

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11
: :
MIDWAY GAMES INC., et al., : Cases No. 09-10465 (KG)
: (Jointly Administered)
Debtors.¹ :

**DISCLOSURE STATEMENT UNDER 11 U.S.C. § 1125 IN
SUPPORT OF DEBTORS' JOINT CHAPTER 11 PLAN OF LIQUIDATION**

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DATED: March 26, 2010

¹ The Debtors are: Midway Games Inc., Midway Home Entertainment Inc., Midway Amusement Games, LLC, Midway Interactive Inc., Surreal Software Inc., Midway Studios - Austin Inc., Midway Studios - Los Angeles Inc., Midway Games West Inc., Midway Home Studios Inc., and Midway Sales Company, LLC.

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EXHIBITS TO DISCLOSURE STATEMENT

Exhibit 1 Substantive Consolidation Analysis
Exhibit A Debtors' Joint Chapter 11 Plan of Liquidation, with Exhibits

NOTICE

ALL CREDITORS AND INTEREST HOLDERS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY. BECAUSE ACCEPTANCE OF THE PLAN WILL CONSTITUTE ACCEPTANCE OF ALL THE PROVISIONS THEREOF, HOLDERS OF CLAIMS OR INTERESTS THAT ARE IMPAIRED ARE URGED TO CONSIDER CAREFULLY THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT REGARDING TREATMENT OF THEIR CLAIMS OR INTERESTS.

IN DETERMINING WHETHER TO VOTE TO ACCEPT THE PLAN, HOLDERS OF IMPAIRED CLAIMS ENTITLED TO VOTE MUST RELY UPON THEIR OWN EXAMINATION OF THE TERMS OF THE PLAN, INCLUDING THE MERITS AND RISKS INVOLVED. THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND/OR TAX ADVISORS WITH RESPECT TO ANY SUCH MATTERS CONCERNING THIS DISCLOSURE STATEMENT, THE SOLICITATION, THE PLAN, AND THE TRANSACTIONS CONTEMPLATED THEREBY.

PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT, INCLUDING THE FOLLOWING SUMMARY, ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, EXHIBITS ANNEXED TO THE PLAN, AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER SUCH DATE. ALL PERSONS SHOULD READ CAREFULLY THE "RISK FACTORS" SECTION HEREOF BEFORE VOTING FOR OR AGAINST THE PLAN. SEE "CERTAIN RISK FACTORS TO BE CONSIDERED," ARTICLE III.C.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE DEBTORS IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE LAW. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC") NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

CERTAIN STATEMENTS CONTAINED HEREIN, INCLUDING WITH RESPECT TO ANY AMOUNT OF ALLOWED CLAIMS, ASSETS AVAILABLE TO CREDITORS AND OTHER FORWARD-LOOKING STATEMENTS, ARE BASED ON ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES OR RESULTS.

THE INFORMATION IN THIS DISCLOSURE STATEMENT IS BEING PROVIDED SOLELY FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE USED BY ANY ENTITY FOR ANY OTHER PURPOSE. THE FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE DESCRIPTION OF THE DEBTORS, THEIR BUSINESS, AND EVENTS LEADING TO THE COMMENCEMENT OF THE CASES, HAS BEEN PREPARED AND OBTAINED BY THE DEBTORS AND THEIR PROFESSIONALS FROM VARIOUS DOCUMENTS, AGREEMENTS, AND OTHER WRITINGS RELATING TO THE DEBTORS. NEITHER THE DEBTORS NOR ANY OTHER PARTY MAKE ANY REPRESENTATION OR WARRANTY REGARDING SUCH INFORMATION.

THE TERMS OF THE PLAN GOVERN IN THE EVENT OF ANY INCONSISTENCY WITH THE SUMMARIES IN THIS DISCLOSURE STATEMENT. ALL EXHIBITS TO THE DISCLOSURE STATEMENT ARE INCORPORATED INTO AND ARE A PART OF THIS DISCLOSURE STATEMENT AS IF SET FORTH IN FULL HEREIN.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE NOR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, OR OTHERWISE HAVE ANY PRECLUSIVE EFFECT, BUT RATHER SHALL CONSTITUTE AND BE CONSTRUED AS A STATEMENT MADE WITHOUT PREJUDICE, WITH FULL RESERVATION OF RIGHTS, AND IS NOT TO BE USED FOR ANY LITIGATION PURPOSE WHATSOEVER. AS SUCH, THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY BANKRUPTCY OR NONBANKRUPTCY PROCEEDING, ADVERSARY PROCEEDING OR OTHER ACTION INVOLVING THE DEBTORS OR ANY OTHER PARTY IN INTEREST, NOR SHALL IT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES, FINANCIAL OR OTHER EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST OR INTERESTS IN THE DEBTORS.

ARTICLE I

INTRODUCTION AND SUMMARY

On February 12, 2009, Midway Games Inc. ("Midway" or "Parent"), and its wholly owned subsidiaries Midway Home Entertainment Inc. ("MHE"), Midway Amusement Games, LLC ("MAG"), Midway Interactive Inc. ("Midway Interactive"), Surreal Software Inc. ("Surreal Software"), Midway Studios - Austin Inc. ("Midway Austin"), Midway Studios - Los Angeles Inc. ("Midway L.A."), Midway Games West Inc. ("Midway Games West"), Midway Home Studios Inc. ("Midway Home Studios"), and Midway Sales Company, LLC ("Midway Sales") (except for Midway, the "Subsidiary Debtors") (collectively, Midway and the Subsidiary Debtors shall be referred to as the "Debtors") each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, as amended (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") (the "Chapter 11 Cases").

Midway is a holding company whose business was conducted primarily through the Subsidiary Debtors and certain non-debtor foreign subsidiaries. MHE was primarily engaged in the manufacture and sale of video games. MHE owned a substantial portion of the intellectual property associated with the videogames developed by or for the Debtors. MAG owned a significant portion of the intellectual property associated with the Mortal Kombat franchise. MAG also acted as a development studio for videogames, including the Mortal Kombat games. The balance of the Subsidiary Debtors, to the extent they had active businesses as of the Petition Date, acted primarily as videogame development studios and handled marketing for the Debtors' videogames

On February 23, 2009, the Official Committee of Unsecured Creditors (the "Creditors' Committee") was appointed in the Debtors' Chapter 11 Cases. This Disclosure Statement, the exhibits hereto and the accompanying forms of Ballots are submitted by the Debtors in connection with the solicitation of acceptances of the Debtors' proposed Joint Chapter 11 Plan of Liquidation (as such may be amended, modified or supplemented, including any exhibits or schedules thereto, the "Plan") under Section 1125 of the Bankruptcy Code, with the participation, consent and full support of the Creditors' Committee. A copy of the Plan is attached hereto as Exhibit A. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

The Chapter 11 Cases have been consolidated for procedural purposes and are being jointly administered pursuant to an Order of the Bankruptcy Court. The Plan contemplates the substantive consolidation of the Debtors' bankruptcy estates for purposes of distributions to the holders of Allowed Class 3A and 3B Claims. The Plan, if approved, will implement a compromise and settlement among the members of the Creditors Committee that hold Class 3A and Class 3B Claims (the "Creditors' Committee Settlement"). As more fully described herein, the Plan will implement the Creditors' Committee Settlement, pursuant to which the Estates will be substantively consolidated and Distributions to Creditors in Classes 3A and 3B will be made in accordance with the provisions of Section 6.09 of the Plan. Although the Debtors did not participate and were not involved in the negotiations and deliberations surrounding the Creditors' Committee Settlement, the Debtors have agreed to seek implementation of the Creditors' Committee Settlement through the Plan. To the extent necessary, the Plan constitutes a motion for approval of the aforementioned compromise and settlement pursuant to Bankruptcy Rule 9019 and Section 1123(b)(3) of the Bankruptcy Code and consistent with Section 1129 of the Bankruptcy Code. The Confirmation Order, subject to the occurrence of the Effective Date, will constitute an order of the Bankruptcy Court finding and determining that such compromise and settlement is (a) in the best interests of the Debtors, their Estates, and creditors holding Claims in Class 3A and Class 3B, (b) fair, equitable and reasonable, (c) made in good faith and (d) approved by the Bankruptcy Court.

The Plan also shall serve as a motion by the Debtors seeking entry, pursuant to Section 105 of the Bankruptcy Code, of an order directing that, upon the Effective Date, the Estates and all of the debts of all of the Debtors be substantively consolidated for purposes of classifying and treating all Claims under the Plan, including for voting, confirmation and

Distribution purposes; *provided, however*, that the Creditors' Committee Settlement specifically provides for treatment of holders of Claims in Class 3A and Class 3B in the manner specified in Section 6.09 of the Plan. Substantive consolidation will not (i) alter the state of incorporation of any Debtor for purposes of determining the applicable law of any of the Causes of Action, (ii) alter or impair the legal and equitable rights of the Liquidating Trustee to enforce any of the Causes of Action, or (iii) otherwise impair, release, discharge, extinguish or affect any of the Causes of Action or issues raised as a part thereof.

If substantive consolidation is ordered as provided herein, then on and after the Effective Date, and subject to the Creditors' Committee Settlement's treatment of Claims in Classes 3A and Class 3B, all assets and liabilities of the Debtors shall be treated under the Liquidating Trust as though they were merged into the Estate of Midway for purposes of treatment of and distributions on Allowed Claims. All guarantees by any Debtor of the obligations of any other Debtor shall be eliminated so that any Claim and any guarantee thereof by any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be treated as one collective obligation of the Debtors.

Substantive consolidation shall not affect any prepetition or postpetition guarantees, Liens, or security interests that are required to be maintained under the Bankruptcy Code, under the Plan, or in connection with contracts or leases that were assumed or entered into during the Chapter 11 Cases. Any alleged defaults under any applicable agreement with the Debtors arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date. Notwithstanding anything in the Plan or in the Confirmation Order to the contrary, the entry of the Confirmation Order ordering substantive consolidation of the Estates shall not have any effect upon the separate and distinct legal entities as they existed at the time of any prepetition transaction that is the subject of any litigation asserting claims for fraudulent conveyance; *provided, however*, that the foregoing provisions shall not serve to prejudice or compromise whatever rights, if any, the Debtors or the Liquidating Trustee, as applicable, may have to contend in any pending or future adversary proceeding that the Debtors or the Liquidating Trustee, as applicable, may prosecute claims for fraudulent conveyance arising from transfers made by one or more of the Debtors based on any theory or doctrine, including any federal, state, or common law alter-ego, veil-piercing, or any other theory or doctrine that would permit or require the disregard of corporate separateness, or facts as they existed at the time of the transaction in question.

The confirmation of a plan of reorganization or liquidation, which is the vehicle for satisfying the rights of holders of claims against and interests in a debtor, is the overriding purpose of a Chapter 11 case. Although referred to as a plan of reorganization, a chapter 11 plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a liquidation of assets, as in the case herein. In either event, upon confirmation of a chapter 11 plan, it becomes binding on the debtor and all of its creditors and interest holders, and the obligations owed by the debtor to such parties are compromised and exchanged for the obligations specified in the plan.

In these Chapter 11 Cases, the Plan contemplates a liquidation of each of the Debtors, and is therefore referred to as a "plan of liquidation." The remaining Assets of the Debtors will be reduced to Cash and distributed to claimants according to the priority scheme

under the Bankruptcy Code and as envisioned by the terms of the Plan, including without limitation the terms of the proposed Creditors' Committee Settlement dealing with Allowed Claims in Classes 3A and 3B.

As of the Effective Date of the Plan, the common stock of Midway, which is held by hundreds of shareholders, will not receive any Distribution on account of such Interests, and all outstanding shares of such common stock and any Interests in the Subsidiary Debtors shall be automatically cancelled.

After a plan of reorganization or liquidation has been filed, certain holders of claims against or interests in a debtor may be permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. **This Disclosure Statement is presented to holders of Claims against and Interests in the Debtors to satisfy the requirements of Section 1125 of the Bankruptcy Code in connection with the Debtors' solicitation of votes on the Plan.**

By order of the Bankruptcy Court dated March 23, 2010, this Disclosure Statement was approved in connection with the Debtors' solicitation of acceptances of the Plan. This Disclosure Statement is a summary of the most important provisions of the Plan.

APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT AS CONTAINING "ADEQUATE INFORMATION" UNDER SECTION 1125 OF THE BANKRUPTCY CODE DOES NOT INDICATE THAT THE BANKRUPTCY COURT RECOMMENDS ACCEPTANCE OF THE PLAN. WHILE THE BANKRUPTCY COURT HAS APPROVED THIS DISCLOSURE STATEMENT AS CONTAINING SUFFICIENT INFORMATION TO ENABLE CREDITORS TO MAKE INFORMED JUDGMENTS IN EXERCISING THEIR RIGHT TO VOTE, SUCH APPROVAL DOES NOT CONSTITUTE A GUARANTEE BY THE BANKRUPTCY COURT OR THE DEBTORS THAT THE CONTENTS OF THIS DISCLOSURE STATEMENT ARE ACCURATE, NOR DOES SUCH APPROVAL CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS AND MERITS OF THE PLAN. YOU SHOULD CONSULT LEGAL COUNSEL OF YOUR CHOICE SHOULD YOU HAVE ANY QUESTIONS ABOUT THE PLAN OR DISCLOSURE STATEMENT.

A. Voting on the Plan

THE DEBTORS AND THE CREDITORS' COMMITTEE SUPPORT THE PLAN AND URGE YOU TO VOTE TO ACCEPT THE PLAN.

1. Only Impaired Classes Vote

Pursuant to the provisions of the Bankruptcy Code, only classes of claims and equity interests that are "impaired" under a chapter 11 plan may vote to accept or reject the plan. Generally, a claim or interest is impaired under a plan if the holder's legal, equitable or contractual rights are changed under such plan. In addition, if the holders of claims or interests

in an impaired class do not receive or retain any property under a plan on account of such claims or interests, such impaired class is deemed to have rejected the plan under section 1126(g) of the Bankruptcy Code.

Chapter 11 does not require that each holder of a claim or interest in a particular class vote in favor of a plan in order for the Bankruptcy Court to determine that the class has accepted the plan. Rather, a class of claims will be determined to have accepted the plan if the Bankruptcy Court determines that the plan has been accepted by a majority in number and two-thirds in dollar amount of those claims actually voting in such class. **In the Chapter 11 Cases, only the holders of Claims who actually vote will be counted as either accepting or rejecting the Plan.**

2. Eligibility to Vote

The Plan classifies Claims and Interests in the following classes:

Class	Description
Unclassified	Administrative Claims
Unclassified	Fee Claims
Unclassified	Priority Tax Claims
Class 1	Allowed Secured Claims
Class 2	Allowed Priority Claims
Class 3A	Allowed General Unsecured Claims against Midway
Class 3B	Allowed General Unsecured Claims against the Subsidiary Debtors
Class 4	Shall consist of the NAI Subordinated Claim to the extent it is an Allowed Claim
Class 5	Interests

Only Classes that are Impaired and eligible to receive a Distribution are entitled to vote under the Plan. Under the Plan, holders of Classes 3A and 3B Claims are Impaired and entitled to vote. Holders of Class 1 Claims and Class 2 Claims are conclusively presumed to have accepted the Plan because they are unimpaired. The holder of the Class 4 Claim will receive no distribution under the Plan and is conclusively presumed to have rejected the Plan. Holders of Class 5 Interests will receive no distribution under the Plan and are conclusively presumed to have rejected the Plan.

3. Voting Procedures

Holders of Class 3A and Class 3B Claims will receive, along with the Disclosure Statement, a Bankruptcy Court-approved ballot (a "Ballot") and a notice setting forth, among other things, the time frame within which acceptances and rejections of the Plan must be received. Holders of Class 1, Class 2, Class 4 and Class 5 Claims or Interests will receive notice of the Plan and the Disclosure Statement, but no Ballot. If you believe you are entitled to but have not yet received the Plan package or the solicitation package, contact the Debtors' Balloting Agent, Epiq Bankruptcy Solutions, LLC at Midway Games Inc. Ballot Processing Center, c/o

Epiq Bankruptcy Solutions, 757 Third Avenue, 3rd Floor, New York, NY 10017; (646) 282-2400. Information also can be obtained at <http://chapter 11.epiqsystems.com/midwaygames>.

To be counted, an original Ballot must be signed and received at the address set forth on the enclosed pre-addressed envelope on or before May 3, 2010 at 5:00 p.m. prevailing Eastern Time. A Ballot that does not indicate either an acceptance or rejection of the Plan will not be counted unless there is clear and unequivocal evidence establishing the intent of the voter to vote in favor of the Plan. A Ballot transmitted by facsimile or email will not be accepted or counted.

If you filed multiple proofs of Claim against the Debtors, you may receive more than one Ballot. The delivery of Ballots does not constitute an admission by the Debtors that the recipients of such Ballots hold Claims that have been allowed either for Distribution or voting purposes. In addition, the fact that a party does not receive a Ballot is no indication as to whether or not that party does or does not have a valid Claim. The Debtors reserve their rights to object to any Claim.

4. Hearing on Confirmation of Plan

The Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan on **May 21, 2010 at 2:00 p.m.**, prevailing Eastern Time, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street Mall, Sixth Floor, Wilmington, DE 19801. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without notice other than an announcement of an adjournment made at the Confirmation Hearing or at any subsequently adjourned Confirmation Hearing. If you have any questions as to whether the Confirmation Hearing is going forward as scheduled, you should contact Michael D. DeBaecke, Esquire, counsel for the Debtors, at (302) 425-6400.

The Bankruptcy Court has directed that any objections to Confirmation of the Plan be filed with the Bankruptcy Court on or before **May 7, 2010 at 4:00 p.m.** prevailing Eastern Time, with copies to be served upon (a) counsel for the Debtors, Blank Rome, LLP, 1201 North Market Street, Suite 800, Wilmington, DE 19801, Attn: Michael D. DeBaecke, Esquire, Facsimile Number: (302) 425-6464; and (b) counsel to the Creditors' Committee, Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30th Floor, Los Angeles, California, Attn: David B. Zolkin, Esquire, Facsimile Number: (213) 892-4710; so that copies of the objections are received by such persons **on or before May 7, 2010 at 4:00 p.m. prevailing Eastern Time.**

B. General Overview of the Plan

The key elements of the Plan include, among other things, the following:

Distributions to Creditors. The Plan will be funded by the proceeds previously generated from the Debtors' ongoing operations during the Chapter 11 Cases, together with the proceeds generated from the consummation of the Sale Transactions with the Purchasers. As of March 19, 2010, the Debtors had approximately \$36 million in Available Cash, which amount may increase or decrease over time. Available Cash together with the proceeds of any remaining Assets, including the Creditors' Committee Action, will be used to fund

Distributions to holders of Allowed Claims. The Plan is premised on the Debtors' ability to pay each holder of an Allowed Claim other than Allowed Claims in Classes 3A, 3B and Class 4, in full and to pay holders of Allowed Claims in Classes 3A and 3B their Pro Rata share of the remaining Available Cash in the Distribution Fund subject to the agreed upon proposed Creditors' Committee Settlement. Allowed Claims in Class 4 will receive no distributions under the Creditors' Committee Settlement. As a result of the Distributions to be made under the Plan, holders of Allowed Claims will have no further recourse against the Debtors or their Estates or against the Liquidating Trust or Liquidating Trust Funds.

Winding Up of Affairs of Debtors; Appointment of Liquidating Trustee. The Plan is a liquidating plan. Post-Confirmation, the Debtors will transfer all of their Assets to the Liquidating Trust. Among other things, the Liquidating Trustee will review and potentially object to Claims; will from time to time make interim or final Distributions to the holders of Allowed Claims entitled to receive the same; and will prosecute the Liquidating Trust Claims. The Debtors and the Liquidating Trustee will take all steps and execute all instruments and documents necessary to effectuate the Plan including Distributions to be made under the Plan and the winding up of the residual affairs of the Debtors.

Formation of Liquidating Trust and Pursuit of Litigation against Third Parties. As more fully set forth in Section H, the Creditors Committee initiated litigation (the "Creditors Committee Action") against a number of third parties – including a number of former directors of Midway and the former controlling shareholders of Midway. The Plan provides that the Liquidating Trustee will succeed as plaintiff in the Creditors Committee Action and prosecute that litigation and other claims and Causes of Action (collectively, the "Liquidating Trust Claims"), for the benefit of the Liquidating Trust Beneficiaries. See pages 32-34 below for additional information regarding the Creditors' Committee Action.

Cancellation of Equity Interests. Interests are classified in Class 5 under the Plan. No holders of Interests in Midway or any of the Subsidiary Debtors shall receive any Distribution of any kind under the Plan on account of such Interests and all such Interests shall be cancelled. On the Effective Date, all warrants, options or other contractual rights to purchase an Interest in Midway or any Subsidiary Debtor shall be deemed cancelled and of no further force or effect. To the extent Midway owns Interests in the Subsidiary Debtors, those Interests will be cancelled and of no further force and effect.

C. Summary of Proposed Treatment and Distribution Under the Plan

The proposed classification and treatment of Claims and Interests under the Plan are summarized in the table below. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Fee Claims and Priority Tax Claims have not been classified. For a discussion of certain additional matters related to Administrative Claims, Fee Claims and Priority Tax Claims, see "The Debtors' Plan of Liquidation – Classification and Treatment of Claims and Interests."

The following chart summarizes the proposed Distributions under the Plan:

CLASS	TYPE OF CLAIM OR INTEREST	TREATMENT
1	Secured Claims	On the Effective Date, or as soon as practicable thereafter, each holder of an Allowed Class 1 Claim will receive either (i) Cash in an amount equal to the amount of the Claim or (ii) return of the collateral securing such Allowed Claim. The Debtors estimate that Allowed Secured Claims will total approximately \$100,000.
2	Priority Claims	On the Effective Date, or as soon as practicable thereafter, each holder of an Allowed Class 2 Claim will receive Cash in an amount equal to the face amount of such Allowed Claim. The Debtors estimate that Allowed Priority Claims will total approximately \$500,000.
3A	General Unsecured Claims Against Midway	On the Effective Date, or as soon as practicable thereafter, each holder of an Allowed Class 3A Claim against Midway will receive its Pro Rata share of Net Distributable Value in the Distribution Fund, pursuant to the terms of the Creditors' Committee Settlement. The Debtors estimate that Allowed Class 3A Claims will total approximately \$155 million.
3B	General Unsecured Claims Against the Subsidiary Debtors	On the Effective Date, or as soon as practicable thereafter, each holder of an Allowed Class 3B Claim against any of the Subsidiary Debtors will receive its Pro Rata share of Net Distributable Value in the Distribution Fund pursuant to the terms of the Creditors' Committee Settlement. The Debtors estimate that Allowed Class 3B Claims will total approximately \$37 million.
4	NAI Subordinated Claim	The NAI Subordinated Claim is structurally subordinate to the Class 3B Claims and contractually subordinate to the Claims of the Noteholders which constitute substantially all of the Class 3A Claims. Midway is a holding company and substantially all of its Assets were owned by its subsidiaries. Because of the substantial disparity between the NDV and the total amount of Class 3A and Class 3B Claims, it is highly unlikely there would ever be Assets available to make a Distribution to the holders of Allowed Class 4 Claims. Therefore, the Class 4 Claim has been disregarded for purposes of the Creditors' Committee Settlement. The Class 4 Claim will not receive any Distribution or retain any property under the Plan.

Because the NDV is far less than the total amount of expected Allowed Class 3A and Class 3B Claims against the Debtors, holders of Class 5 Interests will not receive any Distribution or retain any property under the Plan on account of their Interests and such Interests will be cancelled.

D. Confirmation Requirements

The Plan will only be confirmed if the Bankruptcy Court determines that all of the Confirmation requirements contained in the Bankruptcy Code have been met or are inapplicable. The requirements for confirmation are set forth in Section 1129 of the Bankruptcy Code. These requirements include, among others, that the Plan is (a) accepted by all impaired classes of claims and Interests or, if rejected by an impaired class, the Plan does not “discriminate unfairly” and is “fair and equitable” as to such class, (b) feasible and (c) in the “best interests” of creditors impaired under the Plan.

