Ubisoft will handle sales, marketing, and distribution of *Wheelman* in North America, South America, Australia, New Zealand, France, Germany, Austria, Ireland and the United Kingdom. *Wheelman* was released in March 2009. We continued to direct the development of the title through completion, retain all future rights to the franchise and are selling the title in all other European territories. Based upon the terms of the agreement, unamortized capitalized product development costs exceed the estimated future net realizable value and a charge to cost of sales of approximately $8,000,000 was made in the first quarter of 2009.

On February 12, 2009, the Company and its U.S. subsidiaries filed voluntary petitions in the Bankruptcy Court seeking relief under the provisions of the Chapter 11 Cases. The Debtors are operating as debtors-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court. The Company' s foreign subsidiaries were not included in the Chapter 11 Cases.

The filing of the Chapter 11 Cases constitutes an event of default under both the Notes and the NAI Agreements. Under the Notes, the $150 million of principal and accrued and unpaid interest became immediately due and payable. Under the NAI Agreements, the lenders may declare $70 million immediately due and payable of which $30 million is secured, and also may declare the remaining $20 million immediately due and payable.

As part of the Chapter 11 Cases, the Company also filed with the Bankruptcy Court motions that would allow the Company to continue normal operations with uninterrupted performance of agreements with customers in accordance with existing business terms during the Chapter 11 Cases.

On February 13, 2009, the Company received written notice that the New York Stock Exchange ("NYSE") had suspended trading in the Company' s Common Shares immediately. The NYSE noted that it reached this decision in view of the Company' s Chapter 11 Cases filed in the Bankruptcy Court. The Company' s Common Shares are currently trading under the symbol "MWYGQ" on Pink Sheets®, a real-time quotation service maintained by Pink Sheets LLC.

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MIDWAY GAMES INC.

SCHEDULE II − VALUATION AND QUALIFYING ACCOUNTS

	Column A	Column B	Column C Additions		Column D	Column E
Period	Description	Balance at Beginning of Period	Charged to Costs and Expenses	Charged to Other Accounts	Deductions	Balance at End of Period
Year Ended December 31, 2008	Allowance for doubtful accounts	$350,000	$4,585,000	$−	$309,000	$4,626,000
	Allowance for price protection, returns and discounts	32,160,000	51,987,000	−	60,330,000	23,817,000
	Deferred tax asset valuation allowance	193,329,000	71,737,000	−	20,022,000	245,044,000
Year Ended December 31, 2007	Allowance for doubtful accounts	$1,315,000	$320,000	$−	$1,285,000	$350,000
	Allowance for price protection, returns and discounts	18,093,000	45,989,000	−	31,922,000	32,160,000
	Deferred tax asset valuation allowance	185,546,000	35,648,000	−	27,865,000	193,329,000
Year Ended December 31, 2006	Allowance for doubtful accounts	$1,263,000	$241,000	$−	$189,000	$1,315,000
	Allowance for price protection, returns and discounts	14,867,000	33,900,000	−	30,674,000	18,093,000
	Deferred tax asset valuation allowance	160,622,000	26,113,000	−	1,189,000	185,546,000

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 6th day of April, 2009.

MIDWAY GAMES INC.

By: /s/ MATTHEW V. BOOTY
Matthew V. Booty
Chairman, President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been duly signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Name	Title	Date
/s/ MATTHEW V. BOOTY Matthew V. Booty	Chairman, President and Chief Executive Officer (Principal Executive Officer)	April 6, 2009
/s/ RYAN G. O' DESKY Ryan G. O' Desky	Chief Financial Officer, Senior Vice President – Finance and Treasurer (Principal Financial Officer and Principal Accounting Officer)	April 6, 2009
/s/ WILLIAM C. BARTHOLOMAY William C. Bartholomay	Director	April 6, 2009
/s/ JOSEPH A. CALIFANO, JR. Joseph A. Califano, Jr.	Director	April 6, 2009
/s/ ROBERT N. WAXMAN Robert N. Waxman	Director	April 6, 2009

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EXHIBIT INDEX

Exhibit No.	Description
3 .1	Amended and Restated Certificate of Incorporation of the Registrant dated October 25, 1996, incorporated herein by reference to the Registrant' s Registration Statement on Form S-1/A, as amended, File No. 333-11919, filed on October 18, 1996 and effective October 29, 1996 (the "S-1 Registration Statement").
3 .2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant dated February 25, 1998, incorporated herein by reference to the Registrant' s Registration Statement on Form 8-A/A, Amendment No. 1, filed on April 20, 1998.
3 .3	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant dated August 5, 2003, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2003.
3 .4	Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Registrant dated February 17, 2004, incorporated herein by reference to the Registrant' s Registration Statement on Form S-3, File No. 333-113077, initially filed on February 25, 2004.
3 .5	Amended and Restated By-laws of the Registrant, incorporated herein by reference to the Registrant' s Registration Statement on Form S-3, File No. 333-116334, initially filed on June 10, 2004 (the "6/10/04 S-3").
3 .6	Composite Amended and Restated By-laws of the Registrant dated June 13, 2007, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on May 3, 2007.
4 .1	Indenture, dated as of September 19, 2005, between the Registrant and Wells Fargo Bank, National Association, incorporated herein by reference to the Registrant' s current report on Form 8-K filed on September 19, 2005 (the "9/19/2005 8-K").
4 .2	Registration Rights Agreement, dated as of September 19, 2005 between the Registrant and Banc of America Securities, LLC, as representative of the Initial Purchasers, incorporated herein by reference to the 9/19/2005 8-K.
4 .3	Indenture, dated as of May 30, 2006, between the Registrant and Wells Fargo Bank, National Association, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on May 30, 2006 (the "5/30/06 8-K").
4 .4	Registration Rights Agreement, dated as of May 30, 2006, between the Registrant and Banc of America Securities, LLC, incorporated herein by reference to the 5/30/06 8-K.
4 .5	Notice of Adjustment, dated July 13, 2006, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on July 14, 2006.
4 .6	Notice of Adjustment, dated April 30, 2007, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on April 30, 2007.
4 .7	Notice of Adjustment, dated August 22, 2007, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on August 27, 2007.
10.1*	1996 Stock Option Plan, incorporated herein by reference to the Registrant' s Registration statement on Form S-1/A, as amended, File No. 333-11919, filed on October 25, 1996 and effective October 29, 1996.
10.2*	1998 Non-Qualified Stock Option Plan, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, filed on June 24, 1998 (File No. 333-57583).
10.3*	1998 Stock Incentive Plan, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, filed on December 4, 1998 (File No. 333-68373).
10.4*	1999 Stock Option Plan, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, filed on March 5, 1999 (File No. 333-73451).
10.5*	2000 Non-Qualified Stock Option Plan, incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the fiscal year ended June 30, 2000, filed on September 26, 2000.
10.6*	Amendment to 1998 Stock Incentive Plan, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2001, filed on November 14, 2001.
10.7*	2002 Stock Option Plan, incorporated herein by reference to the Registrant' s definitive proxy statement filed on December 5, 2001.

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Exhibit No.	Description
10.8*	Letter Agreement dated as of March 21, 2001, between the Registrant and Thomas E. Powell regarding Mr. Powell' s employment by the Registrant, incorporated herein by reference to the Registrant' s Transition Report on Form 10-KT-405 for the six-month transition period ended December 31, 2001, filed on March 28, 2002.
10.9*	2002 Non-Qualified Stock Option Plan, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, filed on August 26, 2002 (File No. 333-98745).
10.10*	Letter Agreement dated as of February 10, 2003 between the Registrant and Thomas E. Powell regarding Mr. Powell' s employment by the Registrant, incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the fiscal year ended December 31, 2002 filed with the SEC on March 28, 2003.
10.11*	Executive Employment Agreement made as of May 6, 2003, between the Registrant and David Zucker, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on May 7, 2003 (the "5/7/03 8-K").
10.12*	Stock Option Agreement made as of May 6, 2003, between the Registrant and David Zucker, incorporated herein by reference to the 5/7/03 8-K.
10.13*	Stock Option Agreement under 2002 Stock Option Plan made as of May 6, 2003, between the Registrant and David Zucker, incorporated herein by reference to the 5/7/03 8-K.
10.14*	Restricted Stock Agreement entered into as of May 6, 2003, between the Registrant and David Zucker, incorporated herein by reference to the 5/7/03 8-K.
10.15	PlayStation® 2 CD-ROM/DVD-ROM Licensed Publisher Agreement dated April 1, 2000 between Sony Computer Entertainment America Inc. and Midway Home Entertainment Inc., incorporated herein by reference to the Registrant' s Registration Statement on Form S-3/A, filed on August 18, 2003 (the "August 2003 S-3/A"). (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 406 under the Securities Act of 1933, as amended.)
10.16	PlayStation® 2 Licensed Publisher Agreement dated November 14, 2000 between Sony Computer Entertainment Europe Limited and Midway Games Limited, incorporated herein by reference to the August 2003 S-3/A. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 406 under the Securities Act of 1933, as amended.).
10.17*	Waiver, dated as of April 5, 2004, by David F. Zucker, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on April 13, 2004.
10.18*	Amendment to Stock Option Plans of the Registrant, incorporated herein by reference to the 6/10/04 S-3.
10.19	Letter Agreement entered into as of September 20, 2004 amending the PlayStation®2 CD-ROM/DVD-ROM Licensed Publisher Agreement effective as of April 1, 2000 between Sony Computer Entertainment America Inc. and Midway Home Entertainment Inc., incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the fiscal quarter ended on September 30, 2004, filed on November 8, 2004 (the "9/30/2004 10-Q"). (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.20*	First Amendment to Restricted Stock Agreement made as of October 18, 2004, between the Registrant and David F. Zucker, incorporated herein by reference to the 9/30/2004 10-Q.
10.21*	2000 Stock Option/Stock Issuance Plan for Midway Studios − Austin Inc. and Form of Stock Option Agreement, incorporated herein by reference to the Registrant' s Registration Statement on Form S-8, File No. 333-120347, filed on November 10, 2004.
10.22*	2004 Form of Indemnification Agreement authorized to be entered into between the Registrant and officers and directors of the Registrant, incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed on March 14, 2005 (the "2004 10-K").
10.23*	Form of Stock Option Agreement For Directors used currently by the Registrant for directors under its stock option plans, incorporated herein by reference to the 2004 10-K.
10.24*	Form of Stock Option Agreement For Employees used currently by the Registrant for employees under its stock option plans, incorporated herein by reference to the 2004 10-K.

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Exhibit No.	Description
10.25*	Amended and Restated Midway Incentive Plan, incorporated herein by reference to the 2004 10-K.
10.26*	2005 Long-Term Incentive Plan, incorporated herein by reference to the Registrant' s definitive proxy statement filed on April 29, 2005 (File No. 001-12367).
10.27*	Form of Stock Option Agreement used currently by the Registrant for employees under its 2005 Long-Term Incentive Plan, incorporated herein by reference to the 6/30/2005 10-Q.
10.28*	Form of Restricted Stock Agreement used currently by the Registrant for management under its 2005 Long-Term Incentive Plan, incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on October 7, 2005.
10.29*	Form of Non-Employee Director Stock Option Agreement under the 2005 Long-Term Incentive Plan incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on September 12, 2006.
10.30	Xbox 360 Publisher License Agreement entered into as of October 25, 2006 by and between Microsoft Licensing, GP and Midway Home Entertainment Inc., incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the year ended December 31, 2006, filed on March 12, 2007. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.31	Amended and Restated Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, the lenders thereto, and Wells Fargo Foothill, Inc., dated as of June 29, 2007, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, filed on August 2, 2007.
10.32	First Amendment to Amended and Restated Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, the lenders thereto and Wells Fargo Foothill, Inc., dated as of July 31, 2007, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, filed on August 2, 2007.
10.33	Unreal® Engine 3 License Agreement by and between Epic Games, Inc. ("Epic") and Midway Home Entertainment Inc. ("MHEI"), dated as of January 14, 2005, incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, filed on August 2, 2007. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.34	Amendment No. 1 to Unreal® Engine 3 License Agreement by and between Epic and MHEI, dated as of December 5, 2005 incorporated herein by reference to the Registrant' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, filed on August 2, 2007. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.35*	Second Form of Restricted Stock Agreement used by the Registrant for management under its 2005 Long-Term Incentive Plan, incorporated herein by reference to Registrant' s Quarterly Report on Form 10-Q for the quarter ended September 30, 2007, filed on November 1, 2007.
10.36	Waiver and Second Amendment to Amended and Restated Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, the lenders thereto and Wells Fargo Foothill, Inc., dated as of January 2, 2008 incorporated herein by reference to the Registrant' s Annual Report on Form 10-K for the year ended December 31, 2007, filed on March 14, 2008 (the "2007 10-K").
10.37*	Confidential Settlement Agreement and General Release by and between the Registrant and Steven M. Allison dated January 24, 2008 incorporated herein by reference to the 2007 10-K.
10.38	Amendment to the Xbox 360 Publisher License Agreement effective as of October 12, 2007 between Microsoft Licensing, GP and Midway Home Entertainment Inc. incorporated herein by reference to the 2007 10-K. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)

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Exhibit No.	Description
10.39	Confidential License Agreement for the Wii Console between Nintendo of America Inc. and Midway Home Entertainment Inc. effective November 19, 2006 incorporated herein by reference to the Registrant' s Current Report on Form 10-K/A, Amendment No. 2 filed on October 27, 2008 (the "2007 10-K/A"). (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.40	License Agreement for the Nintendo DS System (EEA, Australia and New Zealand) dated June 18, 2006 between Nintendo Co., Ltd. and Midway Games Limited incorporated herein by reference to the 2007 10-K/A. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.41*	Sales Incentive Bonus Plan for Martin Spiess dated April 20, 2007 incorporated herein by reference to the 2007 10-K/A. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.42	Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, and National Amusements, Inc., dated as of February 29, 2008 incorporated herein by reference to the 2007 10-K.
10.43	Continuing Guaranty dated as of February 29, 2008, between the Registrant and specified subsidiaries in favor of National Amusements, Inc. incorporated herein by reference to the 2007 10-K.
10.44	Intercompany Subordination Agreement dated as of February 29, 2008 among the Registrant, specified subsidiaries of the Registrant and National Amusements, Inc. incorporated herein by reference to the 2007 10-K.
10.45	Unsecured Loan Agreement dated as of February 29, 2008, by and between the Registrant and National Amusements, Inc. incorporated herein by reference to the 2007 10-K.
10.46	Unsecured Subordinated Loan Agreement dated as of February 29 2008, by and between the Registrant and National Amusements Inc. incorporated herein by reference to the 2007 10-K.
10.47*	Letter Agreement dated as of March 19, 2008 between Midway Games Inc. and Matthew V. Booty, incorporated herein by reference to the Registrant' s Current Report on Form 8-K, filed on March 20, 2008.
10.48*	Memorandum to Matthew V. Booty Regarding Performance-Based Bonuses for Interim CEO and President dated April 8, 2008, incorporated herein by reference to the Registrant' s Current Report on Form 8-K/A, Amendment No. 2, filed on October 21, 2008. Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.
10.49*	Midway Games Inc. Memorandum to Ryan O' Desky Regarding Terms of Employment dated April 8, 2008, incorporated herein by reference to the Registrant' s Current Report on Form 8-K, filed on April 11, 2008 (the "4/11/08 8-K").
10.50*	Midway Games Limited Memorandum to Martin Spiess Regarding Terms of Employment dated April 8, 2008, incorporated herein by reference to the 4/11/08 8-K.
10.51*	Midway Games Limited Memorandum to Martin Spiess Regarding Sales Incentive Bonus Plan dated April 8, 2008, incorporated herein by reference to the Registrant' s Current Report on Form 8-K/A, Amendment No. 1, filed on October 21, 2008. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.52	Factoring Agreement by and among National Amusements, Inc., Midway Home Entertainment Inc., and Midway Amusement Games, LLC dated September 15, 2008 incorporated herein by reference to the Registrant' s Current Report on Form 8-K filed on September 18, 2008 (the "9/18/08 8-K"). (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)

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Exhibit No.	Description
10.53	Amendment No. 2 to Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, and National Amusements, Inc., dated as of September 15, 2008 incorporated herein by reference to the 9/18/08 8-K. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.54	Amendment No. 2 to Unsecured Loan Agreement, by and between the Registrant and National Amusements Inc., dated as of September 15, 2008 incorporated herein by reference to the 9/18/08 8-K. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.55	Amendment No. 2 to Unsecured Subordinated Loan Agreement by and between the Registrant and National Amusements Inc., dated as of September 15, 2008 incorporated herein by reference to the 9/18/08 8-K. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.56	Global PlayStation 3 Format Licensed Publisher Agreement effective as of September 26, 2008 by and between Sony Computer Entertainment America Inc. and Midway Home Entertainment, Inc. (Portions of this exhibit have been omitted pursuant to a request for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.)
10.57	Amendment No. 1 to Loan and Security Agreement by and among the Registrant, specified subsidiaries of the Registrant, and National Amusements, Inc., dated as of August 19, 2008.
10.58	Amendment No. 1 to Unsecured Loan Agreement, by and between the Registrant and National Amusements Inc., dated as of August 19, 2008.
10.59	Amendment No. 1 to Unsecured Subordinated Loan Agreement by and between the Registrant and National Amusements Inc., dated as of August 19, 2008.
21	Subsidiaries of the Registrant.
23	Consent of Ernst & Young LLP.
31	Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32	Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*	Indicates a management contract or compensatory plan or arrangement.