1. Acceptance by Impaired Classes

A claim or interest is impaired under a plan unless: (a) the applicable creditor’s or interest holder’s legal, equitable, and contractual rights are left unaltered and there has been no default respecting the applicable claim or interest (other than under a bankruptcy or financial condition clause); or (b) all defaults are cured, maturity dates are reinstated, the party is compensated for damages caused by the default (such as by paying reasonable attorneys’ fees and collection costs) and the party’s legal, equitable and contractual rights are left unaltered. Claims in Classes 3A, 3B and 4 and Class 5 Interests are Impaired. Holders of Class 4 Claims and Class 5 Interests will receive no Distribution under the Plan and thus will be deemed to have rejected the Plan. Holders of Claims in Classes 3A and 3B shall receive Distributions under the Plan, are Impaired, and, thus, are entitled to vote on the Plan. The Debtors seek to confirm the Plan under Section 1129(a) of the Bankruptcy Code. If either Class 3A or Class 3B (but not both) vote to accept the Plan, to the extent not otherwise provided in the Plan, the Debtors intend to rely on the cram down provisions of Section 1129(b) of the Bankruptcy Code to seek Confirmation of the Plan.

The Debtors and the Creditors’ Committee each believe that the Plan provides the maximum recovery for Allowed Claims in Classes 3A and 3B and therefore recommend that holders of Class 3A and Class 3B Claims vote to accept the Plan.

2. Feasibility

Section 1129(a)(ii) requires that confirmation of a plan is either not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors. Here, the Debtors are liquidating pursuant to the Plan. For purposes of determining whether the Plan meets this requirement, the Debtors have analyzed their ability to meet their obligations under the Plan. Given the Cash and other Assets the Debtors currently or will have on hand, the Debtors believe they will meet their obligations under the Plan and that the Plan is feasible.

3. Creditors' Committee Settlement

Upon entry of a Confirmation Order, the Bankruptcy Court will approve the Plan. In doing so, the Bankruptcy Court also will approve the proposed Creditors' Committee Settlement among the holders of Class 3A and Class 3B Claims. See pages 38-40 below and Section 6.09 of the Plan for additional information regarding the Creditors' Committee Settlement. The proposed Creditors' Committee Settlement is an integral part of the Plan.

The principal terms of the proposed Creditors' Committee Settlement were reached following arms length and sensitive negotiations between the respective members of the Creditors' Committee that hold Class 3A Claims and those members that hold Class 3B Claims. Each of those creditor constituencies were represented in the negotiations by able and experienced counsel. The Debtors were not party to those negotiations.

The Class 3A Claims against parent Midway primarily are comprised of the Notes (\$150 million aggregate principal amount). The Class 3B Claims against the Subsidiary Debtors primarily are comprised of the general unsecured claims of trade creditors and former employees for items such as unpaid vacation pay.

Absent approval of the Plan and proposed Creditors' Committee Settlement, certain creditors and parties in interest in these Chapter 11 Cases may choose to litigate complex legal and factual issues such as (i) whether substantive consolidation of the Debtors' Estates is appropriate, (ii) whether certain intercompany claims asserted by parent Midway against one or more of the Subsidiary Debtors should be subject to recharacterization or equitable subordination, and (iii) how to properly allocate among the Debtors' Estates the proceeds generated from the Warner Sale Transaction (as defined in Section 2.D.9.a below) and other court-approved transactions. Battles over the foregoing and other legal and factual issues could be very expensive and time-consuming, with no assurances of success on either side. Such battles also would delay significantly the actual receipt of distributions by holders of Allowed Class 3A and Class 3B Claims.

Based upon the foregoing, the Creditors' Committee believes that the Creditors' Committee Settlement is in the best interests of Class 3A and Class 3B creditors and therefore, holders of Class 3A and Class 3B Claims are urged to vote in favor of the Plan.

To the extent necessary, the Plan constitutes a motion for approval of the proposed Creditors' Committee Settlement pursuant to Bankruptcy Rule 9019 and section 1123(b) of the Bankruptcy Code and is consistent with section 1129 of the Bankruptcy Code. Entry of the Confirmation Order, subject to the occurrence of the Effective Date, will constitute an order of the Bankruptcy Court finding and determining that such compromise and settlement (a) is in the best interests of the Debtors, their Estates, and creditors holding Claims in Class 3A and Class 3B, (b) fair, equitable and reasonable, (c) made in good faith and (d) approved by the Bankruptcy Court.

(a) *Initial Assumptions.* Distributions on account of Allowed Class 3A Claims and Class 3B Claims are based upon the following initial preliminary assumptions (the "Initial Assumptions"):

- i) Net Distributable Value (“NDV”) available to holders of Class 3A Claims and Class 3B Claims after payment of all Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Claims, Allowed Priority Tax Claims, Allowed Fee Claims and the Liquidating Trust Reserve, is estimated to be \$34.67 million;
- ii) Aggregate Allowed Class 3A Claims of \$154.82 million.
- iii) Aggregate Allowed Class 3B Claims of \$36.66 million.

(b) *Substantive Consolidation.* The Estates are to be substantively consolidated, Intercompany Claims are to be extinguished and cancelled as of the Effective Date and will receive no Distribution, and Class 4 Claims shall receive no Distribution as set forth in the Plan.

(c) *Treatment/Distribution of Class 3A and Class 3B Creditors.* Creditors holding Allowed Class 3A Claims and Class 3B Claims would realize the following amounts and percentages **based upon the Initial Assumptions:**

- i) Each Creditor holding an Allowed Class 3A Claim will receive, on a Pro Rata basis with other Creditors holding Allowed Class 3A Claims, its share of approximately \$25.5 million of NDV, **representing an estimated 16.5% recovery on its Allowed Class 3A Claim;**
- ii) Each Creditor holding an Allowed Class 3B Claim will receive, on a Pro Rata basis with other Creditors holding Allowed Class 3B Claims, its share of approximately \$9.2 million of NDV, **representing an estimated 25% recovery on its Allowed Class 3B Claim.**
- iii) In the event NDV increases or decreases from the figure set forth in the Initial Assumptions, Distributions to Allowed Class 3B Claims and to Allowed Class 3A Claims will be adjusted ratably such that the ratio of each Class’ aggregate respective recovery will remain unchanged until all Allowed Class 3B Claims have been paid in full.
- iv) In the event that either or both of the aggregate Allowed Class 3A Claims or Allowed Class 3B Claims increase or decrease from the amounts identified in the Initial Assumptions, Distributions to holders of such Allowed Claims will be adjusted such that the ratio of each Class’ aggregate respective recovery will remain unchanged until all Allowed Class 3B Claims have been paid in full.

Attached as Exhibit A to the Plan are recovery sensitivity tables which show the recoveries to holders of Allowed Class 3A Claims and holders of Allowed Class 3B Claims based upon changes to any of the components comprising the Initial Assumptions.

(d) As part of the proposed Creditors' Committee Settlement, the Liquidating Trustee shall pay in full in Cash, on or as soon as reasonably practicable after the Effective Date, without application to or approval of the Bankruptcy Court and without a reduction to the recoveries of the holders of the Notes, all Indenture Trustee Fees up to a maximum amount of \$425,000.00. Counsel for the Indenture Trustee represented the Class 3A Committee Representatives in the negotiations that led to the Creditors' Committee Settlement. Notwithstanding the foregoing, to the extent any Indenture Trustee Fees are not paid by the Liquidating Trustee, the Indenture Trustee may assert its charging lien against any recoveries received on behalf of the holders of the Notes for payment of such unpaid amounts.

As part of the proposed Creditors' Committee Settlement, the Liquidating Trustee also shall pay in full in Cash, on or as soon as reasonably practicable after the Effective Date, without application to or approval of the Bankruptcy Court, all reasonable attorneys' fees and expenses up to a maximum amount of \$125,000 that were incurred by the NBA in connection with the Chapter 11 Cases since the Petition Date. Counsel for the NBA represented the Class 3B Committee Representatives in the negotiations that led to the Creditors' Committee Settlement.

(e) As part of the proposed Creditors' Committee Settlement, from and after the Effective Date, the Indenture Trustee shall be exculpated from any claims, causes of action and other assertions of liability arising out of the exercise and discharge (or the omission) of the powers and duties conferred upon such Indenture Trustee by the Indenture or this Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of this Plan, or applicable law, including without limitation in connection with the negotiation of any terms of this Plan, including, in particular, the terms of the Creditors' Committee Settlement embodied herein, except for any act, omission, transaction, agreement, event or other occurrence constituting willful misconduct, gross negligence, fraud or criminal conduct of the Indenture Trustee. No holder of a Claim or other party in interest shall have or pursue any claim or cause of action against the Indenture Trustee for making Distributions in accordance with the Creditors' Committee Settlement, this Plan, or for otherwise implementing the provisions of this Plan.

(f) As part of the proposed Creditors' Committee Settlement, as of the Effective Date, each holder of a Claim that votes in favor of the Plan shall be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, or then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or prior to the Effective Date in any way relating to the Notes, the Debtors, and the Chapter 11 Cases, including without limitation in connection with the negotiation of any terms of this Plan, including, in particular, the terms of the Creditors' Committee Settlement embodied herein, that such Person has, had or may have, against the Indenture Trustee and any of its respective present or former directors, officers, employees, agents, representatives, attorneys, accountants, underwriters, investment bankers or financial advisors and any of their respective successors or assigns; provided, however, that the releases

set forth herein will have no effect on the liability of the Indenture Trustee arising from any act, omission, transaction, agreement, event or other occurrence constituting willful misconduct, gross negligence, fraud or criminal conduct of the Indenture Trustee.

(g) As of and on the Effective Date, the Debtors, their Estates, and any of their successors, assigns or representatives, shall be deemed to have waived, released and discharged all rights or claims, whether based upon tort, fraud, contract or otherwise, and whether arising out of the Chapter 11 Cases, cash collateral orders, or otherwise, including without limitation in connection with the negotiation of any terms of this Plan, including, in particular, the terms of the Creditors' Committee Settlement embodied herein, which they possessed or may possess prior to the Effective Date against the Indenture Trustee, and its present or former directors, officers, employees, agents, representatives, attorneys, accountants, underwriters, investment bankers or financial advisors, and any of their respective successors or assigns; provided, however, that the release set forth herein will have no effect on the liability of the Indenture Trustee arising from any act, omission, transaction, agreement, event or other occurrence constituting willful misconduct, gross negligence, fraud or criminal conduct of the Indenture Trustee.

ALTHOUGH THE DEBTORS AND CREDITORS' COMMITTEE BELIEVE THAT THE ABOVE ESTIMATED PRO RATA RECOVERIES FOR THE HOLDERS OF ALLOWED CLASS 3A AND CLASS 3B CLAIMS ARE REASONABLE, THE FINAL AMOUNTS OF ALLOWED CLAIMS IN EACH CLASS MAY MATERIALLY EXCEED, AND/OR THE ACTUAL AMOUNT OF NDV MAY BE MATERIALLY LESS THAN THE ESTIMATED AGGREGATE AMOUNTS STATED IN THE INITIAL ASSUMPTIONS ABOVE AND, THEREFORE, POSSIBLY DECREASE THE ESTIMATED PRO RATA RECOVERY FOR SUCH HOLDERS. Actual recoveries under the Plan will be dependent upon a variety of factors including, but not limited to, whether, and to what extent, Disputed Claims are resolved in favor of the Debtors rather than the creditors asserting such Disputed Claims, and of course the outcome of any litigation pursued by the Liquidating Trustee. Accordingly, no representation can be or is being made with respect to whether each estimated recovery shown above actually will be realized by the holders of Allowed Class 3A and 3B Claims.

4. Best Interests Test

Under the Bankruptcy Code, confirmation of the Plan requires that each creditor or equity interest holder in an impaired class either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value that such creditor or equity interest holder would receive or retain if the Debtors were liquidated under Chapter 7.

To determine what the holders of Claims and Interests in each impaired class would receive if the Debtors were liquidated, the court must determine the dollar amount that would be generated from a liquidation of the Assets in the context of a hypothetical liquidation under Chapter 7. Such determination must take into account the fact that Secured Claims, the costs and expenses of the Chapter 7 Cases, Chapter 11 Administrative Claims, Priority Claims, Priority Tax Claims, and Fee Claims must be paid in full before any proceeds could be made available to pay General Unsecured Claims. Absent the Creditors' Committee Settlement, it is

unclear what Distributions could be made to holders of Allowed Class 3A and Class 3B Claims and in what timeframe.

To determine if the Plan is in the best interests of each impaired class, the present value of Distributions from the proceeds of the hypothetical liquidation of the Assets of the Debtors (after subtracting the amounts attributable to secured claims and costs and expenses of the Chapter 11 Cases) must be compared with the present value of the consideration offered to such Classes under the Plan. After consideration of the likely effects a Chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, the Debtors with the full consent and approval of the Creditors Committee have determined that confirmation of the Plan will provide each holder of a Claim in an impaired class with at least as much of a Distribution as such holder would receive pursuant to a Chapter 7 liquidation. A liquidation analysis prepared by FTI Consulting is attached as Exhibit "B" to the Plan.

The Debtors believe that liquidation under Chapter 7 of the Bankruptcy Code would result in no greater distributions than those provided for in the Plan. Indeed, and by virtue of the Creditors' Committee Settlement set forth above the Plan may provide for a greater Distribution than may be available to the holders of a particular Class 3A or Class 3B Claim in a Chapter 7 liquidation with no deemed substantive consolidation, and Distributions under the Plan would be more certain and would be made in a more timely manner. If the Chapter 11 Cases are converted to cases under Chapter 7 of the Bankruptcy Code, the Debtors believe there is a reasonable likelihood of significant disputes over items such as the proper allocation of value among the respective estates, potential equitable subordination of certain claims, and potential recharacterization of certain claims. It is unknown whether the Chapter 7 estates would be administered by a single Chapter 7 trustee or by multiple Chapter 7 trustees with competing claims and positions. Regardless, the Creditors' Committee Settlement should save the estates hundreds of thousands, and, perhaps, millions of dollars in avoiding litigation over such complex and fact intensive issues for which there would be little certainty in the outcome. Moreover, the Creditors' Committee Settlement ensures that available assets will be distributed promptly to creditors without further material diminution by the fees of estate professionals.

The Debtors and the Creditors' Committee believe that the Plan satisfies all applicable requirements of Section 1129(a) of the Bankruptcy Code.

E. Cram Down

Under Section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may confirm the Plan if (a) at least one class of impaired Claims or Interests has accepted the Plan (with such acceptance determined without taking into account the acceptance of any "insider" in that class) and (b) the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of Claims or Interests that is impaired under, and has not accepted, the Plan.

As used by the Bankruptcy Code, the phrases "discriminate unfairly" and "fair and equitable" have narrow and specific meanings unique to bankruptcy law. A plan does not discriminate unfairly if claims or interests in different classes but with similar priorities and characteristics receive or retain property of similar value under a plan. By establishing separate Classes for the holders of each type of Claim and by treating each holder of a Claim in each class

identically, the Plan has been structured so as to meet the “unfair discrimination” test of Section 1129(b) of the Bankruptcy Code.

The Bankruptcy Code sets forth different standards for establishing that a plan is “fair and equitable” with respect to a dissenting class, depending on whether the class is comprised of secured or unsecured claims or interests. In general, Section 1129(b) of the Bankruptcy Code permits confirmation notwithstanding non-acceptance by an impaired class if that class and all junior classes are treated in accordance with the “absolute priority” rule, which requires that claimants in the dissenting class be paid in full before a junior class may receive anything under the plan. In this case the Creditors’ Committee has actively participated in negotiations of the Plan, and no class junior to Classes 3A and 3B will receive any distribution under the Plan.

The Plan meets the foregoing requirements. First, the Plan does not discriminate between similarly situated Claims. Second, no class of Creditors under the Plan will receive more than one hundred (100%) percent of the amount of their Claims. Third, the Plan abides by the absolute priority rule.

Class 4 (NAI Subordinated Claim) and Class 5 (Interests) are deemed to reject the Plan because holders of Class 4 Claims and Class 5 Interests will not receive any Distribution nor retain any property under the Plan. If either Class 3A or Class 3B votes to accept the Plan, the Debtors reserve the right to seek Confirmation of the Plan in accordance with Section 1129(b) of the Bankruptcy Code as to any rejecting Class.

If the requirements set forth in Section 1129(b) of the Bankruptcy Code are met, the Bankruptcy Court is otherwise satisfied that the solicitation and the Plan conform to the requirements of the Bankruptcy Code, and the Plan is confirmed by the Bankruptcy Court and becomes effective, all holders of Impaired Claims and Interests (including those who rejected or were deemed to reject the Plan, and those who did not submit ballots to accept or reject the Plan) will be bound by the terms of the Plan.

F. Conditions to Plan Confirmation

Confirmation of the Plan shall not occur, unless and until each of the following conditions shall have been either satisfied or waived pursuant to Section 12.01 of the Plan:

a. The Bankruptcy Court shall have approved by Final Order this Disclosure Statement in form and substance reasonably acceptable to Debtors and the Creditors’ Committee; and

b. The Confirmation Order shall have been entered as a Final Order in form and substance reasonably acceptable to the Debtors and the Creditors’ Committee; and

c. The Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been filed in form and substance reasonably acceptable to the Debtors and the Creditors’ Committee.

G. Conditions to Effective Date

The Plan may not be consummated, and the Effective Date shall not occur, unless and until each of the following conditions shall have been either satisfied or waived pursuant to Section 12.02 of the Plan:

- a. The Confirmation Order shall have been entered by the Bankruptcy Court in form and substance reasonably acceptable to the Debtors and the Creditors' Committee and shall be a Final Order;
- b. The Liquidating Trust Agreement shall have been executed;
- c. All of the Assets shall have been transferred to the Liquidating Trust; and
- d. All other actions, documents, agreements and instruments necessary to commence implementation of the Plan shall have been received, recorded, executed, delivered and/or implemented.

H. Liquidating Trust

1. Establishment of the Liquidating Trust; Liquidating Trust Agreement

(a) *Establishment of Liquidating Trust.* On or prior to the Effective Date, the Debtors, the Creditors' Committee and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall take all other steps necessary to establish the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries in accordance with and pursuant to the terms of the Plan. The terms of the Liquidating Trust Agreement, together with the Plan, shall define the obligations, duties, compensation, indemnification and exculpation of the Liquidating Trustee in full.

(b) *Funding of Liquidating Trust.* The Liquidating Trust will be funded with all of the Assets, including the Liquidating Trust Claims, on the Effective Date.

(c) *Appointment of Liquidating Trustee.* The identity of the Liquidating Trustee will be designated in the Plan Supplement. The structure and governance of the Liquidating Trust shall be determined and will be set forth in the Liquidating Trust Agreement included in the Plan Supplement. The Liquidating Trustee shall be the sole representative of the Debtors with respect to Causes of Action for purposes of Section 1123(b)(3)(B) of the Bankruptcy Code and, upon the Effective Date, subject to the provisions of the Liquidating Trust Agreement, such Causes of Action shall be subject to the exclusive control and authority of the Liquidating Trustee. Any recoveries by the Liquidating Trust will be maintained in the Distribution Fund and distributed by the Liquidating Trustee to holders of Allowed Claims in accordance with the Plan and the Liquidating Trust Agreement. In the event the Liquidating Trustee is no longer willing or able to serve as trustee, then the Liquidating Trustee's successor shall be appointed by the Liquidating Trust Advisory Board in accordance with the Liquidating Trust Agreement and notice of the appointment of such successor Liquidating Trustee shall be filed with the Bankruptcy Court.

(d) *Provisions Applicable to Liquidating Trust.*

i) *Transfer and Vesting of Trust Assets in Liquidating Trust.*

Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date and periodically thereafter if additional Assets become available, the Debtors and the Creditors' Committee shall be deemed to have automatically transferred to the Liquidating Trust all of their right, title, and interest in and to all of such Assets, including, without limitation, the Liquidating Trust Claims, and in accordance with section 1141 of the Bankruptcy Code, all such Assets shall automatically irrevocably vest in the Liquidating Trust free and clear of all Claims and Liens, subject only to the Allowed Claims of the applicable Liquidating Trust Beneficiaries, as set forth in the Plan, and the reasonable fees and expenses of administering the applicable Liquidating Trust, including, without limitation, the reasonable fees and expenses of its Liquidating Trustee, as provided in the Liquidating Trust Agreement. Thereupon, the Debtors and Creditors' Committee shall have no interest in or with respect to such additional Assets or the Liquidating Trust. All rights in connection with the vesting and transfer of the Assets, including the Liquidating Trust Claims, and any attorney-client privileges, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidating Trust shall vest in the Liquidating Trust. The Liquidating Trust Claims shall also include any other claims or causes of action against third parties not presently asserted by the Debtors or Creditors' Committee. All bank accounts established by the Debtors shall be transferred to and held by the Liquidating Trustee on behalf of the Liquidating Trust Beneficiaries, subject to the provisions of the Plan and the Liquidating Trust Agreement. The Debtors, Creditors' Committee, and the Liquidating Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges, protections and immunities.

Notwithstanding the foregoing, for purposes of Section 553 of the Bankruptcy Code, the transfer of the Liquidating Trust Claims to the Liquidating Trust will not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Notwithstanding anything to the contrary in the Plan, the transfer of the Liquidating Trust Claims does not diminish, and fully preserves, any defenses a defendant would have if such Liquidating Trust Claims had been retained by the Debtors.

ii) *Preservation of Confidences and Attorney-Client Privilege.*

To effectively investigate, marshal, defend or pursue the Assets, including the Liquidating Trust Claims, the Debtors, the Creditors' Committee, the Liquidating Trust, the Liquidating Trustee, and the Liquidating Trust Advisory Board and all counsel thereto, must be able to exchange information with each other on a confidential basis and cooperate in common interest efforts without waiving any applicable privilege. Given the common interests of the parties and the Liquidating Trust's position as successor to the Assets, including the Liquidating Trust Claims, sharing such information in the manner described in the previous sentence shall not waive or limit any applicable privilege or exemption from disclosure or discovery related to such information. The Debtors, the Creditors' Committee, the Liquidating Trustee and the Liquidating Trust Advisory Board are authorized to take all necessary actions to effectuate the transfer of such privileges. The Confirmation Order will provide that the receipt by the Liquidating Trustee and the Liquidating Trust Advisory Board of transferred privileges shall be without waiver in recognition of the joint and/or successorship interest in prosecuting claims on behalf of the Debtors' Estates. Notwithstanding any agreement or order entered by the Bankruptcy Court to the contrary, the Creditors' Committee will be permitted to share any discovery obtained prior to and after the Effective Date with the Liquidating Trustee and the Liquidating Trustee Advisory Board.

iii) *Treatment of Liquidating Trust for U.S. Federal Income Tax Purposes; No Successor-in-Interest.*

The Liquidating Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treasury Regulation Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Accordingly, the Liquidating Trustee shall in an expeditious but orderly manner, liquidate and convert to Cash the Assets, including, the Liquidating Trust Claims, make timely distributions of the proceeds therefrom to the Liquidating Trust Beneficiaries and not unduly prolong its duration. The Liquidating Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth in the Plan or in the Liquidating Trust Agreement.

The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating

Trust. For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Assets by the Debtors to the Liquidating Trust as a transfer of such assets by the Debtors to the Liquidating Trust Beneficiaries entitled to distributions from the Liquidating Trust Assets, followed by a transfer by such beneficiaries to the Liquidating Trust. Thus, the Liquidating Trust Beneficiaries shall be treated as the grantors and owners of a grantor trust for U.S. federal income tax purposes.

As soon as practicable after the Effective Date, the Liquidating Trustee (to the extent that he or she deems it necessary or appropriate in his or her sole discretion) shall value the Assets in the Liquidating Trust, based on the good faith determination of the Liquidating Trustee, and shall apprise his or her Liquidating Trust Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets in the Liquidating Trust.

iv) *Investment and Distribution of Liquidating Trust Assets.*

The right and power of the Liquidating Trustee to invest the Assets transferred to the Liquidating Trust, the proceeds thereof, or any income earned by the Liquidating Trust, shall be limited to the right and power to (i) invest such Assets (pending distributions in accordance with the Plan) in investments consistent with Section 345 of the Bankruptcy Code and which are (a) direct obligations of, or obligations guaranteed by, the United States of America, or which are (b) obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; provided, however, that the scope of any such permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise (collectively, the "Permissible Investments").