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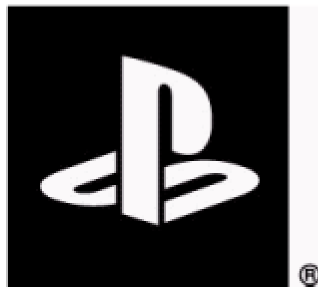
EXHIBIT 10.56



GLOBAL PLAYSTATION®3 FORMAT
LICENSED PUBLISHER AGREEMENT

Sony Computer Entertainment America Inc.
GLPA **REDACTED** **CONFIDENTIAL**

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GLOBAL PLAYSTATION® 3 FORMAT
LICENSED PUBLISHER AGREEMENT

This **Global PlayStation®3 Format Licensed Publisher Agreement** (the "Agreement") is entered into on September 26. 2008 by and between SONY COMPUTER ENTERTAINMENT AMERICA INC., with offices at 919 East Hillsdale Boulevard, Foster City, California ("the SCE Company") and Midway Home Entertainment, Inc., with offices at 10636 Scripps Summit Court, Suite 100, San Diego, CA 92131 ("Publisher").

The SCE Company' s parent company, Sony Computer Entertainment Inc. ("SCEI"), has designed and developed certain core technology of or concerning the System.

The SCE Company has the right to grant non-exclusive licenses to qualified entities regarding certain intellectual property rights with respect to the System.

Publisher desires to be granted a non-exclusive license to publish, develop, have manufactured, market, advertise, distribute and sell Licensed Products in accordance with the provisions of this Agreement and the provisions of the Regional Rider that is attached hereto and incorporated herein by reference, and the SCE Company is willing, in accordance with the terms and subject to the conditions of this Agreement and the Regional Rider, to grant Publisher such a license.

In consideration of the representations, warranties and covenants contained herein and in the Regional Rider, and other good and valuable consideration, Publisher and the SCE Company hereby agree as follows:

1. Definition of Terms.

1.1 "Advertising Materials" means any advertising, marketing, merchandising, promotional, contest-related, public relations (including press releases), display, point of sale or website materials regarding or relating to the Licensed Products or depicting any of the Licensed Trademarks. Advertising Materials include any advertisements in which the System is displayed, referred to, or used, including giving away any unit(s) of the System as prizes in contests or sweepstakes and the public display of the System in product placement opportunities.

1.2 "Affiliate" means, as applicable, either Sony Computer Entertainment America Inc. ("SCEA"), Sony Computer Entertainment Inc. ("SCEI"), Sony Computer Entertainment Europe Ltd. ("SCEE"), Sony Computer Entertainment Korea ("SCEK"), any subsidiary of the foregoing, or any other entity as may be established from time to time and becomes a part of the Sony Computer Entertainment Group.

1.3 "Attribution Line" means the legal attribution line used on Advertising Materials, which shall be substantially similar to the following: "Product copyright and trademarks are the property of the respective publisher or its licensors."

1.4 "Designated Manufacturing Facility" means a manufacturing facility that is designated by the SCE Company, in its sole discretion, to manufacture Disc Products or any of their component parts.

1.5 "Development System Agreement" means an agreement entered into between the SCE Company and a Licensed Publisher or

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other licensee regarding the sale, lease, loan or license of Development Tools.

1.6 "Development Tools" means the PlayStation 3 development tools sold, leased, loaned or licensed solely for use in the development of Executable Software.

1.7 "Disc Products" means the Executable Software on PS3 Format Discs, Advertising Materials, Packaging, Printed Materials and Product Information relating to any individual title which shall consist of one application software product per Unit. Disc Products may, but need not, be designed to allow Online Gameplay.

1.8 "Effective Date" is the date specified in the preamble of this Agreement.

1.9 "Executable Software" means software in final object code form that is designed for use and operation exclusively on the System which consists of Publisher Software and any SCE Materials and constitutes a complete, standalone videogame.

1.10 "Guidelines" means any guidelines or specifications of the SCE Company with respect to the development, manufacture and publishing of Licensed Products, including any requirements regarding the development of Executable Software, the display of the Licensed Trademarks in any Licensed Products and related Advertising Materials, or the protection of any of the SCE Intellectual Property Rights, which may be set forth in the Technical Requirements Checklist, Corporate Identity Guidelines or in any other documentation provided to Publisher by the SCE Company. Guidelines shall be comparable to the guidelines and specifications applied by the SCE Company to its own software products for the System. All Guidelines may be modified, supplemented or amended by any Affiliate from time to time upon reasonable notice to Publisher. Guidelines are incorporated into and form a part of this Agreement.

1.11 "Licensed Developer" means an entity that has signed a Licensed Developer Agreement with any Affiliate.

1.12 "Licensed Developer Agreement" or "LDA" means a valid and current license agreement authorizing the development of software for the System, fully executed between a Licensed Developer and an Affiliate.

1.13 "Licensed Products" means Disc Products and Online Products, including any Publisher demonstration discs.

1.14 "Licensed Publisher" means an entity that has signed a Licensed Publisher Agreement with an Affiliate.

1.15 "Licensed Publisher Agreement" or "LPA" means a valid and current license agreement for the publishing, development, manufacture, marketing, advertising, distribution and sale of Licensed Products, fully executed between a Licensed Publisher and an Affiliate.

1.16 "Licensed Trademarks" means the trademarks, service marks, trade dress, logos, icons and other indicia designated in the Guidelines or otherwise for use on, in or otherwise in connection with Licensed Products. The Licensed Trademarks (or any part thereof) are subject to change during the term of this Agreement and may be modified, supplemented or amended by any Affiliate (as applicable) from time to time upon reasonable notice to Publisher.

1.17 "Master Disc" means a recordable Blu-Ray disc in the form requested by the SCE Company containing final pre-production Executable Software.

1.18 "Online Gameplay" means the capability to operate and interact with the Executable Software associated with a Licensed Product used on a System that is connected to the Internet or any other network and which may allow an end user to participate in a game or gameplay with another end user (or other end users) across the Internet or any other network.

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1.19 "Online Products" means (i) enhancements, improvements, additions, patches, and updates, including characters, artifacts, scripts, levels, modifications, player statistics and gameplay data, used in conjunction with a related Disc Product and distributed electronically to any end users after sale or distribution of a Unit of the related Disc Product; and (ii) Executable Software distributed electronically to end-users. Online Products may, but need not, be designed to allow Online Gameplay.

1.20 "Packaging" means, with respect to each Disc Product, the carton, containers, cases, edge labels, wrapping materials, security seals and other proprietary labels and trade dress elements and wrapping materials of or concerning the Disc Products (and all parts of any of the foregoing) but specifically excluding Printed Materials and PlayStation 3 Format Discs.

1.21 "PlayStation 3 Format Disc" means the disc media formatted for use with the System.

1.22 "Printed Materials" means all artwork and mechanicals for the disc label for each PlayStation 3 Format Disc and for the Packaging relating to any of the Disc Products, and all instructional manuals, liners, inserts, and any other materials and user information within or attached to the Packaging and distributed as part of the Disc Products.

1.23 "Product Information" means any information owned or licensed by Publisher relating to any of the Licensed Products, including demos, videos, hints and tips, artwork, depictions of Disc Product cover art and videotaped interviews.

1.24 "Product Proposal" means a written proposal prepared by a Licensed Publisher and submitted to the SCE Company under the Guidelines regarding the concept and design for a Licensed Product.

1.25 "Publisher Software" means any software including incorporated audio and visual material developed by Publisher under this Agreement or an LDA, and does not include any SCE Materials.

1.26 "Publisher Intellectual Property Rights" means those worldwide intellectual property rights, current or future, that are owned and controlled by Publisher, including rights in or related to patents, inventions, designs, copyrights, databases, trademarks, service marks, trade names, trade dress, mask work rights, utility model rights, trade secret rights, technical information, know-how, and the equivalents of the foregoing under the laws of any jurisdiction and any other intellectual property rights recognized in the Territory (including all registrations, applications to register and rights to apply for registration of same), that relate to the Publisher Software, Packaging, Product Information, Printed Materials, Advertising Materials or other materials.

1.27 "Purchase Order" means a written purchase order issued by Publisher pursuant to Section 7.8.1, regarding the purchase of Disc Products that conform to the Guidelines and other terms and conditions imposed by the SCE Company or any Designated Manufacturing Facility.

1.28 "Regional Rider" means the additional set of binding terms and which are appended to and form part of this Agreement, and which are applicable to the Territory.

1.29 "SCE Confidential Information" means the term as defined in Section 13.1.1.

1.30 "SCE Intellectual Property Rights" means those worldwide intellectual property rights, current or future, including rights in or related to patents, inventions, designs, copyrights, databases, trademarks (including the Licensed Trademarks), service marks, trade names, trade dress, mask work rights, utility model rights, trade secret rights, technical information, know-how, and the equivalents of the foregoing under the laws of any jurisdiction, and any other intellectual property rights recognized in the Territory

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(including all registrations, applications to register and rights to apply for registration of the same), for their full term including all renewals and extensions, that relate to the SCE Materials, the System, the design and development of Licensed Products compatible with the System, and any SCE Confidential Information.

1.31 "SCE Materials" means any data, object code, source code, firmware, documentation (or any part(s) of any of the foregoing) or information relating to the System or the development of interactive entertainment products compatible with the System, selected in the sole judgment of the SCE Company, which are directly or indirectly provided or supplied by any Affiliate to Publisher. SCE Materials shall not include any hardware portions of the Development Tools, but shall include firmware in such hardware.

1.32 "System" means the PLAYSTATION®3 computer entertainment system.

1.33 "Term" means the period from the Effective Date until March 31, 2012.

1.34 "Territory" means the term as defined in the Regional Rider.

1.35 "Unit" means an individual copy of a specific Disc Product regardless of the number of PlayStation 3 Format Discs that are contained within and are part of such Disc Product.

2. License.

2.1 License Grant. The SCE Company grants to Publisher, for the Term and throughout the Territory, and in accordance with the other terms, limitations and conditions referenced herein, a non-exclusive, non-transferable license under the SCE Intellectual Property Rights, without the right to sublicense (except as specifically provided herein), to use SCE Materials as follows: (i) to develop and publish Licensed Products and to enter into agreements with Licensed Developers and other approved third parties, where the SCE Company requires such approval, subject to Section 3.2, to develop Licensed Products; (ii) to have Disc Products manufactured by Designated Manufacturing Facilities; (iii) to market, advertise, promote, sell and distribute Disc Products directly to end users or to third parties for distribution to end users; (iv) to market, advertise and promote, and, pursuant to a separate online distribution agreement(s) with the SCE Company or any Affiliate, to distribute Online Products to end users over the PlayStation®Network; (v) to use the Licensed Trademarks only in connection with the manufacturing, marketing, packaging, advertising, promotion, sale and distribution of the Licensed Products; and (vi) to sublicense end-user customers the right to use the Licensed Products for personal, noncommercial purposes in conjunction with the System only, and not with other devices or for public performance.

2.2 Separate PlayStation Agreements. Unless specifically set forth in this Agreement, all terms used herein are specific to the System and the attendant SCE Company licensing program. Licenses relating to the original PlayStation, PS One, PlayStation 2 or PlayStation Portable game consoles are subject to separate agreements with the SCE Company (or any Affiliate, as applicable), and any license of rights to Publisher under such separate agreements shall not confer on Publisher any rights with respect to the System and vice versa.

3. Development and Distribution of Licensed Products.

3.1 Right to Develop. The SCE Company grants Publisher the right to purchase, lease or borrow, as applicable, certain hardware devices and license certain software tools and utilities that comprise the Development Tools, as is appropriate, from the SCE Company or its designee, pursuant to a separate Development System Agreement with the SCE Company or a separate rider to this Agreement, which hardware and software components may be used by Publisher only in connection with the development of Licensed Products pursuant to Section 2.1. In developing Executable Software (or portions thereof), Publisher and any third-party Licensed Developers with whom Publisher contracts shall fully comply in all respects with

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all Guidelines, including technical specifications. In the event that Publisher uses any third-party tools to develop Executable Software or any portion thereof, Publisher shall be responsible at Publisher' s sole risk and expense for ensuring that it has obtained all necessary licenses for any such use.

3.2 Subcontractors. Publisher may retain subcontractors who provide services which do not require access to SCE Materials or SCE Confidential Information without prior approval. Otherwise, Publisher may retain subcontractor(s) to assist with the development, publication and marketing of Licensed Products (or portions thereof) which have signed (i) an LPA or LDA with the SCE Company (the "PlayStation 3 Agreement") in full force and effect throughout the term of such development, publishing and marketing services or (ii) if required by the SCE Company, an SCE Company-approved subcontractor agreement ("Subcontractor Agreement"), and the SCE Company has approved such subcontractor in writing (which approval shall be in the SCE Company' s sole discretion). Publisher shall not disclose to any subcontractor any of the SCE Confidential Information, including any SCE Materials, unless and until either a PlayStation 3 Agreement or any required Subcontractor Agreement has been executed and approved by the SCE Company. Publisher shall be solely responsible for verifying that all third parties that contribute to the development of any Licensed Product, or component thereof, satisfy the requirements of clause (i) or (ii) of this Section 3.2. Notwithstanding any consent which may be granted by the SCE Company for Publisher to employ any such permitted subcontractor(s), or any such separate agreement(s) that may be entered into by Publisher with any such permitted subcontractor, Publisher shall remain fully liable for its compliance with all of the provisions of this Agreement and for the compliance of any and all permitted subcontractors with the provisions of any agreements entered into by such subcontractors in accordance with this Section. Publisher shall use best efforts to cause all subcontractors that it retains in furtherance of this Agreement to comply in all respects with the terms and conditions of this Agreement, and hereby unconditionally guarantees all obligations of its subcontractors. The SCE Company may subcontract any of its rights or obligations hereunder.

3.3 Form of Distribution. Executable Software distributed physically to end users and demonstration discs shall be in the form of PlayStation 3 Format Discs only. Publisher shall not, directly or indirectly, incorporate more than one Disc Product in a single Unit, or package or bundle Units of any Disc Product with any other goods or services, without the SCE Company' s prior written consent. Online Products, Online Gameplay and any services associated with Online Gameplay, including subscriptions, shall be distributed or made available electronically, including by wireless distribution, to end users over the PlayStation®Network only, unless the SCE Company gives express written consent to another manner of distribution on SCE Company standard terms or otherwise as agreed. Notwithstanding this limitation, Publisher may electronically transmit Executable Software from site to site, or from machine to machine over a computer network, for the sole purposes of facilitating development and for testing to be carried out under Section 6; provided that no right of retransmission shall attach to any such transmission, and provided further that Publisher shall use reasonable security measures customary within the high technology industry to reduce the risk of unauthorized interception or retransmission of such transmissions.

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3.4 **Distribution Channels for Disc Products.** Publisher may use such distribution channels to distribute Disc Products as Publisher deems appropriate, including the use of third-party distributors, resellers, dealers and sales representatives. In the event that the SCE Company permits Publisher to have any of its Disc Products published by another Licensed Publisher, Publisher must, in addition to complying with Section 3.2, provide the SCE Company with advance written notice of such arrangement, including the name of the Licensed Publisher and any additional information requested by the SCE Company regarding the nature of the distribution services that would be provided by such third-party Licensed Publisher prior to manufacture of the Disc Product.

4. Online Gameplay.

4.1 Access to and Maintenance of Online Gameplay. Publisher shall maintain servers hosting Online Gameplay for the periods specified in the Guidelines. Publisher, or, at SCEE' s option, SCEE or its Affiliate shall provide notice to consumers in a clear and conspicuous manner via one of the methods listed in Section 4.3 any permanent shutdown to a server hosting or supporting Online Gameplay no later than [*********] prior to any shutdown.