Subject to the provisions of Article XI of the Plan, the Liquidating Trustee shall distribute to the Liquidating Trust Beneficiaries all Available Cash plus all net cash proceeds from the subsequent liquidation of the Assets (including as Cash for this purpose, all

Cash equivalents) at such time intervals as decided by the Liquidating Trustee following consultation with the Liquidating Trust Advisory Board, pursuant to and in accordance with the terms of the Plan and the Liquidating Trust Agreement. The Liquidating Trustee shall make distributions from the Liquidating Trust no less frequently than once per twelve-month period, such period to be measured from the Effective Date; *provided, however*, that the Liquidating Trustee may, following consultation with the Liquidating Trust Advisory Board, cause the Liquidating Trust to retain an amount of net cash proceeds or net cash income reasonably necessary to maintain the value of its Assets or to meet Claims and contingent liabilities (including Disputed Claims). The Liquidating Trustee may also determine that in a given period or on the anniversary of the Effective Date, there are insufficient assets to make a Distribution.

In accordance with and subject to the provisions of the Liquidating Trust Agreement, upon the creation of the Liquidating Trust, the Liquidating Trustee shall reserve no less than the Liquidating Trust Fund Reserve Amount to finance the operations and administration of the Liquidating Trust.

The Liquidating Trustee shall require any Liquidating Trust Beneficiary or other distributee to furnish to the Liquidating Trustee in writing its Employer or Taxpayer Identification Number as assigned by the IRS and the Liquidating Trustee may condition any distribution to any Liquidating Trust Beneficiary or other distributee upon receipt of such identification number.

v) *Liquidating Trustee's Authority and Duties.*

From and after the Effective Date, the Liquidating Trustee shall serve as trustee of the Liquidating Trust, and shall have all powers, rights and duties of a trustee, as set forth in the Liquidating Trust Agreement. Among other things, the Liquidating Trustee shall, subject to the Liquidating Trust Agreement: (a) administer the Plan; (b) hold and administer the Assets, including the Liquidating Trust Claims, (c) subject to the obligation to consult with the Liquidating Trust Advisory Board, have the sole authority and discretion on behalf of the Liquidating Trust to evaluate and determine strategy with respect to any and all Liquidating Trust Claims, and to litigate, settle, transfer, release or abandon and/or compromise in any manner any and all such Liquidating Trust Claims on any terms and conditions as it may determine in good faith based on the best interests of the Liquidating Trust Beneficiaries, (d) have the power and authority to retain, as an expense of the Liquidating Trust, attorneys, advisors, other

professionals and employees as may be appropriate to perform the duties required of the Liquidating Trustee hereunder or in the Liquidating Trust Agreement, (e) invest, segregate, deposit, reserve and distribute Cash, (f) make distributions to the Liquidating Trust Beneficiaries as provided in the Liquidating Trust Agreement and the Plan, (g) have the right to receive reasonable compensation for performing services as the Liquidating Trustee and to pay the reasonable fees, costs and expenses of any counsel, professionals, advisors or employees as may be necessary to assist the Liquidating Trustee in performing the duties and responsibilities required under the Plan and the Liquidating Trust Agreement, (h) file, litigate, settle, compromise or withdraw objections to Claims, (i) have the right to provide periodic reports and updates to the Liquidating Trust Board and the Liquidating Trust Beneficiaries regarding the status of the administration of the Assets, including, the Liquidating Trust Claims, and the liabilities and transfers of the Liquidating Trust, (j) file customary quarterly reports with the Bankruptcy Court within forty-five (45) days of the end of the applicable quarterly period and serve copies of such reports on Persons requesting written notice thereof, (k) pay quarterly fees when due to the Office of the United States Trustee until the earliest to occur of a Debtor's case being closed, converted, or dismissed, and (l) file appropriate tax returns.

The Liquidating Trustee may also consult the Liquidating Trust Advisory Board at such times and with respect to such issues relating to the conduct of the Liquidating Trust as the Liquidating Trustee considers desirable and in accordance with the terms of the Liquidating Trust Agreement.

vi) *Sale, Transfer or Abandonment of Non-Cash Property.*

Any non-Cash property of the Estates may be sold, transferred or abandoned by the Liquidating Trustee, so long as such sale, transfer or abandonment complies with the terms of the Plan and requirements of the Bankruptcy Code and applicable law. Notice of such sale, transfer, or abandonment shall be provided to the Bankruptcy Court, the U.S. Trustee, and any necessary governmental agencies. If, in the Liquidating Trustee's judgment, any non-Cash property cannot be sold in a commercially reasonable manner, the Liquidating Trustee shall have the right to abandon or otherwise dispose of such property, including by donation of such property to a charity or a local state or county Person. Except in the case of willful misconduct or gross negligence, no Person or party in interest shall have a cause of action against the Liquidating Trustee, arising from or related to

the disposition of non-Cash property in accordance with the terms of the Plan.

vii) *Termination of Liquidating Trust.*

The Liquidating Trust will terminate as soon as practicable, but in no event later than the fifth (5th) anniversary of the Effective Date; provided, however, that, on or prior to the date of such termination, the Bankruptcy Court, upon motion by a party-in-interest, may extend the term of the Liquidating Trust for a finite period, if such an extension is necessary to liquidate the Assets or for other good cause. Notwithstanding the foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is obtained prior to the expiration of each extended term; provided further, however, that the Liquidating Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a grantor trust for U.S. federal income tax purposes.

viii) *Termination of Liquidating Trustee.*

The duties, responsibilities and powers of the Liquidating Trustee shall terminate in accordance with the terms of the Liquidating Trust Agreement.

ARTICLE II

BACKGROUND ON THE DEBTORS, CERTAIN EVENTS LEADING TO BANKRUPTCY, AND CERTAIN KEY DEVELOPMENTS DURING THE CHAPTER 11 CASES

A. The Debtors' Business and Overview of the Debtors' Operations

Midway was incorporated on July 15, 1988. Midway, through the Subsidiary Debtors, developed and published video games in the interactive entertainment software market. The Debtors distributed and sold video games primarily in North America, Europe, Asia and Australia for ultimate use on home consoles, handheld devices and personal computers, including Microsoft's Xbox 360, Nintendo's Wii and Nintendo DS, and Sony's PlayStation 3 and PlayStation Portable, and previous-generation home consoles including Microsoft's Xbox, Nintendo's GameCube and Sony's PlayStation 2. Customers included mass merchandisers, video rental retailers, software specialty retailers, internet based retailers and entertainment software distributors.

The video games marketed and sold by Debtors were developed either internally by Debtors' employee teams and/or in conjunction with third party developers who entered into contracts with the Debtors for the development of games. The Debtors also entered into agreements wherein the Debtors paid for rights to utilize the software and/or services of third

party inventory manufacturers, video game platform manufacturers and intellectual property owners, and other third party providers in connection with the development, marketing, publishing and sale of the Debtors' products. As of the Petition Date, the Debtors' product development efforts were focused on the creation of a portfolio of titles in the action/fighting, open-world and casual/handheld video game genres. Some of the more well-known and popular games developed or published by the Debtors in recent years included: *Mortal Kombat vs. DC Universe*, *TNA iMPACT!*, *Unreal Tournament 3*, *Game Party*, *Stranglehold*, *Blacksite: Area 51* and *The Wheelman*.

In addition to game sales, the Debtors earned license and royalty revenue from licensing to third parties the rights to some of their video games and related intellectual property, such as plots, artwork, brands, characters and titles.

In addition to the Subsidiary Debtors, Midway also had subsidiaries located in the United Kingdom, Australia, Germany, France and Canada. As of the Petition Date, only the subsidiaries located in the United Kingdom, Germany and France (the "Foreign Subsidiaries") were actively engaged in the business. One of the foreign subsidiaries in the United Kingdom operated a development studio which had developed *The Wheelman* game. The other three foreign subsidiaries in the United Kingdom, Germany and France merely marketed and distributed games.

B. Capital and Debt Structure

1. Credit Facilities

The Debtors' primary liabilities on a consolidated basis, as of the Petition Date, consisted of approximately \$153,000,000 in unsecured indebtedness owed to the Noteholders, approximately \$106,000,000 in unsecured and subordinated debt, and approximately \$29 million in secured debt.

On February 29, 2008, Debtors MHE and MAG (collectively, the "Borrowers"), and Debtors Midway, Midway Games West, Midway Interactive, Midway Sales, Midway Home Studios, Surreal Software, Midway Austin, and Midway L.A. (collectively, the "U.S. Credit Parties") terminated the then existing amended and restated loan and security agreement among the Borrowers, the U.S. Credit Parties, the Lenders that were 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 among the Borrowers and U.S. Credit Parties on the one hand and National Amusement Inc. ("NAI") on the other hand (the "Secured Facility"). The Secured Facility provided the Debtors up to \$30 million of availability, including a \$20 million term loan and a revolving line of credit of up to \$10 million. The Secured Facility was secured by substantially all of the assets of the Debtors including some or all of the stock of Midway's non-U.S. subsidiaries. NAI is a Maryland corporation controlled by Sumner Redstone.

On February 29, 2008, Midway, as borrower, and NAI, as lender, entered into an unsecured loan agreement (the "Unsecured Facility") and a subordinated unsecured loan agreement (the "Subordinated Facility", and together with the Secured Facility and the Unsecured Facility, the "NAI Agreements"). The Unsecured Facility and Subordinated Facility

provided for \$40 million and \$20 million revolving lines of credit, respectively. Under the Unsecured Facility and Subordinated Facility, there were no pledges of collateral or guarantees. As of December 31, 2008, Midway had drawn \$40 million on four borrowings under the Unsecured Facility.

The Subordinated Facility provides that it is subordinated only in the event of the bankruptcy or insolvency of Midway and in such event is entitled to be repaid only after payment in full of the Unsecured Facility, the Secured Facility and the Notes. The NAI Agreements contained certain cash sweep provisions to the effect that cash in the Debtors' bank accounts in excess of a specified amount was automatically used on a weekly basis to repay borrowings under first the Subordinated Facility and then the Unsecured Facility (the "Cash Sweep").

In total, the three NAI facilities provided up to \$90 million in availability. As of the Petition Date, borrowings outstanding under the Secured Facility term loan and revolving line of credit totaled \$20 million and \$8,952,831, respectively, and borrowings outstanding under the Unsecured Facility and Subordinated Facility totaled \$40 million and \$19,978,746, respectively.

2. Factoring Arrangement

On September 15, 2008, Debtors MHE and MAG on the one hand and NAI on the other hand entered into a Factoring Agreement (as amended, the "Factoring Agreement") pursuant to which, inter alia, NAI agreed to purchase from MHE certain of its accounts receivable invoices, subject to certain eligibility criteria and certain other conditions precedent, up to a maximum of \$40 million at any one time (with availability under such commitment being replenished to the extent NAI received collections on purchased accounts receivable invoices).

The period during which MHE was able to sell accounts receivable invoices to NAI under the Factoring Agreement expired on December 31, 2008. As of the Petition Date, the Debtors were no longer factoring accounts receivable invoices under the Factoring Agreement, although certain payments received by the Debtors after the Petition Date on factored accounts receivable invoices remained subject to treatment under the terms of the Factoring Agreement.

3. 6.0% and 7.125% Notes

In addition to amounts owed by the Debtors under the Secured Facility, the Unsecured Facility and the Subordinated Facility, Midway on the one hand and Wells Fargo Bank, National Association as trustee ("Indenture Trustee") on the other hand are parties to separate Indentures dated as of (i) September 19, 2005 for Midway's 6.0% Convertible Senior Notes due 2025 (the "6.0% Notes") and (ii) May 30, 2006 for Midway's 7.125% Convertible Senior Notes due 2026 (the "7.125% Notes" and together with the 6.0% Notes, the "Notes"), respectively, each in the original principal amount of \$75 million. The borrowings under each of the Notes issuances by Midway were on an unsecured basis. The Offering Memorandum with respect to the Notes advised potential investors that the Notes would be structurally subordinate to the debts of any of the subsidiaries of Midway including the Subsidiary Debtors.