4.2 Publisher Online Designee. Publisher shall appoint a dedicated contact person for its Licensed Products designed to allow Online Gameplay, who shall act as a liaison between the SCE Company and Publisher for all online matters relating to Licensed Products designed to allow Online Gameplay. Publisher' s designee shall also be responsible for ensuring that all terms and conditions relating to the online elements of the Licensed Products are complied with. Publisher shall give the SCE Company [*********] written notice prior to any change in designee.

4.3 Online Legal Compliance. Licensed Products designed for Online Gameplay must include a legal disclosure enumerating end user, privacy and moderation policies and age rating (collectively, "Online Terms") prior to allowing any end users to engage in Online Gameplay for the first time for a particular user or as otherwise required by law. The SCE Company reserves the right to review Publisher' s Online Terms, but shall have no liability for content of Publisher' s Online Terms. Online Terms shall either be coded into the applicable Licensed Product or available on the server hosting Online Gameplay in such a way that an end user must agree to it prior to accessing and engaging in Online Gameplay. Online Terms must comply with the Guidelines. Publisher must inform all end users engaging in or accessing Online Gameplay if any personally identifying information will be collected, how it will be collected, and how it will be used.

4.4 Publisher Liability for Online Gameplay. Publisher shall bear exclusively all responsibility and liability for any features or capability of Licensed Products related to Online Gameplay, including Online Gameplay between territories using different television standards, whether PAL, NTSC or otherwise.

5. Limitations on Licenses; Reservation of Rights.

5.1 **Application of Council Directive 91/250/EEC.** If Publisher has executed the Regional Rider in a Territory governed by Council Directive 91/250/EEC, the limitations set forth in Section 5 shall be subject to Council Directive 91/250/EEC.

5.2 **Reverse Engineering Prohibited.** Publisher shall not directly or indirectly disassemble, decrypt, electronically scan, peel semiconductor components, decompile, or otherwise reverse engineer in any manner or attempt to reverse engineer or otherwise derive any source code from, all or any portion of the SCE Materials, or permit, assist or encourage any third party to do so.

5.3 **Limitation on Creation of Derivative Works.** Publisher shall not use, modify, reproduce, sublicense, distribute, create derivative works from, or otherwise provide to third parties, the SCE Materials, in whole or in part, other than as expressly set forth herein without the SCE Company' s prior written consent.

5.4 **Limitation on Examination and Study of Tools.** Publisher may study the performance, design and operation of the Development Tools solely for the limited purposes of developing and testing Publisher Software, or to develop tools to assist Publisher with the development and testing of Publisher Software. Any tools

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developed or derived by Publisher as a result of studying the performance, design or operation of the Development Tools shall be considered derivative works of the SCE Materials and shall be owned by the SCE Company, but may be treated as trade secrets of Publisher. This section shall govern any conflict with a similar provision in any separate agreement.

5.5 Limitations Regarding Content of Licensed Products. No rights are granted under this Agreement with respect to non-game products or products which contain significant elements of, or are a hybrid with, audio or video profile products. No rights are granted under this Agreement with respect to serving or providing in-game dynamic advertisements. Licensed Products may contain in-game static advertisements, subject to the Guidelines.

5.6 Reservation of SCE Company' s Rights.

5.6.1 Limitations on Use of SCE Materials and SCE Intellectual Property Rights. This Agreement does not grant any right or license under, and Publisher shall not use, any SCE Confidential Information, the SCE Materials, or any of the SCE Intellectual Property Rights except as expressly authorized hereunder and in strict compliance with the terms and conditions of this Agreement. No other right or license is to be implied by or inferred from any provision of this Agreement or the conduct of the parties. In particular, Publisher shall not use the Executable Software, SCE Materials or SCE Confidential Information (or any portion of any of the foregoing) in connection with the development of any software for any emulator or other computer hardware or software system. In no event shall Publisher patent any tools, methods, or applications, created, developed or derived from SCE Materials. Publisher shall not make available to any third party any tools developed or derived from the study of the Development Tools without the SCE Company' s express written permission. Use of such tools shall be strictly limited to the creation or testing of Licensed Products and any other use, direct or indirect, of such tools is strictly prohibited. Moreover, Publisher shall bear all risks arising from incompatibility of its Licensed Product and the System resulting from use of Publisher-created tools. The burden of proof under this Section shall be on Publisher, and the SCE Company reserves the right to require Publisher to furnish evidence satisfactory to the SCE Company that Publisher has complied with this Section.

5.6.2 Ownership and Protection of SCE Materials and SCE Intellectual Property Rights. All rights with respect to the SCE Materials and the System, including all of the SCE Intellectual Property Rights, are the exclusive property of the SCE Company or its Affiliates. Publisher shall not do or cause to be done any act or thing in any way impairing or tending to impair any of the SCE Company' s rights, title or interests in or to the SCE Materials or the SCE Intellectual Property Rights. Publisher shall take all steps as the SCE Company may reasonably require for the protection and maintenance of the SCE Intellectual Property Rights, including executing licenses or obtaining registrations. Publisher shall not register any trademark in its own name or in any other person' s name, or use, or obtain rights to use Internet domain names or addresses, which are identical or similar to, or are likely to be confused with any of the Licensed Trademarks or any other trademarks of the SCE Company. All goodwill associated with the Licensed Trademarks, including any goodwill generated or arising by or through

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Publisher' s or its sub-licensees' activities under this Agreement, accrues to the benefit of and belongs exclusively to the SCE Company. Nothing contained in this Agreement shall be deemed to grant Publisher the right to use the trademark "SONY" in any manner or for any purpose.

5.6.3 Authentication. The SCE Company reserves the right to require Publisher to utilize an authentication or authorization system to be provided, licensed or designated by the SCE Company to authenticate and verify all Licensed Products and units of the System. The SCE Company reserves the right to insert serial numbers on all PlayStation 3 Format Discs for security or authentication purposes.

5.7 Acknowledgment of Publisher' s Ownership Rights. Separate and apart from the SCE Materials and other rights licensed to Publisher by the SCE Company hereunder, as between Publisher and the SCE Company, Publisher retains all rights, title and interest in and to the Publisher Software, the Product Proposals, and related Product Information, including Publisher Intellectual Property Rights therein, as well as Publisher' s rights in any source code and other underlying material such as artwork and music (but specifically excluding the SCE Materials and any software provided directly or indirectly by the SCE Company) and any names used as titles for Licensed Products and other trademarks used by Publisher. Nothing in this Agreement shall restrict the right of Publisher to develop, distribute or transmit products incorporating the Publisher Software and underlying material, which do not contain or were not developed through use of the SCE Materials or the SCE Intellectual Property Rights, for any hardware platform or service other than the System, or to use Printed Materials or Advertising Materials approved by the SCE Company (excepting Printed Materials or Advertising Materials that contain any Licensed Trademarks) as Publisher determines for such other platforms.

5.8 Guidelines Requirement. The licenses granted to Publisher are expressly conditioned on Publisher' s compliance with all provisions of the SCE Company' s Guidelines, as and when published or within a commercially reasonable time following its receipt of a publication expressly referencing such provisions, and any and all such provisions are incorporated herein by this reference. To the extent that the Guidelines change with respect to any Licensed Product materials that Publisher submits to the SCE Company under Section 6.1, Publisher shall only be required to implement any such revised Guidelines in subsequent orders of corresponding Disc Product or subsequent publications of corresponding Online Product. Publisher shall not be required to recall or destroy previously manufactured Disc Products, unless such Disc Products do not comply with the original standards, requirements and conditions set forth in the Guidelines or unless explicitly required to do so in writing by the SCE Company.

6. Quality Standards for Licensed Products.

6.1 Product Assessment, Format Quality Assurance and Printed and Advertising Materials. Publisher shall comply with the process and requirements for assessment and format quality assurance of Licensed Products and Advertising Materials, on a product-by-product basis as specified in the Guidelines. The SCE Company will not approve Licensed Products that are outside the PlayStation®3 format specifications in the Guidelines.

6.2 Rating Requirements. No Licensed Product may be published, sold, distributed, marketed, advertised or promoted unless each Licensed Product bears a consumer advisory age rating, consisting of a rating code and product descriptors, either as required by local law or as issued by, and following the rating display requirements of, a consumer

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advisory ratings system designated by the SCE Company. Any and all costs and expenses incurred in connection with obtaining such rating shall be borne solely by Publisher. No Licensed Product, Printed Materials or Advertising Materials may bear more than one consumer advisory rating code. Any Online Product that can be used with a Disc Product must bear a rating that is the same as or lower than the rating issued to the Disc Product, unless the SCE Company gives express written consent.

6.3 Compatibility of Licensed Products with Peripherals. Publisher shall be solely responsible for functionality and operational compatibility of its Licensed Products with any third-party peripherals (e.g., controllers, memory storage devices, etc.). The SCE Company shall have no responsibility to test or otherwise evaluate the compatibility of Publisher' s Licensed Products with any third-party peripherals. The SCE Company shall not be held responsible for any actual, incidental or consequential damages that may result from any use or inability to use any third-party peripherals with any Licensed Products or the System. If the SCE Company elects, at its sole discretion, to test or otherwise evaluate the compatibility of Publisher' s Licensed Products with any third-party peripheral device then, (i) any such testing or evaluation shall not obligate the SCE Company to test or evaluate any other third-party peripherals; (ii) any such testing or evaluation shall not shift to the SCE Company any responsibility to ensure or assess the functionality or compatibility of any third-party peripheral or require the SCE Company to report any third-party peripheral incompatibilities; and (iii) Publisher shall provide the SCE Company, upon request and at no additional cost or expense to the SCE Company, with a reasonable number of samples of any such third-party peripheral products for testing and review in a timely manner. In the event that any Licensed Product fails to perform to the SCE Company' s satisfaction with any third-party peripheral that it is intended to support, the SCE Company shall have the right to require that Publisher modify or remove such portions of the Executable Software as are intended to support the affected third-party peripheral.

6.4 Publisher' s Additional Quality Assurance Obligations. If at any time or times subsequent to the approval of any part of a Licensed Product, the SCE Company identifies any material defects (such materiality to be determined by the SCE Company in its sole discretion) with respect to the Licensed Product, or in the event that the SCE Company identifies any improper use of its Licensed Trademarks or the SCE Materials, or any material defects or improper use are brought to the attention of the SCE Company, Publisher shall, at no cost to the SCE Company, promptly correct any such material defects, or improper use, to the SCE Company' s commercially reasonable satisfaction, which may include, in the SCE Company' s judgment, the recall and re-release of Units of the affected Disc Product or publication of an update, upgrade or technical fix to an Online Product. In the event any Licensed Products create any risk of loss or damage to any property or injury to any person, Publisher shall immediately take effective steps, at Publisher' s sole liability and expense, to recall and remove such Licensed Products from any affected channels of distribution; provided, however, that if Publisher is not acting as the distributor or seller for the Licensed Products, its obligation shall be to use its best efforts to arrange removal of all affected Licensed Products from the relevant distribution channels. Publisher shall provide all end-user support for Licensed Products. Publisher and the SCE Group Company may enter into a separate agreement to have Publisher provide all end-user support for Online Gameplay of Publisher' s Licensed Products that is provided through the PlayStation®Network. The SCE Company expressly disclaims any obligations or liability to provide end-user support with respect to Licensed Products.

7. Manufacture of Disc Products.

7.1 Manufacture of Units. Upon approval of Executable Software and associated Printed Materials pursuant to Section 6, and subject to Sections 7.4 − 7.7, the Designated Manufacturing Facility will, in accordance with the terms and conditions set forth in this Section 7, and at Publisher' s request and sole expense (a) manufacture PlayStation 3 Format Discs for Publisher;

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(b) manufacture Publisher' s Packaging and Printed Materials; and (c) assemble the PlayStation 3 Format Discs with the related Printed Materials and Packaging. Publisher shall comply with all Guidelines relating to the production of Units of Disc Products. The SCE Company reserves the right to insert or require Publisher to make arrangements for the insertion of certain Printed Materials relating to the System into each Unit.

7.2 Designated Manufacturing Facilities. To insure compatibility of PlayStation 3 Format Discs with the System, consistent quality of the Disc Products and incorporation of anti-piracy security measures, the SCE Company shall designate and license a Designated Manufacturing Facility or Facilities to reproduce PlayStation 3 Format Discs. Publisher shall purchase [*********] for PlayStation 3 Format Discs, including demonstration discs, from such Designated Manufacturing Facility. Any Designated Manufacturing Facility shall be entitled to enforce the terms of this Agreement.

7.3 Creation of Master PlayStation 3 Format Disc. Using one of the fully approved Master Discs provided by Publisher under the Guidelines, the SCE Company or the Designated Manufacturing Facility shall create an encrypted, reproducible master of the Executable Software (formatted as a PlayStation 3 Format Disc) from which all other copies of the Executable Software for the corresponding Disc Product are to be replicated. Publisher shall be responsible for the costs, as determined by the SCE Company or the Designated Manufacturing Facility, of producing the reproducible masters of any and all Executable Software.

7.4 Manufacture of Printed Materials by Designated Manufacturing Facility. If Publisher elects to order Printed Materials from a Designated Manufacturing Facility, Publisher shall deliver all SCE Company-approved Printed Materials to that Designated Manufacturing Facility, at Publisher' s sole risk and expense, and the Designated Manufacturing Facility will manufacture such Printed Materials in accordance with this Section 7. In order to insure against loss or damage to the copies of the Printed Materials furnished to the SCE Company, Publisher shall retain duplicates of all Printed Materials, and neither the SCE Company nor any Designated Manufacturing Facility shall be liable for any loss of or damage to any Printed Materials.

7.5 Manufacture of Printed Materials by Alternate Source. Subject to the Guidelines, Publisher may elect to be responsible for manufacturing its own Printed Materials (other than artwork which is to be reproduced or otherwise displayed on any PlayStation 3 Format Discs, which Publisher will supply to the Designated Manufacturing Facility for incorporation within the Disc Products), at Publisher' s sole risk and expense. The SCE Company shall have the right to disapprove any Printed Materials that do not comply with the applicable Guidelines. If Publisher elects to supply its own Printed Materials, neither the SCE Company nor any Designated Manufacturing Facility shall be responsible for any delays arising from use of Publisher' s own Printed Materials.

7.6 Manufacture of Packaging by Designated Manufacturing Facility. To ensure consistent quality of the Disc Products, the SCE Company may designate and license a Designated Manufacturing Facility to reproduce all or part of the proprietary Packaging for the Disc Products. If so, then Publisher shall purchase [*********] for such Packaging from a Designated Manufacturing Facility during the Term.

7.7 Assembly Services. Publisher may either procure assembly services from a Designated Manufacturing Facility or, with the SCE Company' s prior written consent, from an alternate source. If Publisher elects to be responsible for assembling the Disc Products, then the Designated Manufacturing Facility shall ship the component parts of the Disc Product to a destination designated by Publisher, at Publisher' s sole risk and expense. The SCE Company shall have the right to

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inspect any assembly facilities that Publisher proposes to use in order to determine if the component parts of the Disc Products are being assembled in accordance with the SCE Company' s quality standards. The SCE Company may require Publisher to recall any Units of any Disc Products that fail to comply with the Guidelines. If Publisher elects to use alternate assembly facilities, neither the SCE Company nor any Designated Manufacturing Facility shall be responsible for any delays or other production issues, including missing component parts, arising from use of alternate assembly facilities. Publisher shall comply with all applicable labor laws and, in accordance with the provisions of Section 16.8, shall not employ child labor, slave labor or forced labor in connection with the assembly of the Licensed Products.

7.8 Orders and Delivery.

7.8.1 Orders. Publisher shall issue Purchase Order(s) to a Designated Manufacturing Facility in the form set forth and containing the information required in the Guidelines, with a copy to the SCE Company. No Purchase Orders will be processed for any Disc Product unless that Disc Product is fully compliant with the Guidelines. All Purchase Orders shall be subject to approval by the SCE Company not to be unreasonably withheld and to acceptance by the Designated Manufacturing Facility pursuant to the Guidelines. Purchase Orders issued by Publisher to a Designated Manufacturing Facility for each Licensed Product approved by the SCE Company shall be non-cancelable and are subject to the order requirements of the Designated Manufacturing Facility.

7.8.2 General Terms. Neither the SCE Company nor any Designated Manufacturing Facility shall be responsible for shortage or breakage with respect to any order if component parts or assembly services are obtained from alternate sources.

7.9 Delivery of Disc Products. The Designated Manufacturing Facility will deliver Disc Products to Publisher at Publisher' s sole expense, except where otherwise provided under this Agreement. Publisher shall have no right to have completed Units of Disc Products stored after manufacture.

7.10 Ownership of Original Master Discs. Due to the proprietary and confidential nature of the mastering and encryption process, neither the SCE Company nor any Designated Manufacturing Facility shall under any circumstances release any original Master Discs, reproducible masters created under section 7.3 or other in-process materials to Publisher. All such materials shall be and remain the sole property of the SCE Company or the Designated Manufacturing Facility (as applicable). Notwithstanding the foregoing, the Publisher Intellectual Property Rights contained in the Publisher Software that is contained in any such in-process materials is, as between the SCE Company and Publisher, the sole and exclusive property of Publisher or its licensors.

8. Marketing of Licensed Products.

8.1 Marketing Generally. At no expense to the SCE Company, Publisher shall, and shall direct its distributors to, diligently market, sell and distribute the Licensed Products, and shall use commercially reasonable efforts to stimulate demand for such Licensed Products throughout the Territory and to supply any resulting demand. Publisher shall use reasonable efforts to protect the Licensed Products from and against illegal reproduction or copying by end users or by any other persons.

8.2 Samples. Publisher shall provide sample Units of each Disc Product to the SCE Company in the quantities and per the terms specified in the Guidelines. In the event that Publisher assembles any Disc Product using an alternate source, Publisher shall be responsible for shipping such sample Units to the SCE Company, at Publisher' s cost and expense, promptly following the commercial release of such Disc Product. Units shall not be shipped to the SCE Company prior to the commercial release of such Disc Product. The SCE

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Company assumes no liability for release of samples prior to commercial release. The SCE Company shall not directly or indirectly resell any such sample Units of the Disc Products without Publisher' s prior written consent. The SCE Company may distribute sample Units to its employees, provided that it uses its reasonable efforts to ensure that such Units are not sold into the retail market. In addition, subject to availability, Publisher shall sell to the SCE Company additional Units at cost.

8.3 Marketing Programs. From time to time, Company may invite Publisher to participate in promotional or advertising opportunities that may feature one or more Licensed Products from one or more Licensed Publishers. Participation shall be voluntary and subject to terms to be determined at the time of the opportunity. In the event Publisher elects to participate, all materials submitted by Publisher to the SCE Company shall be submitted subject to the Guidelines and delivery of such materials to the SCE Company shall constitute acceptance by Publisher of the terms of the offer. Each Affiliate shall be entitled to display and otherwise use the Attribution Line on its multi-product marketing materials, unless otherwise agreed in writing.

8.4 PlayStation Website. Publisher shall provide the SCE Company with Product Information for a web page for each of its Licensed Products for display on the PlayStation promotional website, or other website(s) operated by the SCE Company from time to time in connection with the promotion of the PlayStation brand. Specifications for Product Information for such web pages shall be as provided in the Guidelines. Publisher shall provide the SCE Company with such Product Information for each Licensed Product upon submission of Printed Materials to the SCE Company for approval pursuant to the Guidelines. Publisher shall also provide updates for any such web page in a timely manner as may be required in the Guidelines.

8.5 Demonstration Disc Programs. The SCE Company may, from time to time, provide opportunities for Publisher to contribute Licensed Product content for distribution as part of a demonstration disc published by any Affiliate, or permit Publisher to publish its own demonstration disc pursuant to a third party demonstration disc program. The specifications with respect to the approval, creation, manufacture, marketing, distribution and sale of any such demo disc programs shall be set forth in the Guidelines. The SCE Company reserves the right to choose from products submitted from other Licensed Publishers and first party products to determine the specific products that will be included in any SCE Company demonstration discs, and Publisher' s Licensed Products will not be guaranteed prominence or preferential treatment on any SCE demonstration disc. The SCE Company has no obligation to publish, advertise or promote any demonstration disc.

8.6 Contests and Sweepstakes of Publisher. Publisher may conduct contests, sweepstakes, competitions and promotions, as permitted by law (collectively, "Contest" or "Contests"), to promote Licensed Products. The SCE Company shall permit Publisher to include Contest materials in Printed Materials and Advertising Materials, subject to compliance with the provisions of Sections 10.2 and 11.2, and subject to the Guidelines.

9. Payments.

9.1 Payments for Licensed Products. Publisher shall pay the SCE Company either directly or through its designee, for Licensed Products, including Licensed Products in any "Greatest Hits," "Platinum" or any other program, and demonstration discs, at the rates and in the manner specified in the Regional Riders and the terms of this Section 9. Publisher shall be required in all cases to make payments to the SCE Company, in accordance with this Section 9 and the Regional Rider, with respect to any and all of Publisher' s products that are developed utilizing any SCE Materials or SCE Intellectual Property Rights or any derivative works based on or otherwise derived from the same. The burden of proof under this

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Section shall be on Publisher. The SCE Company reserves the right to require Publisher to furnish evidence satisfactory to the SCE Company that Publisher has complied with any or all of its obligations pursuant to this Section. Payment terms are subject to change in the SCE Company' s discretion upon reasonable notice to Publisher.

9.2 Payment for Units of Disc Products. Payments shall be made to the SCE Company through its Designated Manufacturing Facility concurrent with the placement of any Purchase Order for Units of any Disc Product in accordance with the terms and conditions set forth in this Agreement unless otherwise agreed in writing with the SCE Company. Payment shall be made prior to manufacture unless the SCE Company has agreed in writing to extend credit terms to Publisher under Section 9.3.

9.3 Credit Terms. The SCE Company is not required to extend any credit terms to Publisher, but may do so in the SCE Company' s sole discretion. Credit terms and limits shall be subject to revocation or extension at the SCE Company' s sole discretion. If credit terms are extended to Publisher, Purchase Orders will be invoiced upon shipment of Disc Products and each invoice will be payable within [*********] of the date of the invoice. Publisher shall be additionally liable for all costs and expenses of collection, including without limitation, reasonable fees for lawyers and court costs.

9.4 Charges and Deductions. The amounts that Publisher must pay under this Agreement are exclusive of all taxes, duties, charges or assessments which the SCE Company or the Designated Manufacturing Facility may have to collect or pay and for which Publisher is solely responsible. No costs incurred in the development, manufacture, marketing, sale or distribution of any Licensed Products shall be deducted from any amounts payable under this Agreement. Similarly, there shall be no deduction from any amounts owed hereunder as a result of any uncollectible accounts owed to Publisher, or for any credits, discounts, allowances or returns which Publisher may credit or otherwise grant to any third-party customer of any Licensed Products, or for any taxes, fees, assessments or expenses of any kind which may be incurred by Publisher in connection with its sale or distribution of any Licensed Products or arising with respect to the payment of royalties. Publisher may not assert any credit, set-off or counterclaim to justify withholding payment under this Agreement. Publisher shall be solely responsible for and bear any costs relating to any withholding taxes or other such assessments which may be imposed by any governmental authority with respect to the payments to the SCE Company. Publisher shall provide the SCE Company with official tax receipts or other such documentary evidence issued by the applicable tax authorities sufficient to substantiate that any such taxes or assessments have in fact been timely paid. Deductions may only be made after issuance of an approved credit memo from the SCE Company or a Designated Manufacturing Facility.

9.5 General Terms. Each shipment to Publisher shall constitute a separate sale, whether said shipment constitutes the whole or partial fulfillment of any Purchase Order. Title to Units shall pass to Publisher only upon payment in full of the amounts due under this Agreement for those Units. The receipt and deposit by the SCE Company of any moneys payable under this Agreement shall be without prejudice to any rights or remedies the SCE Company has and shall not restrict or prevent the SCE Company from challenging the basis for calculation or payment accuracy. Nothing in this Agreement shall excuse or be construed as a waiver of Publisher' s obligation to timely provide any and all payments owed to the SCE Company or any Designated Manufacturing Facility.

10. Representations and Warranties.

10.1 Representations and Warranties of SCE Company. The SCE Company represents and warrants solely for the benefit of Publisher that the SCE Company has the right, power and authority to enter into this

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Agreement and to fully perform its obligations hereunder.

10.2 Representations and Warranties of Publisher. Publisher represents and warrants that:

(i) There is no threatened or pending action, suit, claim or proceeding alleging that the use or possession by Publisher or its affiliates of all or any part of the Publisher Software, Product Proposals, Product Information, Printed Materials, Advertising Materials, Packaging not provided by the Designated Manufacturing Facility, or any underlying work or content embodied in any of the foregoing, including any name, designation or trademark used in conjunction with any of the Licensed Products, infringes or otherwise violates any intellectual property right or other right or interest of any kind whatsoever anywhere in the world of any third party, or otherwise contesting any right, title or interest of Publisher in or to the Publisher Software, Product Proposals, Product Information, Printed Materials, Advertising Materials, Packaging not provided by the Designated Manufacturing Facility, or any underlying work or content embodied in any of the foregoing, including any name, designation or trademark used in conjunction with any of the Licensed Products;

(ii) The Publisher Software, Product Proposals, Product Information, Printed Materials, Advertising Materials, Packaging not provided by the Designated Manufacturing Facility, and their contemplated disclosure or use under this Agreement do not and shall not infringe any person' s rights including patents, copyrights (including rights in a joint work), trademarks, trade dress, trade secret, rights of publicity, privacy, performance, moral rights, literary rights or any other right or interest anywhere in the world of any third party. Publisher has obtained the consent of all holders of intellectual property rights necessary for the SCE Company' s or its Affiliates' use of any Publisher Software, Product Proposals, Product Information, Printed Materials, Advertising Materials and Packaging not provided by the Designated Manufacturing Facility provided by Publisher, which may be reproduced, published, publicly displayed, publicly performed, marketed, sold and otherwise distributed by the SCE Company and any Affiliates in accordance with this Agreement. Publisher has made all payments required to any person having any legal rights arising from such disclosure or use so that the SCE Company will not incur any obligation to pay any royalty, residual, union, guild or other fees or expenses;

(iii) Publisher has the right, power and authority to enter into this Agreement, to grant the SCE Company the rights granted hereunder and to fully perform its obligations hereunder;

(iv)The making of this Agreement by Publisher does not violate any separate agreement, rights or obligations existing between Publisher and any other person, and, throughout the Term, Publisher shall not make any separate agreement with any third party that is inconsistent with any of the provisions of this Agreement;

(v) Publisher has not previously taken any action that could be interpreted as having sold, assigned, leased, licensed or in any other way disposed of or encumbered any of the rights granted to Publisher hereunder. Publisher will not sell, assign, lease, license or in any other way dispose of or encumber any of such rights except as expressly consented to by the SCE Company in writing;

(vii) Neither Publisher nor its affiliates shall make any representation or give any warranty to any person or entity expressly or on the SCE Company' s behalf, or to the effect that the Licensed Products are connected in any way with the SCE Company other than that the Executable Software and Licensed Products have been developed, marketed, sold and distributed under license from the SCE Company;

(viii) In the event that any Executable Software is delivered by Publisher to any other Licensed Publishers or Licensed Developers in

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source code form, Publisher will take all precautions consistent with the protection of valuable trade secrets by companies in high technology industries to ensure that such third parties protect and maintain the confidentiality of such source code;

(ix) The Executable Software, excepting any SCE Materials, and any Product Information shall be in a commercially acceptable form, free of significant bugs, defects, time bombs or viruses or unauthorized content that is inconsistent with the age rating applicable to the corresponding Licensed Product, which could disrupt, delay, or destroy the Executable Software or System, or render any of such items less than fully useful, or that could cause the SCE Company to suffer public disrepute, contempt, scandal or ridicule, or which insults or offends the community or any substantial organized group thereof or which could tend to adversely affect the SCE Company' s name, reputation or goodwill associated with the System, and shall be fully compatible with the System and all peripherals listed on the Printed Materials as compatible with the Licensed Product;

(x) Each of the Licensed Products shall be developed, marketed, sold and distributed by or at the direction of Publisher in an ethical manner and in a responsible manner with respect to the protection of children in the online environment, and in full compliance with all applicable laws, including federal, state, provincial, local and foreign laws, and any rules, regulations and standards promulgated thereunder, including lottery laws and labor laws, and will not contain content that violates applicable laws, including those relating to privacy or any obscene or defamatory matter;

(xi) Publisher' s policies and practices with respect to the development, marketing, sale, and distribution of the Licensed Products shall in no manner reflect adversely upon the name, reputation or goodwill of the SCE Company or any Affiliate;

(xii) To the extent Publisher wishes to utilize a Licensed Developer to assist in development of Licensed Products, Publisher has contracted, or will contract, with a Licensed Developer for the technical expertise and resources necessary to fulfill its obligations under this Agreement; and

(xiii)Publisher shall make no false, misleading or inconsistent representations or claims with respect to the System, any Licensed Products, or the SCE Company or any Affiliate.

11. Indemnities; Limited Liability.

11.1 Indemnification by SCE Company. The SCE Company shall indemnify and hold Publisher harmless from and against any and all third-party claims, demands, losses, liabilities, damages, expenses and costs, including reasonable fees for lawyers, expert witnesses and litigation costs, and costs incurred in the settlement or avoidance of any such claim, in connection with or which result from a breach of any of the SCE Company' s representations or warranties set forth in Section 10.1 (collectively, "SCE-Indemnified Claim(s)"); provided that: (i) Publisher shall give prompt written notice to the SCE Company of the assertion of any SCE-Indemnified Claim; (ii) the SCE Company shall have the right to select counsel and control the defense and settlement of any SCE-Indemnified Claim and Publisher shall not agree to the settlement of any SCE-Indemnified Claim without the SCE Company' s prior written consent; and (iii) Publisher shall provide the SCE Company reasonable assistance and cooperation concerning any SCE-Indemnified Claim, except that Publisher need not incur any out-of-pocket costs in rendering such assistance and cooperation. The SCE Company shall have the exclusive right, at its discretion, to commence and prosecute at its own expense any lawsuit or to take such other action with respect to SCE-Indemnified Claims as shall be deemed appropriate by the SCE Company.

11.2 Indemnification By Publisher. Publisher shall indemnify and hold the

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SCE Company harmless from and against any and all claims, demands, losses, liabilities, damages, expenses and costs, including reasonable fees for lawyers, expert witnesses and litigation costs, and costs incurred in the settlement or avoidance of any such claim, in connection with or which result from (i) a breach of any of the provisions of this Agreement; (ii) any claim of infringement of a third party' s intellectual property rights or any consumer claim, with respect to Publisher' s Licensed Products, including claims related to Publisher' s support of unauthorized or unlicensed peripherals or software that are not part of the PlayStation 3 format specifications as set forth in the Guidelines; (iii) any claim related to any Licensed Product features or capability related to cross-regional Online Gameplay; (iv) any claims of or in connection with any personal or bodily injury (including death or disability) or property damage arising out of, in whole or in part, the development, marketing, advertising, sale, distribution or use of any of the Licensed Products (or portions thereof) unless due directly and solely to the breach of the SCE Company in performing any of the specific duties or providing any of the specific services required of it hereunder; or (v) any federal, state or foreign civil or criminal investigations or actions relating to the development, marketing, advertising, sale or distribution of Licensed Products (all subsections collectively, "Publisher-Indemnified Claim(s)"), provided that (a) the SCE Company shall give prompt written notice to Publisher of the assertion of any Publisher-Indemnified Claim; (b) Publisher shall have the right to select counsel and control the defense and settlement of any Publisher-Indemnified Claim, except that with respect to any Publisher-Indemnified Claims made by a third party against the SCE Company, the SCE Company shall have the right to select counsel for the SCE Company and reasonably control the defense and settlement of the Publisher-Indemnified Claim against the SCE Company; and (c) the SCE Company shall provide Publisher with reasonable assistance and cooperation concerning any Publisher-Indemnified Claim, except that the SCE Company need not incur any out-of-pocket costs in rendering such assistance and cooperation. Subject to the foregoing, Publisher shall have the exclusive right, at its discretion, to commence and prosecute at its own expense any lawsuit or to take such other action with respect to Publisher-Indemnified Claims as shall be deemed appropriate by Publisher.

11.3 LIMITATIONS OF LIABILITY.

11.3.1 SCE Limitation of Liability for Financial Losses. In no event shall the SCE Company or any Affiliates, or the officers, directors, employees, agents, licensors or suppliers of any of such entities, be liable for loss of revenue, loss of actual or prospective profits, loss of contracts, loss of anticipated savings, loss of business opportunity, reputation or goodwill or loss of, damage to or corruption of data (whether such loss or damages are direct, indirect, special, incidental or consequential) arising out of, relating to, or in connection with this Agreement or any collateral contract (including the breach of this Agreement by the SCE Group Company), whether known, foreseen or foreseeable and whether in contract, tort (including negligence), product liability, under indemnity, or otherwise.