C. Summary of Events Leading to Chapter 11

1. Cost Reductions and Sale and Leaseback Transactions

Due to the challenging economic environment facing the Debtors' business and the video game industry generally, the management of Debtors decided it was in the Debtors' best interests to reduce costs and stabilize their business operations. In August 2008, Midway cancelled production of a specific game which resulted in a workforce reduction in its Austin, Texas development studio.

During January 2008, Midway's Board of Directors approved a sale and leaseback transaction for four properties located in Chicago, Illinois. On April 1, 2008, Midway completed a sale and leaseback transaction with Williams Electronics Games, Inc. ("WMS") for three of these properties. Two of the properties were sold to WMS and leased back by Midway for a lease term through May 31, 2010 at a monthly rental fee of \$20,000. The third property was a leasehold property which was leased to Midway by a third party. As part of the transaction, WMS assumed the lease from Midway and sublet the property back to Midway for a lease term through January 31, 2010 at a monthly rental fee of \$10,000. The leasehold property contained an option to purchase the property at the end of the lease term. This option was also included in the sale. The purchase price of the properties was \$6,250,000 less the option price of \$1,150,000 for the leasehold property.

On November 6, 2008, Midway completed a sale and leaseback transaction for the fourth property. This property was sold to a third party developer and leased back by Midway for a lease term through November 6, 2010 at a monthly rental fee of \$20,000. The purchase price of the property was \$2.5 million, plus a potential purchase price premium valued at a minimum of \$4.86 million. If the purchaser did not pay the purchase price premium by a certain date, then Midway had an option to repurchase the property for \$2,500,000. The purchase price premium was not paid. Pursuant to Bankruptcy Court order dated October 2, 2009 [Docket No. 663], Midway assumed and assigned to WMS the contract containing the repurchase option for consideration of up to \$500,000. Ultimately, the Debtors received \$200,000 as a result of this transaction.

On December 16, 2008, the Debtors implemented an expense reduction program which included (i) a reduction in force of approximately 180 employees at its Chicago, Illinois; Austin, Texas; and San Diego, California locations; (ii) a closure of their Austin, Texas studio; and (iii) a suspension of several of their non-core prototype games. The reduction in force represented an approximately 25% reduction in the overall work force. Employees affected by the reduction in force at the Chicago location were provided notice under the federal Worker Adjustment and Retraining Notification Act (the "WARN Act").

2. Corporate Events

The Board of Directors of Midway consisted of six Directors: Shari Redstone, daughter of Sumner Redstone and President of NAI, acted as Chair of the Directors. The other directors were Peter C. Brown, Robert J. Steele (a Vice President of NAI), Joseph A. Califano, William L. Bartholomay and Robert N. Waxman. In October 2008, the Board of Directors of

Midway appointed Matthew Booty as President and Chief Executive Officer of Midway. Mr. Booty had served as interim President and CEO since March 2008, and had worked for the Debtors in various capacities since 1991. Mr. Booty was appointed as a director of Midway on January 9, 2009 and became its sole director as of August 19, 2009. Mr. Booty is the sole director of the Subsidiary Debtors.

In October 2008, the Board of Directors of Midway appointed Ryan O'Desky as Chief Financial Officer and Treasurer of Midway. He had served as the interim Chief Financial Officer and Treasurer since February of 2008, and held a variety of positions with the Debtors including Vice President of Finance, Controller and Assistant Treasurer since joining Midway in early 2007 as Chief Internal Auditor.

Under the terms of the Indenture for the 6.0% Notes, holders of the 6% Notes would have the right to require Midway to repurchase the 6% Notes beginning April 30, 2009. Midway needed to make provision for the likely event that holders of the 6% Notes would exercise their repurchase rights. Therefore, on or about October 29, 2008, a special committee of independent directors was formed to consider any proposals to restructure or refinance the Notes and other outstanding debt of Midway or to consider other strategic alternatives, including a sale of all or substantially all of the assets. The law firm of Dewey & LeBoeuf LLP provided legal advice to the special committee. Following the Petition Date, Dewey & LeBoeuf was retained by order of the Bankruptcy Court as special counsel to the independent directors of Midway.

On November 20, 2008, the special committee of the Board of Directors of Midway retained Lazard Freres & Co. LLC ("Lazard") as investment banker to assist it in the solicitation and/or evaluation of available options relating to a restructuring or refinancing of some or all of the Debtors' outstanding indebtedness and/or the sale(s) of some or substantially all of the Debtors' assets. Lazard thereafter worked closely with the Midway Board of Directors and with management of the Debtors through the eventual sales of substantially all of the Debtors' assets that occurred after the Petition Date.

In November 2008, following the resignation of Shari Redstone as a director and as Chair of the Board, Mr. Peter C. Brown was appointed to serve as Chairman of the Board. Mr. Brown had served on the Board of Directors of Midway since 2005. On December 1, 2008, director Robert J. Steele resigned from the Board of Directors of Midway.

As of January 29, 2009, Mr. Brown resigned as a director and as Chairman of the Board of Directors of Midway. As of that date, the Board of Directors of Midway appointed Mr. Booty as a director and as the new Chairman of the Board. The Board of Directors of Midway thereafter had four directors until August 19, 2009, when the three outside directors resigned.

3. Defaults Under NAI Agreement and Notes

Mr. Redstone and NAI owned, directly or indirectly, approximately 87% of the outstanding common stock of Midway. On November 28, 2008, each of Mr. Redstone, NAI, of which Mr. Redstone is the Chairman, and Sumco, Inc. ("Sumco", which is owned jointly by both NAI and Mr. Redstone (collectively, the "Redstone Sellers" or "Redstone Entities")) entered into a Stock Purchase Agreement (the "Redstone Stock Purchase Agreement") with Acquisition

Holdings Subsidiary LLC ("AHS"), pursuant to which the Redstone Sellers sold to AHS, and AHS purchased from the Redstone Sellers, all of the shares of common stock of Midway beneficially owned by the Redstone Sellers immediately prior to such sale, representing, collectively, approximately 87.2% of the total issued and outstanding common stock of Midway (such sale, together with the transactions under the Participation Agreement described below are referred to as the "Redstone-Thomas Transaction").

Concurrently with the execution of the Redstone Stock Purchase Agreement, NAI and AHS entered into a Participation Agreement (the "Participation Agreement"), pursuant to which NAI granted to AHS, and AHS acquired from NAI, (i) an undivided interest and participation in the loans and advances made by NAI, whether before or after the date of the Participation Agreement, under the (a) Secured Facility, including guarantees, collateral, pledges, distributions, claims and causes of actions against the borrowers thereunder, and (b) Unsecured Facility, all on the terms and conditions set forth in the Participation Agreement. The total consideration paid by AHS for the interests acquired in the Redstone-Thomas Transaction was \$100,000. The president and sole beneficial owner of AHS was Mark Thomas (collectively with AHS and MT Acquisition Holding ("MT"), the "Thomas Parties").

The Redstone-Thomas Transaction triggered the change in control provisions under each Indenture for the Notes, which triggered an accelerated repurchase schedule with respect to the Notes. As a result of the Redstone-Thomas Transaction, the holders of the Notes would have the right to require Midway to repurchase all of the Notes no later than 50 days following the Redstone-Thomas Transaction. The Debtors lacked the liquidity that would have been required to meet the repurchase obligations. The Redstone-Thomas Transaction was effected without the knowledge or participation of the Debtors.

Any failure to satisfy Midway's obligation to repurchase the Notes would also have consequences under the NAI Agreements. Specifically, under the NAI Agreements, NAI arguably would have had the option in such a circumstance to declare all amounts outstanding under the NAI Agreements immediately due and payable and foreclose on its collateral under the Secured Facility. During December 2008 and January 2009, Midway negotiated with the holders of the Notes to obtain waivers and forbearance agreements through February 12, 2009 to afford Midway an opportunity to consider its alternatives. Midway also obtained a waiver and forbearance agreement under the NAI Agreements to suspend the Cash Sweep during this period. Midway entered into (i) a Waiver and Forbearance Agreement dated December 30, 2008 with the holders of the 7.125% Notes; (ii) an Amended and Restated Waiver and Forbearance Agreement dated January 14, 2009 with the holders of the 7.125% Notes (together the "7.125% Agreements") and (iii) a Waiver and Forbearance Agreement dated January 14, 2009 with the holders of the 6.0% Notes (the "6.0% Agreement" and together with the 7.125% Agreements, the "Waiver and Forbearance 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. In December 2008, in connection with the negotiation of and as a condition to the December 30, 2008 Waiver and Forbearance Agreement with the holders of the 7.125% Notes, Midway agreed to pay the fees and expenses of Milbank Tweed Hadley & McCoy and FTI Consulting, legal and financial advisors, respectively, to the holders of the Notes as well as the interest payment due under the 7.125% Notes.

Pursuant to the Waiver and Forbearance Agreements, the holders of the Notes signing such agreements deferred their rights under the Indentures to require Midway to repurchase the 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 Waiver and Forbearance Agreements, Midway was required to, and did, enter into an agreement with NAI and AHS, pursuant to which NAI and AHS agreed to (i) suspend, until and including February 12, 2009, the Cash Sweep features under the NAI Agreements, and (ii) forbear, until and including February 12, 2009, from exercising any rights they had with respect to any default or event of default under the NAI Agreements and the Factoring Agreement that arose as a result of Midway's failure to repurchase on January 16, 2009 any 6.0% Notes whose holder timely and validly exercised its right to require Midway to repurchase the Notes.

Consequently, the triggering of the repurchase rights of the holders of the Notes by the Redstone-Thomas Transaction substantially shortened the time within which the Debtors could seek restructuring alternatives. Lazard and management prepared an executive summary of the Debtors and its business to assist with the marketing of the Debtors and their assets. Potential strategic and financial buyers were contacted.

In addition to exploration of opportunities to sell some or all of the Debtors' assets, the Debtors and their professionals also explored other options, including whether any of the holders of its debt would be willing to swap such debt for equity in connection with a reorganization of the Debtors' and their business. Such discussions did not result in any preliminary or final agreements being reached.

D. Overview of the Chapter 11 Cases

On February 12, 2009 ("Petition Date"), each of the Debtors filed a voluntary Chapter 11 petition with the Bankruptcy Court. The Debtors continued in possession of their properties and in the management of their businesses as debtors in possession. The Chapter 11 Cases were assigned to and have been presided over by the Honorable Kevin Gross, United States Bankruptcy Judge.

1. Significant Initial Pleadings

The Debtors devoted substantial efforts early in the Chapter 11 Cases toward stabilizing the operation of their businesses and maintaining employee, vendor and customer relationships. These efforts included obtaining critical "first day" relief to allow the Debtors' business to continue with minimal disruption. Motions, applications and other pleadings filed by the Debtors in furtherance of this goal included the following:

a. *First Day Affidavit.* The Debtors filed an affidavit of Ryan G. O'Desky, Treasurer and Chief Financial Officer of Midway, that summarized the Debtors' history, the circumstances and events that precipitated the Chapter 11 Cases, and the justification for the relief sought in the other first-day pleadings.

b. *Cash Management Motion.* The Debtors obtained the Bankruptcy Court's authorization to maintain the Debtors' prepetition cash management practices and investment

policy, subject to the Debtors' obligation to delineate between prepetition and postpetition transactions and obligations.

c. *Employee Compensation and Benefits Motion.* In order to provide the continued and uninterrupted service of management and staff, the Debtors sought and obtained Bankruptcy Court approval to pay certain prepetition employment obligations, including compensation and benefits, subject to certain limitations, and to continue on a postpetition basis certain of the Debtors' employment policies, practices and programs.

d. *Critical Vendor Motion.* The Debtors sought and obtained an order authorizing, but not directing, the Debtors to pay prepetition Claims of a few discrete vendors and suppliers of critical goods and services, provided that such vendors agreed to maintain or reinstate customary trade terms during the pendency of the Chapter 11 Cases.

e. *Employment Application.* On March 10, 2009, the Debtors obtained an order of the Bankruptcy Court authorizing the employment of Blank Rome LLP as bankruptcy counsel.

f. *Prepetition Obligations to Customers and Continuation of Customer Programs in the Ordinary Course of Business.* In order to maintain their ability to attract continuing business from their customers and thereby generate revenue, the Debtors requested authorization to continue their customer programs in the ordinary course of business and to perform and honor, in the Debtors' sole discretion, prepetition obligations thereunder. The Bankruptcy Court approved the Debtors' ability, in their sole discretion, to continue honoring all customer programs and to continue honoring all obligations to customers that arose in the ordinary course of the Debtors' business from and after the Petition Date.

g. *Cash Collateral Motion.* In order to fund their administrative and operational obligations through the duration of the Chapter 11 Cases, the Debtors sought authority to use cash collateral. By first day motion (the "Cash Collateral Motion"), the Debtors sought entry of an order (i) authorizing the Debtors to use the cash collateral of AHS on certain terms and conditions, (ii) authorizing the granting of adequate protection to AHS, and (iii) prescribing the form and manner of notice and setting the time for a final hearing on the Cash Collateral Motion.