11.3.2 SCE Limitation of Liability for Other Consequential Losses. In no event shall the SCE Company, its Affiliates or the officers, directors, employees, agents, licensors or suppliers of any of such entities, be liable for any indirect, special, incidental or consequential loss or damage of any kind arising out of or in connection with this Agreement or any collateral contract (including the breach of this Agreement by the SCE Group Company), whether known, foreseen or foreseeable and whether in contract, tort (including negligence), product liability, under an indemnity or otherwise.

11.3.3 SCE Limitation of Liability for Representations. Publisher shall have no remedy with respect to any representation made to it upon which it relied in entering into this Agreement and the SCE Company and its

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Affiliates and the officers, directors, employees, agents, licensors or suppliers of any of such entities shall have no liability to Publisher other than under the express terms of this Agreement. In this Section 11.3.3, "representation" means any undertaking, promise, assurance, statement, representation, warranty or understanding, whether in writing or otherwise, of any person (whether a party to this Agreement or not), relating to the subject matter of this Agreement.

11.3.4 SCE Limitation of Liability for SCE Materials and Publisher' s Materials. Except as expressly set forth herein, neither the SCE Company, nor its Affiliates, nor the officers, directors, employees, agents, licensors or suppliers of any of such entities, shall bear any risk, or have any responsibility or liability of any kind to Publisher or to any third parties with respect to the quality, functionality, operation or performance of, or the use or inability to use, all or any part of the SCE Materials, the System, the Licensed Products or Units of Disc Products, or for any software errors or "bugs" in Product Information included on SCE Company demonstration discs.

11.3.5 SCE Limitation of Financial Liability. In no event shall the SCE Company' s liability arising under, relating to, or in connection with this Agreement, or any collateral contract, exceed the total amount paid by Publisher under Section 9 within the [*********] period immediately prior to the date of the first occurrence of the event or circumstances giving rise to the claimed liability.

11.3.6 Publisher Limitation of Liability. In no event shall Publisher, its officers, directors, employees, agents, licensors or suppliers be liable to the SCE Company for loss of revenue, loss of actual or prospective profits, loss of contracts, loss of anticipated savings, loss of business opportunity, reputation or goodwill or loss of, damage to or corruption of data (whether such loss or damage is direct, indirect, special, incidental or consequential), arising out of or in connection with this Agreement or any collateral contract (including the breach of this Agreement by Publisher) provided that such limitations shall not apply to damages resulting from Publisher' s breach of Sections 2, 3, 5, 11.2, or 13 of this Agreement, or to any amounts which Publisher may be required to pay pursuant to Sections 11.2 or 16.10.

11.3.7 Disclaimer of Warranty. Except as expressly provided in Section 10.1, neither the SCE Company, nor any of its officers, directors, employees, agents or suppliers, make, nor does Publisher receive, any warranties (express, implied or statutory) regarding all or part of the SCE Materials, the SCE Confidential Information, the SCE Intellectual Property Rights, the System, Units manufactured hereunder or Product Information included on demonstration discs. Without limiting the generality of the foregoing, the SCE Company disclaims any warranties, conditions or other terms implied by any law (including as to merchantability, satisfactory quality or fitness for a particular purpose and warranties against infringement, and the equivalents thereof under the laws of any jurisdiction) to the fullest extent permitted by applicable law.

11.3.8 Law Applicable to Liabilities. Nothing in this Agreement shall exclude or limit any liability of either party which may not be excluded or limited under applicable law.

12. Infringement of SCE Intellectual Property Rights By Third Parties.

In the event that Publisher discovers or otherwise becomes aware that any of the SCE Intellectual Property Rights have been or are being infringed by any third party, Publisher shall promptly notify the SCE Company. The SCE Company shall have the sole right, in its discretion, to institute and prosecute lawsuits against third parties regarding infringement of SCE Intellectual Property Rights. Any lawsuit shall be prosecuted solely at the cost and expense of the SCE Company and all sums recovered in any such lawsuits, whether by judgment, settlement or otherwise, shall belong solely to the SCE Company.

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Upon the SCE Company' s request, Publisher shall execute all papers, testify on all matters and otherwise cooperate in every way necessary or desirable for the prosecution of any such lawsuit. The SCE Company shall reimburse Publisher for the reasonable expenses incurred as a result of such cooperation, but unless authorized by other provisions of this Agreement, not costs and expenses attributable to any cross-claim, counterclaim or third party action.

13. Confidentiality.

13.1 SCE Confidential Information.

13.1.1 Definition of SCE Confidential Information. "SCE Confidential Information" shall mean:

(i) the SCE Materials, the Development Tools, the Guidelines, the Regional Riders and this Agreement, including all exhibits and schedules attached to any of the foregoing and all information related to these items;

(ii) other information, documents and materials developed, owned, licensed or under the control of the SCE Company or any Affiliate, including all processes, data, hardware, software, inventions, trade secrets, ideas, creations, improvements, designs, discoveries, developments, research and know-how, including SCE Intellectual Property Rights relating to the SCE Materials and the Development Tools; and

(iii) information, documents and other materials regarding the SCE Company' s or any Affiliate' s finances, business and business methods, marketing and technical plans, and development and production plans; and

(iv) third-party information and documents licensed to or under the control of the SCE Company or any Affiliate.

The SCE Confidential Information consists of information in any medium, whether oral, printed, in machine-readable form or otherwise, provided to Publisher before or during the Term, including information subsequently reduced to tangible or written form. In addition, the existence of a relationship between Publisher and the SCE Company shall be deemed to be the SCE Confidential Information unless otherwise agreed to in writing by the parties or until publicly announced by the SCE Company or any Affiliate.

13.1.2 Term of Protection of the SCE Confidential Information. The term for the protection of the SCE Confidential Information shall commence on the Effective Date and shall continue in full force and effect for as long as any of the SCE Confidential Information continues to be maintained as confidential and proprietary by the SCE Company or any Affiliate.

13.1.3 Preservation of SCE Confidential Information. Publisher shall, with respect to the SCE Confidential Information:

(i) not disclose SCE Confidential Information to any person, other than those employees, directors or officers of the Publisher or subcontractors expressly approved under Section 3.2, whose duties justify a "need-to-know" and who have executed a confidentiality agreement in which such employees, directors, officers or subcontractors have agreed not to disclose and to protect and maintain the confidentiality of all confidential information and materials inclusive of those of third parties which may be disclosed to them or to which they may have access during the course of their duties. At the SCE Company' s request, Publisher shall provide the SCE Company with a copy of such confidentiality agreement between Publisher and its employees, directors, officers, or subcontractors and shall also provide the SCE Company with a list of employee, director, officer, and subcontractor signatories. Publisher shall not disclose any of the SCE Confidential Information to third parties, other than expressly approved subcontractors under section 3.2, including to consultants or agents

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without the SCE Company' s prior written consent. Any employees, directors, officers, subcontractors, authorized consultants and agents who obtain access to or copies of the SCE Confidential Information shall be advised by Publisher of the confidential or proprietary nature of the SCE Confidential Information, and Publisher shall be responsible for any breach of this Agreement by all such persons.

(ii) hold all of the SCE Confidential Information in confidence and take all measures necessary to preserve the confidentiality of the SCE Confidential Information in order to avoid disclosure, publication, or dissemination, using as high a degree of care and scrutiny, but at least reasonable care, as is consistent with the protection of valuable trade secrets by companies in high technology industries.

(iii) ensure that all written materials relating to or containing the SCE Confidential Information be maintained in a restricted access area and plainly marked to indicate the proprietary and confidential nature thereof.

(iv) at the SCE Company' s request, return promptly to the SCE Company any and all portions of the SCE Confidential Information, together with all copies thereof.

(v) not use, copy, reproduce, modify, create derivative works from, sublicense, distribute, or otherwise disseminate the SCE Confidential Information, or any portion thereof, except as expressly authorized, nor shall Publisher remove any proprietary legend set forth on or contained within any of the SCE Confidential Information.

13.1.4 Exceptions. The foregoing restrictions shall not apply to any portion of the SCE Confidential Information which:

(i) was previously known by Publisher without restriction on disclosure or use, as proven by written documentation of Publisher;

(ii) is or legitimately becomes part of the public domain through no fault of Publisher or any of its employees, directors, officers, consultants or agents;

(iii) is independently developed by Publisher' s employees or consultants who have not had access to or otherwise used the SCE Confidential Information (or any portion thereof), as proven by written documentation of Publisher;

(iv) is required to be disclosed by court, administrative or governmental order; provided that Publisher must use all reasonable efforts prior to issuance of any such order to maintain the confidentiality of the SCE Confidential Information, including asserting in any action or investigation the restrictions set forth in this Agreement, and, immediately after receiving notice of any such action, investigation, or threatened action or investigation, Publisher must notify the SCE Company of such action, investigation, or threatened action or investigation, unless Publisher is ordered by a court not to so notify; or

(v) is approved for release by written authorization of the SCE Company.

13.1.5 No Obligation to License. Disclosure of the SCE Confidential Information to Publisher shall not (i) constitute any option, grant or license from the SCE Company to Publisher under any SCE Intellectual Property Rights now or after owned or controlled by the SCE Company; (ii) result in any obligation on the part of the SCE Company to approve any materials of Publisher; (iii) give Publisher any right to, directly or indirectly, develop, manufacture, sell or otherwise distribute any product derived from or which uses or was developed with the use of the SCE Confidential Information (or any portion thereof), other than as expressly set forth in this Agreement.

13.1.6 Publisher' s Obligations Upon Unauthorized Disclosure. If at any time Publisher becomes aware of any unauthorized

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duplication, access, use, possession or knowledge of any of the SCE Confidential Information, it shall notify the SCE Company as soon as reasonably practicable, and shall promptly act to recover any such information and prevent further breach of the confidentiality obligations herein. Publisher shall provide any and all reasonable assistance to the SCE Company to protect the SCE Company' s proprietary rights in any of the SCE Confidential Information that Publisher or its employees, directors, officers, or permitted subcontractors, consultants, or agents may have directly or indirectly disclosed or made available, and that may be duplicated, accessed, used, possessed or known in any manner or for any purpose not expressly authorized by this Agreement, including enforcement of confidentiality agreements, commencement and prosecution in good faith (alone or with the SCE Company) of legal action, and reimbursement for all reasonable lawyers' fees, costs and expenses incurred by the SCE Company to protect the SCE Company' s proprietary rights in the SCE Confidential Information. Publisher shall take all steps requested by the SCE Company to prevent the recurrence of any unauthorized duplication, access, use, possession or knowledge of the SCE Confidential Information.

13.2 <u>Publisher' s Confidential Information.</u>

13.2.1 <u>Definition of Publisher' s Confidential Information.</u> "Publisher' s Confidential Information" shall mean:

(i) any Publisher Software provided to the SCE Company pursuant to this Agreement and all documentation and information relating thereto, including Product Proposals, Printed Materials and Advertising Materials (other than documentation and information intended for release to and use by end users, the general public or the trade);

(ii) other documents and materials developed, owned, licensed or under the control of Publisher, including all processes, data, hardware, software, inventions, trade secrets, ideas, creations, improvements, designs, discoveries, developments, research and knowhow; and

(iii) information and documents regarding Publisher' s finances, business, marketing and technical plans, business methods and production plans.

Publisher' s Confidential Information may consist of information in any medium, whether oral, printed, in machine-readable form or otherwise, provided to the SCE Company before or during the Term, including information subsequently reduced to tangible or written form.

13.2.2 <u>Term of Protection of Publisher' s Confidential Information.</u> The term for the protection of Publisher' s Confidential Information shall commence on the Effective Date and shall continue in full force and effect for as long as any of Publisher' s Confidential Information continues to be maintained as confidential and proprietary by Publisher.

13.2.3 <u>Preservation of Confidential Information of Publisher.</u> The SCE Company shall, with respect to Publisher' s Confidential Information:

(i) hold all Publisher' s Confidential Information in confidence and take all reasonable steps to preserve the confidentiality of Publisher' s Confidential Information, and to prevent it from falling into the public domain or into the possession of persons other than those persons to whom disclosure is authorized hereunder.

(ii) not disclose Publisher' s Confidential Information to any person other than the SCE Company' s or a Designated Manufacturing Facility' s employees, directors, agents, consultants and subcontractors who need to know or have access to Publisher' s

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Confidential Information for the purposes of this Agreement, and only to the extent necessary for such purposes.

(iii) ensure that all written materials relating to or containing Publisher' s Confidential Information be maintained in a secure area and plainly marked to indicate the proprietary and confidential nature thereof.

(iv) at Publisher' s request, return promptly to Publisher any and all portions of Publisher' s Confidential Information, together with all copies thereof.

(v) not use Publisher' s Confidential Information, or any portion thereof, except as provided herein, nor shall the SCE Company remove any proprietary legend set forth on or contained within any of Publisher' s Confidential Information.

13.2.4 **Exceptions.** The foregoing restrictions shall not apply to any portion of Publisher' s Confidential Information which:

(i) was previously known by the SCE Company without restriction on disclosure or use, as proven by written documentation of the SCE Company;

(ii) comes into the possession of the SCE Company from a third party which is not under any obligation to maintain the confidentiality of such information;

(iii) is or legitimately becomes part of information in the public domain through no fault of the SCE Company, or any of its employees, directors, agents, consultants or subcontractors;

(iv) is independently developed by the SCE Company' s employees, consultants or subcontractors who have not had access to or otherwise used Publisher' s Confidential Information (or any portion thereof), as proven by written documentation of the SCE Company;

(v) is required to be disclosed by court, administrative, or governmental order; provided that the SCE Company attempts, prior to the issuance of any such order, to maintain the confidentiality of Publisher' s Confidential Information, including asserting in any action or investigation the restrictions set forth in this Agreement, and immediately after receiving notice of any such action, investigation, or threatened action or investigation, notifies Publisher of such action, investigation, or threatened action or investigation, unless the SCE Company is ordered by a court not to so notify; or

(vi) is approved for release by written authorization of Publisher.

13.2.5 **SCE Company' s Obligations Upon Unauthorized Disclosure.** If at any time the SCE Company becomes aware of any unauthorized duplication, access, use, possession or knowledge of Publisher' s Confidential Information, it shall notify Publisher as soon as is reasonably practicable. The SCE Company shall provide any and all reasonable assistance to Publisher to protect Publisher' s proprietary rights in any of Publisher' s Confidential Information that it or its employees or permitted subcontractors may have directly or indirectly disclosed or made available and that may be duplicated, accessed, used, possessed or known in a manner or for a purpose not expressly authorized by this Agreement, including enforcement of confidentiality agreements, commencement and prosecution in good faith (alone or with Publisher) of legal action, and reimbursement for all reasonable lawyers' fees, costs and expenses incurred by Publisher to protect Publisher' s proprietary rights in Publisher' s Confidential Information. The SCE Company shall take all reasonable steps requested by Publisher to prevent the recurrence of any unauthorized duplication, access, use, possession or knowledge of Publisher' s Confidential Information.

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13.3 Confidentiality of Agreement. While the terms of this Agreement and the Regional Rider shall be treated as SCE Confidential Information, Publisher may disclose their terms and conditions:

(i) to legal counsel;

(ii) in confidence, to accountants, banks and financing sources and their advisors;

(iii) in confidence, in connection with the enforcement of this Agreement or rights arising under or relating to this Agreement; and

(iv) if required, in the opinion of its counsel, to file publicly or otherwise disclose the terms of this Agreement under applicable securities or other laws, Publisher shall promptly notify the SCE Company of such obligation so that the SCE Company has a reasonable opportunity to contest or limit the scope of such required disclosure, and Publisher shall request, and shall use best efforts to obtain, confidential treatment for such sections of this Agreement as the SCE Company may designate.

14. Term Renewal and Termination.

14.1 Term Renewal. The Term shall be automatically extended for additional one-year terms, unless either party provides the other with written notice of its election not to extend on or before January 31 of the year in which the Term would renew. Notwithstanding the foregoing, the term for the protection of SCE Confidential Information and Publisher' s Confidential Information shall be as set forth in Sections 13.1.2 and 13.2.2 respectively.

14.2 Termination by SCE Company. The SCE Company shall have the right to terminate the Agreement immediately, on written notice to Publisher, upon the occurrence of any of the following:

(i) If Publisher is in material breach of any of its obligations under the Agreement or under any other agreement entered into between the SCE Company or any Affiliate, on the one hand, and Publisher on the other hand;

(ii) A statement of intent by Publisher to no longer exercise any of the rights granted by the SCE Company to Publisher hereunder or Publisher failing to submit materials under section 6.1 or failing to issue any Purchase Orders during any period of twelve consecutive calendar months;

(iii) If Publisher (a) is unable to pay its debts when due; (b) makes an assignment for the benefit of any of its creditors; (c) files or has filed against it a petition, or an order of bankruptcy or insolvency is made, under the bankruptcy or insolvency laws of any jurisdiction (and such petition is not discharged within [*********] or becomes or is adjudicated bankrupt or insolvent; (d) is the subject of an order for, or applies for or notices its intent to apply for, the appointment of an administrator, receiver, administrative receiver, manager, liquidator, trustee or similar officer to be appointed over any of its business or property; (e) ceases to do business or enters into liquidation; or (f) takes or suffers any similar or analogous action in any jurisdiction as a consequence of debt;

(iv) If a controlling interest in Publisher or in an entity which directly or indirectly has a controlling interest in Publisher is transferred to a party that (a) is in breach of any agreement with the SCE Company or any Affiliate; (b) directly or indirectly holds or acquires a controlling interest in a third party which designs, develops any of the core components for an interactive device or product which is directly or indirectly competitive with the System, or itself develops any product that is directly or indirectly competitive with the System; or (c) is in litigation or in an adversarial administrative proceeding with the SCE Company or any Affiliate concerning the SCE Confidential Information or any SCE Intellectual Property Rights, including challenging validity of any SCE Intellectual Property Rights;

(v) If Publisher or any entity that directly or indirectly has a controlling interest in Publisher (a) enters into a business relationship with a third

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party related to the design or development of any core components for an interactive device or product which is directly or indirectly competitive with the System; or (b) acquires an interest in or otherwise forms a strategic business relationship with any third party which has developed or owns or acquires intellectual property rights in any such device or product;

(vi) If Publisher or any of its affiliates initiates any legal or administrative action against the SCE Company or any Affiliate or challenges the validity of any SCE Intellectual Property Rights;

(vii) If Publisher fails to pay any sums owed to the SCE Company on the date due and such default is not fully corrected or cured within [*********] of the date on which such payment was originally due; or

(viii) If Publisher or any of its officers or employees engage in "hacking" of any software for any PlayStation format or in activities which facilitate the same by any third party.

As used hereinabove, "controlling interest" means, with respect to any form of entity, sufficient power to control the decisions of such entity. Publisher shall immediately notify the SCE Company in writing in the event that any of the events or circumstances specified in this Section 14.2 occur. In the event of termination under 14.2(viii), the SCE Company shall have the right to terminate any other agreements entered into between the SCE Company and Publisher.

14.3 Product-by-Product Termination. In addition to the events of termination described in Section 14.2, the SCE Company, at its option, shall be entitled to terminate, with respect to a particular Licensed Product, the licenses and related rights herein granted to Publisher on written notice to Publisher, in the event that (a) [*********] (b) Publisher uses a third party that fails to comply with the requirements of Section 3.2 in connection with the development of any Licensed Product; (c) any third party with whom Publisher has contracted for the development of Licensed Products breaches any of its material obligations to the SCE Company pursuant to such third party' s agreement with the SCE Company with respect to any such Licensed Product; (d) Publisher cancels a Licensed Product or fails to provide the SCE Company, in accordance with the provisions of Section 6 and the relevant Guidelines, with the final version of the Executable Software for any Licensed Product within three months of the scheduled release date (as referenced in the Product Proposal or as otherwise mutually agreed by the parties in writing), fails to provide work in progress to the SCE Company in strict compliance with the review process set forth in the Guidelines, fails to provide fully tested final Executable Software in strict conformance with the Guidelines; or (e) Publisher otherwise fails materially to conform to the Guidelines with respect to any particular Licensed Product.

14.4 Options in Lieu of Termination. As alternatives to terminating the Agreement or all licensed rights with respect to a particular Licensed Product as set forth in Sections 14.2 and 14.3, the SCE Company may, at its option and upon written notice to Publisher, suspend this Agreement, entirely or with respect to a particular Licensed Product or program, for a set period of time which shall be specified in writing to Publisher upon the occurrence of any breach of this Agreement. Election of suspension shall not constitute a waiver of or compromise with respect to any of the SCE Company' s rights under this Agreement and the SCE Company may elect to terminate this Agreement with respect to any breach.

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14.5 No Refunds. In the event that this Agreement expires or is terminated under any of Sections 14.2 through 14.4, no portion of any payments of any kind whatsoever previously provided hereunder shall be owed or be repayable or refunded to Publisher.

15. Effect of Expiration or Termination.

15.1 Inventory Statement. Within [*********] of the date of expiration or the effective date of termination with respect to any or all Licensed Products or this Agreement, Publisher shall provide the SCE Company with an itemized statement, certified to be accurate by an officer of Publisher, specifying the number of unsold Units of the Licensed Products as to which such termination applies, on a title-by-title basis, which remain in its inventory or under its control at the time of expiration or the effective date of termination. The SCE Company shall be entitled to conduct at its expense a physical inspection of Publisher' s inventory and work in process upon reasonable written notice during normal business hours in order to ascertain or verify such inventory and inventory statement.

15.2 Reversion of Rights. Upon expiration or termination and subject to Section 15.3, the licenses and related rights herein granted to Publisher shall immediately revert to the SCE Company, and Publisher shall cease from any further use of the SCE Confidential Information, Licensed Trademarks and the SCE Materials and any SCE Intellectual Property Rights therein, and, subject to the provisions of Section 15.3, Publisher shall have no further right to continue the development, publication, manufacture, marketing, advertising, sale or other distribution of any Licensed Products, or to continue to use any Licensed Trademarks; provided, however, that for a period of one year after the effective date of termination, and subject to all the terms of Section 13, and provided this Agreement is not terminated due to any breach or default by Publisher, Publisher may retain such portions of the SCE Materials and the SCE Confidential Information as the SCE Company in its sole discretion agrees are required to support end users who possess Licensed Products but must return all these materials at the end of such one year period. Upon expiration or termination, the licenses and related rights herein granted to the SCE Company by Publisher shall immediately revert to Publisher, and the SCE Company shall cease from any further use of Product Information and any Publisher Intellectual Property Rights therein; provided that the SCE Company may continue the manufacture, marketing, advertising, sale and other such distribution of any SCE Company demonstration discs containing Publisher' s Product Information which Publisher had previously approved.

15.3 Disposal of Unsold Units Upon Termination. In the event of termination of this Agreement under sections 14.2(ii), (iv), or (v), Publisher may sell off existing inventories of Units of the Disc Products, on a non-exclusive basis, and strictly in accordance with this Agreement, for a period of [*********] from the date of expiration or effective date of termination of this Agreement, and provided such inventories have not been manufactured solely or principally for sale during such period. Subsequent to the expiration of such [*********] period, or in the event this Agreement is terminated under Sections 14.2(i), (iii), (vi), (vii), or (viii), any and all Units of the Disc Products remaining in Publisher' s inventory or otherwise under its control shall be destroyed by Publisher within [*********] business days of such expiration or termination date. Within [*********] business days after such destruction, Publisher shall provide the SCE Company with an itemized statement, certified to be accurate by an officer of Publisher, indicating the number of Units of the Licensed Products which have been destroyed (on a title-by-title basis), the location and date of such destruction, and the disposition of the remains of such destroyed materials.

15.4 Disposal of Unsold Units Upon Non-Renewal. In the event that the Term expires and this Agreement is not renewed, Publisher may continue to publish those Licensed Products containing Executable Software whose development was completed before or during the

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Term, and to use the Licensed Trademarks strictly, only and directly in connection with such publication, until the Term expires or, if later, until the [*********] anniversary of the [*********] next following such completion. Upon expiration of the Term or, the extended period for publishing Licensed Products, Publisher may sell off existing inventories of such Licensed Products on a non-exclusive basis for a period of 180 days from the applicable expiration date; provided that such inventory is not manufactured solely or principally for sale within such sell-off period.

15.5 **Return of the SCE Materials and the SCE Confidential Information.** Upon the expiration or earlier termination of this Agreement or following either the [*********] period or the [*********] period referenced in Sections 15.4 and 15.3 and subject to Section 15.2, Publisher shall immediately deliver to the SCE Company, or if and to the extent requested by the SCE Company, destroy, all SCE Materials and any and all copies thereof, and Publisher and the SCE Company shall, upon the request of the other party, immediately deliver to the other party, or to the extent requested by such party destroy, all Confidential Information of the other party, including any and all copies thereof, which the other party previously furnished to it in furtherance of this Agreement. Within [*********] after any such destruction, Publisher or the SCE Company, as appropriate, shall provide the other party with a certificate of destruction and an itemized statement, each certified to be accurate by an officer of Publisher, indicating the number of copies or units of the SCE Materials or SCE Confidential Information which have been destroyed, the location and date of such destruction and the disposition of the remains of such destroyed materials. In the event that Publisher fails to return or certify the destruction of the SCE Materials or SCE Confidential Information and the SCE Company must resort to legal means (including any use of lawyers) to recover the SCE Materials or SCE Confidential Information or the value thereof, all costs, including the SCE Company' s reasonable lawyers' fees, shall be borne by Publisher, and the SCE Company may, in addition to the SCE Company' s other remedies, withhold such amounts from any payment otherwise due from the SCE Company to Publisher under any agreement between the SCE Company and Publisher.

15.6 **Extension of this Agreement; Termination Without Prejudice.** The SCE Company shall be under no obligation to extend this Agreement notwithstanding any actions taken by either of the parties prior to the expiration of this Agreement. Upon the expiration of this Agreement, neither party shall be liable to the other for any damages (whether direct, indirect, consequential or incidental, and including any expenditures, loss of profits or prospective profits) sustained or arising out of or alleged to have been sustained or to have arisen out of such expiration. The expiration or termination of this Agreement shall be without prejudice to any rights or remedies which one party may otherwise have against the other party, and shall not excuse either party from liability with respect to any events occurring prior to expiration or the effective date of termination.

16. Miscellaneous Provisions.

16.1 **Notices.** All notices or other communications required or desired to be sent to either of the parties shall be in writing and shall be sent by registered or certified mail, postage prepaid, or sent by recognized international courier service, or facsimile, with charges prepaid. The address for all notices or other communications required to be sent to the SCE Company or Publisher, respectively, shall be the mailing address stated in the preamble hereof, or such other address as may be provided by written notice from one party to the other on at least [*********] prior written notice. Any such notice shall be effective upon the date of actual receipt, as confirmed by the receiving party.

16.2 **Audit Provisions.** Publisher shall keep full, complete, and accurate books of accounts and records covering all

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transactions relating to this Agreement. Publisher shall preserve such books of accounts, records, documents, and materials for a period of [*********] after the expiration or earlier termination of this Agreement. Acceptance by the SCE Company of any accounting statement, purchase order, or payment hereunder will not preclude the SCE Company from challenging or questioning the accuracy thereof at a later time. In the event that the SCE Company reasonably believes that the pricing information provided by Publisher with respect to any Licensed Product is not accurate, the SCE Company shall be entitled to request additional documentation from Publisher to support the pricing information provided for such Licensed Product. In addition, during the Term and for a period of [*********] thereafter and upon the giving of reasonable prior written notice to Publisher, at the SCE Company' s expense, representatives of the SCE Company shall be given access to, and the right to inspect, audit, and make copies and summaries of and take extracts from, such portions of all books and records of Publisher, and Publisher' s affiliates and branch offices, as pertain to the Licensed Products and any payments due or credits received hereunder. Any such audit shall take place during normal business hours and shall, at the SCE Company' s sole election, be conducted either by an independent certified accountant or by an appropriately professionally qualified SCE Company employee. In the event that such inspection reveals any under-reporting of any payment due to the SCE Company, Publisher shall immediately pay the SCE Company such amount. In the event that any audit conducted by the SCE Company reveals that Publisher has under-reported any payment due to the SCE Company hereunder by **[*******]** or more for the relevant audit period, then in addition to the payment of the appropriate amount due to the SCE Company, Publisher shall reimburse the SCE Company for all reasonable audit costs for that audit and any and all collection costs to recover any unpaid amounts.

16.3 **Force Majeure.** Neither the SCE Company nor Publisher shall be liable for any loss or damage or be deemed to be in breach of this Agreement if its failure to perform or failure to cure any of its obligations under this Agreement results from any event or circumstance beyond its reasonable control, including any natural disaster, fire, flood, earthquake or other Act of God; shortage of equipment, materials, supplies or transportation facilities; strike or other industrial dispute; war or rebellion; shutdown or delay in power, telephone or other essential service due to the failure of computer or communications equipment or otherwise; provided, however, that the party interfered with gives the other party written notice thereof promptly, and, in any event, within [*********] of discovery of any such Force Majeure condition. If notice of the existence of any Force Majeure condition is provided within such period, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure event or circumstance described in such notice, except that any such cause shall not excuse the payment of any sums owed to the SCE Company prior to, during or after the occurrence of any such Force Majeure condition. In the event that the Force Majeure condition continues for more than [*********], the SCE Company may terminate this Agreement for cause by providing written notice to Publisher to such effect.

16.4 **No Agency, Partnership or Joint Venture.** The relationship between the SCE Company and Publisher, respectively, is that of licensor and licensee. Both parties are independent contractors and neither party is the legal representative, agent, joint venturer, partner or employee of the other party for any purpose whatsoever. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.

16.5 **Assignment.** The SCE Company has entered into this Agreement based upon the particular reputation, capabilities and experience of Publisher and its officers, directors and employees.

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Except as provided in this Agreement, Publisher may not assign, sublicense, subcontract, encumber or otherwise transfer this Agreement or any of its rights hereunder, nor delegate or otherwise transfer any of its obligations hereunder, to any third party unless the prior written consent of the SCE Company shall first be obtained. Any attempted or purported assignment, delegation or other such transfer, directly or indirectly, without the required consent of the SCE Company shall be void and a material breach of this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns (other than in connection with any of the events referenced in Section 14.2(iv).) The SCE Company shall have the right to assign any and all of its rights and obligations hereunder to any Affiliate(s) or to any company in the Sony family group of companies.

16.6 Non-solicitation. Neither Publisher nor any of its affiliates, by itself, its officers, employees or agents, or indirectly, shall during the Term, induce or seek to induce, on an individually targeted basis, the employment or the engagement of the services of, any employee of the SCE Company or any of its Affiliates, whose services are (a) specifically engaged in product development or directly related functions or (b) otherwise reasonably deemed by his or her employer to be of material importance to the protection of its legitimate business interests, and (c) with whom Publisher or any of its affiliates shall have had contact or dealings during the Term. The foregoing provisions shall continue to apply for a period of [*********] after this Agreement expires or is terminated.

16.7 Compliance with Applicable Laws. The parties shall at all times comply with all applicable laws and regulations and all conventions and treaties to which their countries are a party or relating to or in any way affecting this Agreement and the performance by the parties of this Agreement, including the US Children' s Online Privacy Protection Act and all other laws and regulations relating to the gathering, handling and dissemination of all data from or concerning end users of Online Products. Each party, at its own expense, shall negotiate and obtain any approval, license or permit required in the performance of its obligations, and shall declare, record or take such steps to render this Agreement binding, including the recording of this Agreement with any appropriate governmental authorities (if required).

16.8 Legal Costs and Expenses. In the event it is necessary for either party to retain the services of a lawyer to enforce the provisions of this Agreement or to file or defend any action arising out of this Agreement, then the prevailing party in any such action shall be entitled, in addition to any other rights and remedies available to it at law or in equity, to recover from the other party its reasonable fees for lawyers and expert witnesses, plus such court costs and expenses as may be fixed by any court of competent jurisdiction. The term "prevailing party" for the purposes of this Section shall include a defendant who has by motion, judgment, verdict or dismissal by the court, successfully defended against any claim that has been asserted against it.

16.9 Remedies. Unless expressly set forth to the contrary, either party' s election of any remedies provided for in this Agreement shall not be exclusive of any other remedies at law or equity, and all such remedies shall be deemed to be cumulative. Any breach of Sections 2, 3, 5, 6, 7.1 − 7.7, 13 or 15 of this Agreement would cause significant and irreparable harm to the SCE Company, the extent of which would be difficult to ascertain and for which damages might not be an adequate remedy. Accordingly, in addition to any other remedies, including damages to which the SCE Company may be entitled, in the event of a breach or threatened breach by Publisher, or any of its directors, officers, employees, agents or permitted consultants or subcontractors, of any such Section or Sections of this Agreement, the SCE Company shall be entitled to the immediate

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issuance without bond or other security, of ex parte equitable relief, including injunctive relief, or, if a bond is required under applicable law, on the posting of a bond in an amount not to exceed USD **[*******]**, enjoining any breach or threatened breach of any or all of such provisions. In addition, if Publisher fails to comply with any of its obligations as set forth herein, the SCE Company shall be entitled to an accounting and repayment of all forms of compensation, commissions, remuneration or benefits which Publisher directly or indirectly realizes as a result of or arising in connection with any such failure to comply. Such remedy shall be in addition to and not in limitation of any injunctive relief or other remedies to which the SCE Company may be entitled under this Agreement or otherwise at law or in equity.