Following objections raised by certain noteholders at the first day hearing, the Bankruptcy Court entered an interim order approving the use of cash collateral of AHS on certain modified terms and conditions therein. The Bankruptcy Court also provided that all interest accruing under the Secured Facility be paid by the Debtors into a segregated account maintained in the name of the Debtors subject to AHS' liens until further order of the Bankruptcy Court. The Cash Collateral Motion was scheduled for a final hearing.

2. The Creditors' Committee

On February 23, 2009, the U.S. Trustee appointed the Creditors' Committee in the Debtors' Chapter 11 Cases. The Creditors' Committee was comprised of (i) Highbridge

International LLC (“Highbridge”), (ii) NBA Properties, Inc. (“NBA”), as co-chairs, (iii) Farsight Technologies, Inc. (“Farsight”)², (iv) Multi Packaging Solutions, Inc. (“MPS”, collectively with NBA, the “Class 3B Committee Representatives”) and (v) Wells Fargo Bank, N.A. (“Wells Fargo”, collectively with Highbridge, the “Class 3A Committee Representatives”) as Indenture Trustee with respect to the Notes. The Creditors’ Committee employed professionals, including Milbank, Tweed, Hadley & McCloy LLP and Richards Layton & Finger as its co-counsel and FTI Consulting as its financial advisors.

The Creditors’ Committee has been active and involved in every aspect of the Chapter 11 Cases. Consistent with its duties under Section 1103 of the Bankruptcy Code, the Creditors’ Committee consulted with the Debtors on the administration of the Chapter 11 Cases; investigated the acts, conduct, assets, liabilities, and financial condition of the Debtors, the operation of their business, and matters relevant to the Chapter 11 Cases; and participated in the negotiation, drafting, and formulation of the Plan. The Creditors’ Committee has played an important role in key aspects of the Chapter 11 Cases.

3. Employment of Other Key Professionals

On March 30, 2009, the Bankruptcy Court entered an order authorizing the Debtors to employ Lazard as its investment banker. The Debtors also employed Ernst & Young LLP as independent auditors and accountants and Huron Consulting as financial advisors.

4. KEIP/Employee-Related Motions

During the Chapter 11 Cases, in addition to the first-day motion seeking to pay prepetition amounts owed to employees and to continue certain employment benefits and policies on a postpetition basis, the Debtors filed various motions relating to the compensation of employees, including with respect to proposed bonus and incentive payments to be made to certain employees pursuant to the terms of prepetition bonus plans and a postpetition Key Employee Incentive Plan.

The Bankruptcy Court entered the following employee compensation-related orders: Order Granting Debtors’ Motion for Order (I) Authorizing Payment of Prepetition Wages, Compensation, Employee Benefits, Expense Reimbursement and Related Items, and the Continuation of Certain Employment Policies, and (II) Authorizing and Directing Applicable Banks to Honor and Pay All Checks with Respect Thereto [Dkt. No. 34]; Order Approving Payment of Discretionary Bonuses to Non-Insiders of the Debtors [Dkt. No. 143]; Order Authorizing, But Not Directing, (I) Debtors to Honor Certain Employee Programs Postpetition and (II) Payment of Prepetition Claims in Connection with Such Programs [Dkt. No. 144]; Order Authorizing, But Not Directing, (I) Debtors to Honor Certain Employee Programs Postpetition and (II) Payment of Prepetition Claims in Connection With Such Programs [Dkt. No. 200]; Order Approving a Key Employee Incentive Plan [Dkt. No. 282]; and Order Authorizing, But

² Farsight resigned from the Creditors’ Committee on July 13, 2009, promptly following the consummation of the Warner Sale Transaction (as defined below) and the cure of the Debtors’ obligations to Farsight under one or more contracts that were assumed by the Debtors and assigned to Warner as part of the Warner Sale Transaction.

Not Directing, (I) Debtors to Honor Certain Employee Programs Postpetition and (II) Payment of Prepetition Claims in Connection with Such Programs [Dkt. No. 283].

By order dated August 26, 2009 [Dkt. No. 580], the Bankruptcy Court approved, effective as of August 5, 2009, the Debtors' motion to approve a Transition Services Plan relating to certain transition services to be performed by employees of the Debtors in connection with the Warner Sale Transaction (discussed below). Such services were performed by employees of the Debtors and incentive compensation paid to those employees performing the services in a satisfactory manner was funded by Warner.

By order dated September 28, 2009 [Dkt. No. 641], the Bankruptcy Court approved the Debtors' proposed Wind-Down Incentive Plan pursuant to which approximately twenty employees of the Debtors received aggregate incentive payments of approximately \$104,000 in exchange for performance of various accounting, human resources, information technology, legal and business operations tasks in connection with the continued prosecution of the Chapter 11 Cases toward a successful conclusion and the wind-down of the Debtors' business operations following the closings of the various Sale Transactions. Presently, the Debtors have two remaining employees, Messrs. Booty and O'Desky. The Debtors also have employed Venturity Financial Partners to perform various financial and accounting services.

5. Cash Collateral Litigation, Creditors' Committee Action and Settlement Between the Creditors' Committee and the Thomas Parties

Upon its formation and appointment of counsel, the Creditors' Committee joined certain holders of the Notes who had previously objected to the Cash Collateral Motion (the "Objecting Noteholders") in objecting to the Cash Collateral Motion. In objecting to the Cash Collateral Motion, the Noteholders and Creditors Committee contended, among other things, that the terms and conditions that AHS had demanded in return for permitting the Debtors' use of cash collateral were overreaching, that AHS was substantially oversecured and, hence, did not require the various protections that were proposed in favor of AHS in the Cash Collateral Motion, and that the unique nature of the prepetition events and insider transactions leading up to and including the Redstone-Thomas Transaction created material claims against various of the Redstone Entities, the Thomas Parties and other insiders that required investigation by the Creditors' Committee.

Following an evidentiary hearing held on April 1, 2009 and oral argument on April 6, 2009, the Bankruptcy Court sustained the Creditors' Committee's objection to entry of a final order on the Cash Collateral Motion and, on April 9, 2009 entered a heavily stripped down form of cash collateral order that (i) authorized the Debtors' use of cash collateral on terms and conditions set forth therein and (ii) denied AHS' cross-motion for relief from the automatic stay. As part of this cash collateral order, the Bankruptcy Court granted the Creditors' Committee the right to "investigate, assert and/or prosecute on behalf of Debtors' Estates any all claims of the Estates against any party that arise out of, or relate to (a) any transaction by and between NAI or any of its affiliates or shareholders on the one hand, and any of the Debtors on the other hand, (b) transactions that led to AHS, and/or any of the AHS' affiliates, insiders or shareholders (including MT and the principal of MT and AHS, Mark E. Thomas), becoming the majority owner of the Debtors and the owner of claims against the Debtors previously held by NAI and

(c) any action or omission of any insider or affiliate of the Debtors including, without limitation, NAI, AHS, or any of their respective affiliates, insiders or shareholders, in connection with any of the Debtors in the Chapter 11 Cases.” [Dkt. No. 251] That order was appealed by the independent Midway directors and by the Thomas Parties. [Dkt. Nos. 272 and 270]

On May 11, 2009, the Creditors’ Committee filed the Creditors’ Committee Action (Adv. Pro. No. 09-50968 (KG)) against certain then-directors and former directors of the Midway Board of Directors, the Thomas Parties, and Redstone Entities, alleging claims arising out of and in connection with the February 29, 2008 financing transactions and the Redstone-Thomas Transaction.

As against the Thomas Parties, the Creditors’ Committee Action alleged claims of fraudulent transfer, aiding and abetting breach of fiduciary duty, equitable subordination, and unjust enrichment. The Committee sought to have the entirety of the claims that the Thomas Parties purchased from the Redstone Entities (a \$30 million secured claim under the Secured Facility and a \$40 million unsecured claim under the Unsecured Facility) recharacterized or subordinated as equity, and sought monetary damages.

On June 3, 2009, less than a month after the Creditors’ Committee commenced the Creditors’ Committee Action, the Thomas Parties entered into a settlement agreement (the “Settlement Agreement”) with the Creditors’ Committee pursuant to which the Thomas Parties agreed to walk away from the vast majority of the claims against Midway and 100% of the shares of Midway stock they had purchased from the Redstone Entities. Certain of the more material terms of the Settlement Agreement are set forth immediately below:

a. *Allowed Claim.* AHS received an allowed secured claim against the Estates in the aggregate amount of \$5,000,000 (the “Settlement Claim”), less certain amounts already paid to the Thomas Parties. Such claim was secured by a valid, binding, perfected, first in priority lien and security interest in the assets that constituted collateral under the Secured Facility and the proceeds thereof. The Settlement Payment was paid in full by the Debtors following closing of the Warner Sale Transaction out of the proceeds thereof. As a result of the Settlement Agreement and that payment, the Thomas Parties are no longer creditors in the Chapter 11 Cases.

b. *Disposition of Thomas Claims and Majority Shares.* The Thomas Parties agreed to consent to any sale of substantially all of the Debtors’ assets, or to any sales of assets that, collectively, would result in the sale of substantially all of the Debtors’ assets, so long as such sale or sales would result in the timely receipt of payment by the Thomas Parties of the Settlement Claim. The Thomas Parties agreed that any such sale(s) of assets would be free and clear (within the meaning of Section 363(f) of the Bankruptcy Code) of all liens, claims, interests and other encumbrances that secure the Settlement Claim.

The Thomas Parties, who, by virtue of the Redstone-Thomas Transaction, had become the owners of 100% of NAI’s interests under the Secured Facility and Unsecured Facility, waived and released any further rights under those credit facilities. Thus, the approximately \$70,000,000 indebtedness outstanding under those facilities were resolved by the payment of \$5,000,000. The Thomas Parties were released as defendants in the Creditors’

Committee Action. The Settlement Agreement also provided for mutual Releases and the release of all liens and security interests held by the Thomas Parties.

The Bankruptcy Court approved the Thomas Settlement on July 1, 2009. [Dkt. No. 472]

6. Litigation against NAI, the Redstone Entities and certain Outside Members of Midway's Board of Directors

As noted, on May 11, 2009, the Creditors Committee filed the Creditors' Committee Action. The Complaint asserted claims for fraudulent transfer, unlawful conversion, corporate waste, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, equitable subordination, recharacterization and unjust enrichment.

On July 1, 2009, all remaining defendants moved to dismiss all claims asserted against them. At the same time, all remaining defendants moved to have the Bankruptcy Court abstain from ruling on the Complaint.

On July 29, the Creditors' Committee filed an Amended Complaint against all remaining defendants. The Amended Complaint includes additional allegations and asserts claims, *inter alia*, for recharacterization, fraudulent transfer, avoidable preferences, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and equitable subordination. Not all counts are asserted against all remaining defendants.

On August 28, 2009, the remaining defendants filed motions to dismiss the amended complaint and a joint motion for abstention. On September 18, 2009, the Creditors' Committee filed an opposition to defendants' motions to dismiss and an opposition to defendants' motion for abstention. Defendants filed reply papers on October 2, 2009. On November 17, 2009, the Bankruptcy Court heard oral argument on the motions.