16.10 Severability. In the event that any provision of this Agreement or portion thereof is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, such provision or portion shall be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, shall be deemed to be deleted from this Agreement, while the remainder of this Agreement shall continue in full force and remain in effect according to its stated terms and conditions.

16.11 Sections Surviving Expiration or Termination. The following Sections shall survive the expiration or earlier termination of this Agreement for any reason: 5, 6.2, 6.3, 6.4, 7.10, 9, 10, 11, 13, 14.5, 15 and 16 and any terms in any Regional Rider that are expressly designated as surviving termination.

16.12 Waiver. No failure or delay by either party in exercising any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Any waiver by either party of any provision of this Agreement shall not be construed as a waiver of any other provision of this Agreement, nor shall such waiver operate or be construed as a waiver of such provision respecting any future event or circumstance.

16.13 Modification and Amendment. The SCE Company reserves the right, at any time upon reasonable notice to Publisher, to amend the relevant provisions of this Agreement or the Guidelines, to take account of or in response to any decision, order, or objection of any court or governmental or other competition authority of competent jurisdiction, or any statutory or similar measures that give effect to any such decision (from which this Agreement and the Guidelines are not exempt) or to reflect any undertaking by the SCE Company to any such authority. Any such amendment shall be of prospective application only and shall not be applied to any Licensed Products submitted to the SCE Company pursuant to Section 6 prior to the date of the SCE Company' s notice of amendment. In the event that Publisher is unwilling to accept any such amendment, then Publisher shall have the right to terminate this Agreement by providing written notice to the SCE Company no more than [*********] following the date of the SCE Company' s notice of amendment. The provisions of Section 15.3 shall come into effect upon any such termination by Publisher. Subject to the remainder of this Section 16.14 and except as otherwise provided in this Agreement, no modification or amendment of any provision of this Agreement shall be effective unless in writing and signed by both of the parties.

16.14 Interpretation. The section headings used in this Agreement are intended primarily for reference and shall not by themselves determine the construction or interpretation of this Agreement or any portion hereof. Any reference to section numbers are to the sections of this Agreement. Any reference to persons includes natural persons as well as organizations, including firms, partnerships, companies and corporations. Any phrase introduced by the terms "including," "include," "in particular," or any similar expression shall be construed as illustrative and shall not limit the category preceding those terms.

16.15 Integration. This Agreement, together with the Guidelines, constitutes the entire agreement between the SCE Company

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and Publisher and supersedes all prior or contemporaneous agreements, proposals, representations, understandings and communications between the SCE Company and Publisher, whether oral or written, with respect to the subject matter hereof, including any PlayStation 3 Confidentiality and Nondisclosure Agreement between the SCE Company and Publisher. Publisher is not relying upon any statement, representation, warranty or understanding, whether negligently or innocently made, of any person other than as expressly set out in this Agreement.

16.16 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and together shall constitute one and the same instrument.

16.17 Construction. This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either of the parties.

THIS AGREEMENT HAS BEEN ENTERED INTO ON THE DATE STATED AT THE BEGINNING OF IT.

SONY COMPUTER ENTERTAINMENT AMERICA INC.

By: /s/ Jack Tretton

Print Name: Jack Tretton

Title: President and CEO

Date: 10/17/08

MIDWAY HOME ENTERTAINMENT INC.

By: /s/ Miguel Iribarren

Print Name: Miguel Iribarren

Title: SVP-Publishing

Date: October 3, 2008

NOT AN AGREEMENT UNTIL EXECUTED BY BOTH PARTIES

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SONY COMPUTER ENTERTAINMENT AMERICA INC.

FIRST AMENDED NORTH AMERICAN TERRITORY RIDER TO THE GLOBAL PLAYSTATION3 FORMAT LICENSED PUBLISHER AGREEMENT

This **First Amended North American Territory Rider to the Global PlayStation® 3 Format Licensed Publisher Agreement** (the "Rider" or "1st Amended North American Rider") is entered into and rendered effective as of this 26th day of September, 2008 (the "Effective Date.

1. Incorporation

The Rider' s terms and conditions are incorporated into and read in conjunction with the terms and conditions of the Global PlayStation 3 Format Licensed Publisher' s Agreement signed by Publisher ("PS3 LPA").

2. Definitions

All capitalized words and phrases referenced in the Rider that are not expressly defined herein shall have the meanings set forth in the Definitions section of the PS3 LPA.

2.1 [*********] to determine the initial wholesale price for the purpose of calculating royalties.

3. Territory

A. The Territory pursuant to the Rider and the PS3 LPA is expressly limited to the following countries and territories:

(1) The United States of America and its territories and possessions;

(2) Canada: and

(3) Mexico.

B. SCEA shall be entitled to modify and amend the Territory from time to time during the Term by providing written notice of any such changes to Publisher. In the event a country is deleted from the Territory, SCEA shall deliver to Publisher a written notice stating the number of days within which Publisher must cease distributing Licensed Products and must retrieve any Development Tools located in any deleted country.

C. Publisher shall not, directly or indirectly, solicit orders for or sell any Units of Disc Products in any situation where Publisher knows or reasonably should know that any of such Disc Products may be exported or resold outside of the Territory.

4. Royalties Applicable to Licensed Products

A. Disc Products.

(i) Initial Orders. In accordance with Section 9 of the PS3 LPA, Publisher shall pay SCEA, either directly or through its designee, a royalty in United States dollars for each Unit of the Disc products manufactured, as follows:

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For product distributed on a 25GB BD: [*********]

For product distributed on a 50GB BD: [*********]

To insure quality, royalty payments include manufacturing of the BluRay disc and Packaging, excluding Printed Materials and inserts. In the future and at its sole discretion, SCEA may allow Publisher to use alternative packaging facilities provided that Publisher can prove that it can meet all of SCEA' s quality assurance criteria set forth in the Guidelines. At that time, SCEA may restructure royalties to account for costs related to Packaging.

In the absence of satisfactory evidence to support the WSP, the royalty rate that shall apply will be [*********] for a BluRay 25 disc and [*********] for a BluRay 50 disc, per Unit. Upon receipt of any notice of change in royalties under Section 9.1 of the PS3 LPA, Publisher shall have the option to terminate this Agreement upon written notice to SCEA and discontinue all production, publishing, marketing, advertising, sale, distribution and other exploitation of Licensed Products, rather than having such revised royalty structure go into effect.

(ii) Reorders and Other Programs. Royalties on additional orders for Disc Products shall be the royalty determined by the initial Wholesale Price as originally reported by Publisher for that Disc Product, regardless of the wholesale price of the Disc Product at the time of reorder, except: (a) in the event that the Wholesale Price increases for such Disc Product, in which case the royalty shall be adjusted upwards to reflect the higher Wholesale Price; or (b) the product qualifies for an alternative royalty program offered by SCEA. Disc Products qualifying for SCEA' s "Greatest Hits" programs or other SCEA alternative royalty programs shall be subject to the royalty rates applicable for such programs as set forth in the Guidelines.

(iii) Third Party Publisher Demo Disc Program Royalties. Publisher shall be able to produce demonstration discs in accordance with the Guidelines published by SCEA for demonstration discs in the Territory. The quantity of Units ordered shall comply with the terms of such SCEA Established Third Party Demo Disc Program.

B. Online Products.

Publisher must require all end-users to sign in with the end-user' s unique PLAYSTATION Network identifier ("PSN Online ID") when accessing Online Gameplay. On a site that allows end-users access to Online Gameplay, for revenue, income, or other monetary value ("Consumer Value") that is earned, recognized, or otherwise derived by Publisher, including revenue recognized through distribution of Licensed Products or services provided free of charge to end-users, Publisher shall pay SCEA, either directly or through its designee, a [*********] royalty in United States dollars on all Consumer Value.

Prior to distributing a Licensed Product to consumers without cost or other consideration, Publisher shall confer with SCEA to determine the deemed Consumer Value of the Licensed Product.

C. Advertising. Content or services that are supported by advertising shall be subject to a separate agreement or rider to the PS3 LPA and to SCEA' s advertising policies and procedures. No advertisements shall be placed in Online Products nor shall advertisements be placed or served dynamically in Licensed Products without a separate express license from SCEA. SCEA reserves the right to charge an additional or different royalty for third-party advertising in-game, whether dynamic or static.

5. Accounting.

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Publisher shall provide SCEA with monthly reports of the gross Consumer Value revenues actually received by Publisher (or otherwise credited to its benefit). Such monthly reports shall be delivered on a per title basis to SCEA no later than [*********] after the end of each month, beginning with the month in which Publisher launches a title-specific site that allows end-users access to Online Gameplay of that title. SCEA shall have the right to adopt and implement online royalty accounting verification mechanisms at its sole discretion.

Additional Regional Terms.

6.1 Payment Terms. In addition to the remedies and requirements set forth in the PS3 LPA, any overdue sums shall bear interest at the rate of [*********] per [*********] or such lower rate as may be the maximum rate permitted under applicable law, from the date when payment first became due through and including the date of payment.

6.2 Subpublishing Prohibited. Publisher' s license to publish Licensed Products in the Territory under the PS3 LPA does not extend to Licensed Products previously published for the PlayStation 3 computer entertainment system by another Licensed Publisher.

6.3 Liquidated Damages. As an additional option in lieu of termination under Section 14.4 of the PS3 LPA, SCEA may require Publisher to pay liquidated` damages of [*********] for certain breaches of the Agreement, including violations of SCEA' s trademark rights under Section 6.8.2 of the PS3 LPA. Liquidated damages may be invoiced separately or on Publisher' s next invoice for Disc Products. Election of liquidated damages shall not constitute a waiver of or compromise with respect to any of SCEA' s rights under this Rider or the PS3 LPA and SCEA may elect to terminate the PS3 LPA with respect to any breach.

6.4 Additional Ground for Termination. If Publisher fails to pay any sums owed to SCEA (Including liquidated damages pursuant to Section 6.3 of this Rider) on the date due and such default is not fully corrected or cured within [*********] of the date on which such payment was originally due, SCEA shall be entitled to terminate under Section 14.2 of the PS3 LPA.

6.5 Subcontractors. SCEA requires that Publisher enter into a Subcontractor Agreement for use of subcontractors under Sections 2.1(i), 3.2 and 16.7 of the PS3 LPA. Each Subcontractor Agreement shall provide that SCEA has the full right to bring any actions against the signing subcontractor, to require the subcontractor to comply with all the terms and conditions of the PS3 LPA or the Subcontractor Agreement. Publisher shall provide a copy of any proposed Subcontractor Agreement to SCEA prior to, and a fully-executed copy promptly following, execution of the Subcontractor Agreement. Publisher shall give SCEA written notice of the identity of any prospective subcontractor no less than [*********] prior to entering into an agreement or other arrangement with the prospective subcontractor.

7. Notices.

Any notices required under this Rider or the PS3 LPA shall be delivered addressed to the following persons:

For Publisher: ATTN: President
Midway Home Entertaiment Inc.
c/o Midway Amsement Games, LLC.
2704 West Roscoe Street
Chicago, IL 60618

with a copy to: ATTN: SVP, General Counsel
Midway Games Inc.

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2704 West Roscoe Street

Chicago, IL 60618

For SCEA: ATTN: General Counsel
Sony Computer Entertainment America Inc.
919 East Hillsdale Boulevard
Foster City, CA 94404

8. Governing Law

The Agreement and this Rider shall be governed by and interpreted in accordance with the laws of the State of California, excluding that body of law related to choice of laws, and of the United States of America.

9. Dispute Resolution

The Parties shall attempt in good faith to resolve through informal discussions or negotiations any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement, including breach, termination or validity thereof (a "Dispute"). Any Dispute that the Parties are unable to resolve through informal discussions or negotiations after [*********] will be submitted to binding arbitration conducted in accordance with and subject to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") except to the extent otherwise required under this dispute resolution clause. One arbitrator will be selected by the Parties' mutual agreement or, failing that, by the AAA. The arbitrator must have substantial experience in disputes involving technology licensing agreements. The arbitrator will allow such discovery as is appropriate, and impose such restrictions as are appropriate, consistent with the purposes of arbitration in accomplishing fair, speedy and cost-effective resolution of disputes, except that (i) no requests for admissions will be permitted; (ii) interrogatories will be limited to (a) identifying persons with knowledge of relevant facts and b) identifying expert witnesses and obtaining their opinions and the bases therefor; and (iii) each party will be limited to five (5) depositions. Judgment upon the award rendered in any such arbitration may be entered in any court having jurisdiction thereof. Any arbitration conducted pursuant to this section will take place in San Francisco, California. Each Party will bear its own costs. The Parties will share equally in paying the expenses and fees of the arbitrator. The arbitrator may not alter the foregoing allocation of the parties' costs, nor of the arbitrator's fees and expenses. Other than those matters involving injunctive relief or any action necessary to enforce the award of the arbitrator, the Parties agree that the provisions of this section are a complete defense to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any Dispute. Notwithstanding the foregoing. SCEA may apply to any court of competent jurisdiction within the Licensed Territory seeking a temporary restraining order, preliminary injunction, or other interim or conservatory relief, with respect to the protection of any intellectual property rights or Confidential Information of or concerning the SCE Group Companies or the System, including, without limitation, the SCE Materials and Licensed Trademarks.

ACCEPTED AND AGREED:

Sony Computer Entertainment America Inc.

By: /s/ Jack Tretton
Name: Jack Tretton
Title: President & CEO
Date: 10/17/08

Midway Home Entertainment Inc.

By: /s/ Miguel Iribarren
Name: Miguel Iribarren
Title: SVP-Publishing
Date: October 3, 2008

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EXHIBIT 10.57

EXECUTION COPY

AMENDMENT NO. 1 to LOAN AND SECURITY AGREEMENT

THIS AMENDMENT NO. 1 to LOAN AND SECURITY AGREEMENT (this "Amendment") is being executed and delivered as of August 19, 2008, by and among MIDWAY HOME ENTERTAINMENT INC., a Delaware corporation ("Midway"), as Administrative Borrower on behalf of the "Companies" (as defined in the Credit Agreement referred to below), and NATIONAL AMUSEMENTS, INC., a Maryland corporation, as Lender (the "Lender"). All capitalized terms used herein without definition shall have the same meanings as set forth in the hereinafter identified and defined Credit Agreement.

WITNESSETH:

WHEREAS, the Lender, Midway, Midway Amusement Games, LLC, a Delaware limited liability company, Midway Games Inc., a Delaware corporation, Midway Games West Inc., a California corporation, Midway Interactive Inc., a Delaware corporation, Midway Sales Company, LLC, a Delaware limited liability company, Midway Home Studios Inc., a Delaware corporation, Surreal Software Inc., a Washington corporation, Midway Studios − Austin Inc., a Texas corporation, and Midway Studios − Los Angeles Inc., a California corporation, have entered into that certain Loan and Security Agreement, dated as of February 29, 2008 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"); and

WHEREAS, Midway, on behalf of the Companies, has requested that the Lender agree to amend the Credit Agreement, as set forth herein, and the Lender has agreed to so amend the Credit Agreement on the terms and conditions of this Amendment;

NOW, THEREFORE, in consideration of the foregoing premises, the terms and conditions stated herein, the representations and warranties of Midway in Section 2 hereof, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Midway and the Lender, such parties hereby agree as follows:

1. Amendments. As of the date hereof, the Credit Agreement is hereby amended as follows:

(a) The definition of "Permitted Investments" appearing in Section 1.1 of the Credit Agreement is hereby amended (i) to insert the additional clauses, "(o) Investments constituting loans made by any Foreign Company to the Parent or any other Subsidiary of the Parent," and "(p) Loans from any Company to any Foreign Company which re-evidence Investments made prior to the Closing Date (so long the proceeds of any such Loan are used at the time of such Loan to repay such prior Investments)," immediately after clause (n) therein and (ii) to renumber the final clause in such definition from "(o)" to "(q)".

(b) The definition of "LIBOR Rate" appearing in Section 1.1 of the Credit Agreement is hereby amended to insert the words "(or such other independent source as the Administrative Borrower and the Lender may agree upon from time to time)" immediately after the words "Bank of America, N.A." appearing therein.

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(c) The definition of "Maximum Revolver Amount" appearing in Section 1.1 of the Credit Agreement is hereby amended to delete the number "$1,047,619" appearing therein and to replace such figure with the following language: "the aggregate face amount as of any date of determination of (i) that Letter of Credit issued by Wells Fargo Bank, N.A. on January 5, 2006, initially in favor of RREEF Domain, LP, with an initial face amount of $833,333, and (ii) that Letter of Credit issued by Wells Fargo Bank, N.A. on November 6, 2006, initially in favor of Crystal Pier Partners, LP, San Diego, CA, with an initial face amount of $214,285.75, in each case, together with any Letter of Credit as may renew, refinance, restructure, replace, or extend either such Letter of Credit, and in each case, as the same may be amended, restated, supplemented or otherwise modified and in effect".

(d) Section 1.1 of the Credit Agreement is hereby amended to insert the following new definition in proper alphabetical order:

"German Intercompany Loan" means, collectively, one or more loans in an aggregate principal amount of up to 2,137,100 made on or after August 19, 2008 by the German Company to the Parent and evidenced by that certain Agreement dated as of August 19, 2008, as amended, restated, supplemented or otherwise modified, as such loan or loans may be refinanced, renewed or extended.

(e) The definition of "Permitted Lien" appearing in Section 1.1 of the Credit Agreement is hereby amended (i) to insert the additional clause "(n) Liens granted in favor of the German Company and securing the obligations of the Parent under the German Intercompany Loan" immediately after clause (m) therein and (ii) to renumber the final clause in such definition from "(n)" to "(o)".

(f) Article VIII of the Credit Agreement is hereby amended to insert the following Section 8.14 immediately following Section 8.13 appearing therein, and to renumber Sections 8.14 and 8.15 as Sections "8.15" and "8.16", respectively:

8.14 The German Company shall sell, assign, pledge, or otherwise transfer its interest in the German Intercompany Loan without the prior consent of the Lender or the German Company' s security interest in the collateral pledged by the Parent in connection with such German Intercompany Loan shall be enforced or foreclosed upon.

2. Representations and Warranties. Midway hereby represents and warrants that after giving effect to the terms of this Amendment (i) no Default or Event of Default has occurred and is continuing and (ii) the representations and warranties contained in the Credit Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date hereof, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date).

3. Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and

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delivered shall be deemed to constitute one and the same instrument. A signature page sent to the Lender or its counsel by facsimile or other electronic means (including in portable document format (.pdf)) shall be effective as an original counterpart signature.

4. Section Titles. The section titles contained in this Amendment are and shall be without substance, meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

5. Governing Law. The validity of this Amendment, the construction, interpretation, and enforcement hereof, and the rights of the parties hereto with respect to all matters arising hereunder or related hereto shall be determined under, governed by, and construed in accordance with the laws of the State of Illinois.

[Signature Pages Follow]

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IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

MIDWAY HOME ENTERTAINMENT INC.,
as Administrative Borrower

By **/s/ Matthew V. Booty**
Title Interim President and Chief Executive Officer

Signature Page to
Amendment No. 1
to Loan and Security Agreement

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NATIONAL AMUSEMENTS, INC.,
a Maryland corporation, as Lender

By: /s/ Richard J. Sherman
Title: Vice President

Signature Page to
Amendment No. 1
to Loan and Security Agreement

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EXHIBIT 10.58

EXECUTION COPY

AMENDMENT NO. 1 to UNSECURED LOAN AGREEMENT

THIS AMENDMENT NO. 1 to UNSECURED LOAN AGREEMENT (this “Amendment”) is being executed and delivered as of August 19, 2008, by and among MIDWAY GAMES INC., a Delaware corporation (the “Borrower”), as Borrower, and NATIONAL AMUSEMENTS, INC., a Maryland corporation, as Lender (the “Lender”). All capitalized terms used herein without definition shall have the same meanings as set forth in the hereinafter identified and defined Credit Agreement.

WITNESSETH:

WHEREAS, the Lender and the Borrower have entered into that certain Unsecured Loan Agreement, dated as of February 29, 2008 (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”); and

WHEREAS, the Borrower has requested that the Lender agree to amend the Credit Agreement, as set forth herein, and the Lender has agreed to so amend the Credit Agreement on the terms and conditions of this Amendment;

NOW, THEREFORE, in consideration of the foregoing premises, the terms and conditions stated herein, the representations and warranties of the Borrower in Section 2 hereof, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Borrower and the Lender, such parties hereby agree as follows:

1. Amendments. As of the date hereof, the Credit Agreement is hereby amended as follows:

(a) The definition of “Permitted Investments” appearing in Section 1.1 of the Credit Agreement is hereby amended (i) to insert the additional clauses, “(o) Investments constituting loans made by any Foreign Company to the Borrower or any other Subsidiary of the Borrower,” and “(p) Loans from any Company to any Foreign Company which re-evidence Investments made prior to the Closing Date (so long the proceeds of any such Loan are used at the time of such Loan to repay such prior Investments),” immediately after clause (n) therein and (ii) to renumber the final clause in such definition from “(o)” to “(q)”.

(b) The definition of “LIBOR Rate” appearing in Section 1.1 of the Credit Agreement is hereby amended to insert the words “(or such other independent source as the Borrower and the Lender may agree upon from time to time)” immediately after the words “Bank of America, N.A.” appearing therein.

(c) Section 1.1 of the Credit Agreement is hereby amended to insert the following new definition in proper alphabetical order:

“German Intercompany Loan” means, collectively, one or more loans in an aggregate principal amount of up to 2,137,100 made on or after August 19, 2008 by the German Company to the Borrower and evidenced by that certain Agreement dated as of August 19, 2008, as

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amended, restated, supplemented or otherwise modified, as such loan or loans may be refinanced, renewed or extended.

(d) The definition of "Permitted Lien" appearing in Section 1.1 of the Credit Agreement is hereby amended (i) to insert the additional clause "(n) Liens granted in favor of the German Company and securing the obligations of the Borrower under the German Intercompany Loan" immediately after clause (m) therein and (ii) to renumber the final clause in such definition from "(n)" to "(o)".

(e) Article VIII of the Credit Agreement is hereby amended to insert the following Section 8.14 immediately following Section 8.13 appearing therein, and to renumber Sections 8.14 and 8.15 as Sections "8.15" and "8.16", respectively:

8.14 The German Company shall sell, assign, pledge, or otherwise transfer its interest in the German Intercompany Loan without the prior consent of the Lender or the German Company' s security interest in the collateral pledged by the Borrower in connection with such German Intercompany Loan shall be enforced or foreclosed upon.

2. Representations and Warranties. The Borrower hereby represents and warrants that after giving effect to the terms of this Amendment (i) no Default or Event of Default has occurred and is continuing and (ii) the representations and warranties contained in the Credit Agreement shall be true and correct in all material respects on and as of the date hereof, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date).

3. Further Assurances. The parties hereto hereby agree to undertake in good faith to negotiate a loan and lien subordination agreement in connection with any refinancing of the German Intercompany Loan prior to the final maturity thereof.

4. Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to constitute one and the same instrument. A signature page sent to the Lender or its counsel by facsimile or other electronic means (including in portable document format (.pdf)) shall be effective as an original counterpart signature.

5. Section Titles. The section titles contained in this Amendment are and shall be without substance, meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

6. Governing Law. The validity of this Amendment, the construction, interpretation, and enforcement hereof, and the rights of the parties hereto with respect to all matters arising hereunder or related hereto shall be determined under, governed by, and construed in accordance with the laws of the State of Illinois.

[Signature Pages Follow]

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IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

MIDWAY GAMES INC.,
as Borrower

By /s/ Matthew V. Booty
Title Interim President and Chief Executive Officer

Signature Page to
Amendment No. 1
to Unsecured Loan Agreement

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NATIONAL AMUSEMENTS, INC.,
a Maryland corporation, as Lender

By: /s/ Richard J. Sherman
Title: Vice President

Signature Page to
Amendment No. 1
to Unsecured Loan Agreement

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EXHIBIT 10.59

EXECUTION COPY

AMENDMENT NO. 1 to UNSECURED SUBORDINATED LOAN AGREEMENT

THIS AMENDMENT NO. 1 to UNSECURED SUBORDINATED LOAN AGREEMENT (this "Amendment") is being executed and delivered as of August 19, 2008, by and among MIDWAY GAMES INC., a Delaware corporation (the "Borrower"), as Borrower, and NATIONAL AMUSEMENTS, INC., a Maryland corporation, as Lender (the "Lender"). All capitalized terms used herein without definition shall have the same meanings as set forth in the hereinafter identified and defined Credit Agreement.

WITNESSETH:

WHEREAS, the Lender and the Borrower have entered into that certain Unsecured Subordinated Loan Agreement, dated as of February 29, 2008 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"); and

WHEREAS, the Borrower has requested that the Lender agree to amend the Credit Agreement, as set forth herein, and the Lender has agreed to so amend the Credit Agreement on the terms and conditions of this Amendment;

NOW, THEREFORE, in consideration of the foregoing premises, the terms and conditions stated herein, the representations and warranties of the Borrower in Section 2 hereof, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Borrower and the Lender, such parties hereby agree as follows:

1. Amendments. As of the date hereof, the Credit Agreement is hereby amended as follows:

(a) The definition of "Permitted Investments" appearing in Section 1.1 of the Credit Agreement is hereby amended (i) to insert the additional clauses, "(o) Investments constituting loans made by any Foreign Company to the Borrower or any other Subsidiary of the Borrower," and "(p) Loans from any Company to any Foreign Company which re-evidence Investments made prior to the Closing Date (so long the proceeds of any such Loan are used at the time of such Loan to repay such prior Investments)," immediately after clause (n) therein and (ii) to renumber the final clause in such definition from "(o)" to "(q)".

(b) The definition of "LIBOR Rate" appearing in Section 1.1 of the Credit Agreement is hereby amended to insert the words "(or such other independent source as the Borrower and the Lender may agree upon from time to time)" immediately after the words "Bank of America, N.A." appearing therein.

(c) Section 1.1 of the Credit Agreement is hereby amended to insert the following new definition in proper alphabetical order:

"German Intercompany Loan" means, collectively, one or more loans in an aggregate principal amount of up to 2,137,100 made on or after August 19, 2008 by the German Company to the Borrower and evidenced by that certain Agreement dated as of August 19, 2008, as

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amended, restated, supplemented or otherwise modified, as such loan or loans may be refinanced, renewed or extended.

(d) The definition of "Permitted Lien" appearing in Section 1.1 of the Credit Agreement is hereby amended (i) to insert the additional clause "(n) Liens granted in favor of the German Company and securing the obligations of the Borrower under the German Intercompany Loan" immediately after clause (m) therein and (ii) to renumber the final clause in such definition from "(n)" to "(o)".

(e) Article VIII of the Credit Agreement is hereby amended to insert the following Section 8.14 immediately following Section 8.13 appearing therein, and to renumber Sections 8.14 and 8.15 as Sections "8.15" and "8.16", respectively:

8.14 The German Company shall sell, assign, pledge, or otherwise transfer its interest in the German Intercompany Loan without the prior consent of the Lender or the German Company' s security interest in the collateral pledged by the Borrower in connection with such German Intercompany Loan shall be enforced or foreclosed upon.

2. Representations and Warranties. The Borrower hereby represents and warrants that after giving effect to the terms of this Amendment (i) no Default or Event of Default has occurred and is continuing and (ii) the representations and warranties contained in the Credit Agreement shall be true and correct in all material respects on and as of the date hereof, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date).

3. Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to constitute one and the same instrument. A signature page sent to the Lender or its counsel by facsimile or other electronic means (including in portable document format (.pdf)) shall be effective as an original counterpart signature.

4. Section Titles. The section titles contained in this Amendment are and shall be without substance, meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

5. Governing Law. The validity of this Amendment, the construction, interpretation, and enforcement hereof, and the rights of the parties hereto with respect to all matters arising hereunder or related hereto shall be determined under, governed by, and construed in accordance with the laws of the State of Illinois.

[Signature Pages Follow]

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IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

MIDWAY GAMES INC.,
as Borrower

By /s/ Matthew V. Booty
Title Interim President and Chief Executive Officer

Signature Page to
Amendment No. 1
to Unsecured Subordinated Loan Agreement

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NATIONAL AMUSEMENTS, INC.,
a Maryland corporation, as Lender

By: /s/ Richard J. Sherman
Title: Vice President

Signature Page to
Amendment No. 1
to Unsecured Subordinated Loan Agreement

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EXHIBIT 21

SUBSIDIARIES OF THE REGISTRANT

Subsidiary	Jurisdiction of Incorporation
Midway Interactive Inc.	Delaware
Midway Home Entertainment Inc.	Delaware
Midway Games West Inc. (formerly, Atari Games Corporation)	California
Midway Games Sales Corporation	Barbados
Midway Games (Europe) GmbH	Germany
Midway Games Limited	United Kingdom
Midway Amusement Games, LLC	Delaware (LLC)
Midway Sales Company, LLC	Delaware (LLC)
Midway Home Studios Inc.	Delaware
K. K. Midway Games	Japan
Midway Games Canada Corp.	Canada
Surreal Software Inc.	Washington
Midway Studios - Austin Inc.	Texas
Midway Studios - Los Angeles Inc.	California
Midway Games GmbH	Germany
Midway Australia Holdings Pty Ltd	Australia
Ratbag Holdings Pty Ltd	Australia
Midway Studios - Newcastle Limited	United Kingdom
Midway Games SAS	France

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Exhibit 23

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements listed below of our reports dated April 6, 2009, with respect to the consolidated financial statements and schedule of Midway Games Inc. and the effectiveness of internal control over financial reporting of Midway Games Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2008.

(1) Registration Statement No. 333-140206 on Form S-8,

(2) Registration Statement No. 333-136272 on Form S-3,

(3) Registration Statement No. 333-130130 on Form S-3,

(4) Registration Statement No. 333-130131 on Form S-3,

(5) Registration Statement No. 333-130132 on Form S-3,

(5) Registration Statement No. 333-130133 on Form S-3,

(6) Registration Statement No. 333-130134 on Form S-3,

(7) Registration Statement No. 333-127796 on Form S-3,

(8) Registration Statement No. 333-127795 on Form S-3,

(9) Registration Statement No. 333-125830 on Form S-8,

(10) Registration Statement No. 333-121523 on Form S-3,

(11) Registration Statement No. 333-120952 on Form S-3,

(12) Registration Statement No. 333-120347 on Form S-8,

(13) Registration Statement No. 333-115098 on Form S-8,

(14) Registration Statement No. 333-115055 on Form S-3,

(15) Registration Statement No. 333-98745 on Form S-8,

(16) Registration Statement No. 333-46618 on Form S-8,

(17) Registration Statement No. 333-73451 on Form S-8,

(18) Registration Statement No. 333-68373 on Form S-8,

(19) Registration Statement No. 333-57583 on Form S-8, and

(20) Registration Statement No. 333-25757 on Form S-8.

Chicago, Illinois
April 6, 2009

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Exhibit 31

CERTIFICATION

I, Matthew V. Booty, certify that:

1. I have reviewed this annual report on Form 10-K of Midway Games Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant' s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant' s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant' s internal control over financial reporting that occurred during the registrant' s most recent fiscal quarter (the registrant' s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant' s internal control over financial reporting; and

5. The registrant' s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant' s auditors and the audit committee of the registrant' s board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant' s ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant' s internal control over financial reporting.

April 6, 2009

/s/ Matthew V. Booty

Matthew V. Booty
Chief Executive Officer

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CERTIFICATION

I, Ryan G. O' Desky, certify that:

1. I have reviewed this annual report on Form 10-K of Midway Games Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant' s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant' s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant' s internal control over financial reporting that occurred during the registrant' s most recent fiscal quarter (the registrant' s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant' s internal control over financial reporting; and

5. The registrant' s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant' s auditors and the audit committee of the registrant' s board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant' s ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant' s internal control over financial reporting.

April 6, 2009

/s/ Ryan G. O' Desky

Ryan G. O' Desky
Chief Financial Officer

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Exhibit 32

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Midway Games Inc. (the "Company") on Form 10-K for the year ended December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Matthew V. Booty, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Matthew V. Booty

Matthew V. Booty
Chief Executive Officer
April 6, 2009

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CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Midway Games Inc. (the “Company”) on Form 10-K for the year ended December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Ryan G. O’ Desky, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Ryan G. O’ Desky

Ryan G. O’ Desky
Chief Financial Officer
April 6, 2009

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