By opinion dated January 29, 2010 and order dated January 29, 2010, as revised on February 3, 2010, the Bankruptcy Court granted the motions to dismiss as to the Second, Third, Fourth, Fifth, Eighth, Ninth, Tenth, Eleventh, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-First, and Twenty-Second counts of the Amended Complaint. In doing so, the Bankruptcy Court dismissed, among others, claims against the Board Defendants and the Redstone Defendants (as those terms are defined in the January 29, 2010 opinion) for breaches of fiduciary duties. The Bankruptcy Court denied the motions to dismiss as to the First, Sixth, Seventh and Twelfth counts of the Amended Complaint. Because the Bankruptcy Court dismissed the claims that were the subject of the joint motion for abstention, the Bankruptcy Court did not decide the joint motion for abstention.

By motion and memorandum dated February 12, 2010, the Creditors' Committee moved for partial reconsideration and clarification of the January 29, 2010 opinion and accompanying order. The Creditors' Committee sought reconsideration of the dismissal of the Third and Fifth counts of the complaint for constructive fraudulent transfer against NAI. By order dated March 19, 2010, the Bankruptcy Court granted the Creditors' Committee's motion.

7. Schedules and Statement of Financial Affairs

On April 23, 2009, the Debtors filed their respective Schedules and Statements of Financial Affairs ("Schedules and SOFAs") [Dkt. Nos. 284-303]. On May 19, 2009 certain of the Debtors filed their respective Amended Schedules and SOFAs [Dkt. Nos. 341-354]. The Schedules and SOFAs may be further amended from time to time.

8. Claims Bar Date

The Bankruptcy Court fixed July 15, 2009 (and August 11, 2009 for governmental units) as the last date for filing Claims against the Debtors (the "Bar Date"). The Debtors currently believe that the total amount of timely-filed Claims, excluding Claims, if any, by certain insiders and certain intercompany claimants not required to file Claims on or before the Bar Date, and adjusting for settlements which have been agreed upon (including the Thomas Settlement) and Claims which have been cured, amended, or objected to, is approximately \$205 million (\$185 million without the NAI Subordinated Claim). Such amount is subject to further adjustment as a result of the outcome of the Confirmation process, the claims reconciliation process which may involve the filing of claim objections and/or negotiated claim settlements, and the entry of further orders of the Bankruptcy Court.

9. Chapter 11 Sale Process

a. Sale Transactions and Stalking Horse Agreement.

As noted above, prior to the Petition Date, the Debtors, with the assistance of their professional advisors, had been exploring various strategic alternatives. These alternatives included potential mergers or joint ventures or a sale or sales of all or substantially all of the Debtors' Assets and reorganization on a stand-alone basis. The Debtors disclosed these strategic alternatives publicly in various instances, including through notices, SEC filings and press releases and after the Petition Date, to the Creditors' Committee, the Bankruptcy Court and otherwise publicly in various instances.

After the filing of the Chapter 11 Cases, the Debtors and Lazard continued marketing the Debtors' Assets for sale. Toward this end, the Debtors and Lazard conducted a marketing program to solicit third-party proposals and offers to purchase the Debtors' Assets, contacting numerous entities (including many familiar with the Debtors' industry in general and the Debtors in particular).

The Debtors requested that on or before May 10, 2009, all potential purchasers submit offers and markups of a form of asset purchase agreement provided by the Debtors, for some or all of the Debtors' Assets. Thereafter, the Debtors met with counsel and Lazard to review, analyze, and provide comments with respect to the offers received. Additional due diligence (including data room visits, management meetings and site inspections) was facilitated in connection with this process. Potential purchasers included pure financial sponsors, financial sponsors teamed with video game industry specialists, and video game industry competitors.

Upon review of all offers received, and lengthy, protracted negotiations with several bidders for some or all of the Debtors' Assets, the Debtors, in the exercise of their sound

business judgment and in consultation with the Creditors' Committee, elected to enter into a stalking horse asset purchase agreement (the "Warner Purchase Agreement") with Warner Bros. Entertainment Inc. ("Warner") for substantially all of the Debtors' U.S. assets (the "Warner Sale Transaction") for a proposed purchase price of \$33 million, subject to certain purchase price adjustments, plus certain cure amounts, the value of the Debtors' accounts receivable and a waiver of an agreed upon \$7,867,820 cure amount under license agreements between the Debtors and Warner for three video games.

b. *The Warner Sale Motion.*

On May 20, 2009, the Debtors filed a sale motion (the "Warner Sale Motion") seeking authority to consummate the transactions proposed in the Warner Purchase Agreement, subject to higher and/or better offers, and requesting approval of sale and auction procedures with respect thereto. On June 2, 2009, the Bankruptcy Court approved the proposed sale and auction procedures. By the Warner Sale Motion, the Debtors proposed to conduct an auction for all or any of their Assets in the event competing qualified bids were received on or before the proposed Bid Deadline of June 24, 2009. However, no competing qualified bids were received.

On July 1, 2009, a sale hearing was held. At the hearing, the Debtors sought Bankruptcy Court approval of the Warner Purchase Agreement as the highest and best offer received. Various parties in interest, including the Creditors' Committee, supported Bankruptcy Court approval of the Warner Purchase Agreement. There were various objections filed to the proposed Warner Sale Transaction but those objections were resolved following negotiations in connection therewith.

The Bankruptcy Court approved the Warner Purchase Agreement by entry of the Order Under 11 U.S.C. Sections 105(a), 363 and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006 and 9014(A) Approving the Sale of Purchased Assets Free and Clear of All Liens, Claims, Interests and Encumbrances (B) Authorizing and Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (c) Granting Related Relief dated July 1, 2009. [Dkt. No. 477]

The Warner Sale Transaction closed on July 10, 2009. The Debtors realized approximately \$49 million from the Warner Sale Transaction.

c. *Sale of the Non Debtor Foreign Subsidiaries.*

By motion dated August 6, 2009, the Debtors sought approval of two separate stock purchase agreements providing for the sale of MHE's equity interests in certain non-debtor Foreign Subsidiaries: (i) Midway Games SAS, and Midway Games Limited, and (ii) Midway Games GmbH [Dkt. No. 517]. In connection with these two sale transactions, the Debtors also sought approval of a certain Intercompany Claims Agreement.

Following the Petition Date, the Foreign Subsidiaries operated using their cash on hand and funds generated from sales of Midway® and third party video games. Midway Studios-Newcastle Limited ("Newcastle") was a wholly owned subsidiary of Midway Games Limited ("Midway UK") and was a development studio for action driving games. Newcastle developed games for Debtors under the product development agreement between MHE and

Newcastle. Following the Petition Date, the operations of Newcastle were funded by Midway UK on behalf of MHE under a product development agreement. The payments being made by Midway UK were credited against outstanding intercompany balances between MHE and Midway UK. By July, 2009 it became clear that there was no acceptable purchaser for the development studio at Newcastle and there were no third party offers for the other Foreign Subsidiaries. Accordingly, Newcastle was closed down and its employees terminated in July, 2009 and a liquidator was appointed to oversee the process of winding up the company. Midway began negotiations in earnest with the managers of Midway UK and of Midway GmbH for the sale of the Foreign Subsidiaries to those managers. Any purchase of the Foreign Subsidiaries required resolution of the intercompany accounts among the Debtors and the Foreign Subsidiaries.

With the involvement and approval of the Creditors' Committee, a stock purchase agreement was entered into among MHE, Speiss Media Holding UG (limited liability – *haftungsbeschränkt*), a German enterprise company with limited liability, Midway Games SAS, a French société par actions simplifiée, registered with company no. 484 780 333 R.C.S. Paris (“Midway SAS”) and Midway UK pursuant to which the stock of each of Midway SAS and Midway UK were sold for \$1; and a stock purchase agreement between MHE and F+F Publishing GmbH pursuant to which the stock of Midway GmbH was sold for \$1. In connection with and as a condition to the sales contemplated by these stock purchase agreements, an Intercompany Claims Agreement was entered into among MHE, Midway and the several Foreign Subsidiaries pursuant to which intercompany accounts were settled, paid and/or released. The benefit to the Debtors was the receipt of a cash payment of \$1,700,000 from Midway UK which it might otherwise not have received but for the sale transactions, as well as the elimination of certain prepetition claims of the Foreign Subsidiaries against the Debtors.

The stock purchase agreements and Intercompany Claims Agreement were approved by the Bankruptcy Court on August 19, 2009 [Dkt. No. 562] and the transactions closed on that date.

d. *Sale of assets of San Diego Development Studio.*

Excluded from the sale to Warner was the Debtors' San Diego development studio which developed wrestling and other action fighting games, most recently TNA Impact!. TNA Entertainment LLC (“TNA”), Southpeak Interactive Corporation (“Southpeak”) and THQ Entertainment Inc. (“THQ”) expressed interest in these assets but the Debtors ultimately accepted the offer proposed by THQ.

Since the Debtors had been unable to sell the San Diego development studio during the sale process involving Warner, the Debtors provided notice of termination of employment to the San Diego studio employees under the WARN Act. Therefore, the Debtors believed it important and of value to the Debtors if a purchaser would agree to take over the Debtors' obligations with respect to the studio, including payment of compensation to the employees during the WARN Act notice period.

THQ agreed to immediately offer employment to the San Diego development studio employees and the Debtors entered into a purchase agreement with THQ pursuant to

which THQ would purchase the related intellectual property, exclusive of the TNA Impact games, for a purchase price of \$200,000 in addition to the fact that THQ had hired the studio employees effective as of August 4, 2009. As a result of entering into the THQ purchase agreement, the Debtors were relieved of their obligation to continue to pay the development studio employees during the WARN Act notice period.

Debtors filed a motion on August 6, 2009 to approve the sale of the San Diego studio assets to THQ. TNA filed an objection to the motion and argued at the August 18 hearing that the THQ offer was not the highest and best offer. At the direction of Judge Gross, the hearing was adjourned and the Debtors conducted an auction in which TNA and Southpeak on the one hand, and THQ on the other, participated. At the end of the process, THQ had increased its cash portion of its offer to \$740,000 which was deemed by the Debtors to be the highest and best offer. The following day, upon continuation of the hearing, the Bankruptcy Court approved the sale to THQ [Dkt. No. 566] and the transaction closed that day.

As part of the negotiations during the auction process, with the consent of TNA, the Debtors agreed to sell certain of the TNA games and assets to Southpeak for a purchase price of \$100,000 plus the assumption of approximately \$65,000 in cure amounts under assumed and assigned contracts. The sale transaction was approved by the Bankruptcy Court on October 1, 2009 [Dkt. No. 657] and the transaction closed on October 2, 2009. By order of the Bankruptcy Court on October 20, 2009 [Dkt. No. 687], the Debtors rejected the TNA license agreement and assumed and assigned to Southpeak the agreed upon assigned contracts.

From time to time throughout the Chapter 11 Cases, in consultation with and approval of the Creditors' Committee, the Debtors have sold various assets pursuant to a de minimis asset sale order entered by the Bankruptcy Court on March 30, 2009.

As of the date of this Disclosure Statement, substantially all of the Debtors' tangible personal property assets have been sold or otherwise disposed of.

10. The Creditors' Committee Settlement.

The Creditors' Committee Settlement was reached following extensive negotiations among members of the Creditors' Committee. The Creditors' Committee Settlement resolves disputes among Class 3B Committee Representatives and Class 3A Committee Representatives regarding the proper allocation of value to creditors of each of the Debtors, including assertions (i) by Class 3B Committee Representatives that Class 3A Claims were structurally subordinated to Class 3B Claims and that intercompany claims owed to Midway should be considered capital contribution and (ii) assertions by Class 3A Committee Representatives that recoveries to holders of Class 3A Claims should equal or even exceed recoveries to the vast majority of holders of Class 3B Claims by virtue of substantial intercompany claims in favor of Midway.

The Class 3A Committee Representatives and Class 3B Committee Representatives each had the benefit of sophisticated counsel advising them in connection with the negotiations and analysis that took place. Class 3A Committee Representatives were advised by Kelley, Drye & Warren, LLP ("KDW"), which is counsel to the Indenture Trustee. The Class

3B Committee Representatives were advised by Proskauer Rose, LLP ("Proskauer"), which is counsel to the NBA, which is the largest Class 3B creditor.

Milbank mediated the process and provided legal and practical insights into the implications of the financial and operational analyses prepared by FTI, at the Creditors' Committee's request. FTI has served as the financial advisors to the Creditors' Committee. FTI previously had been asked by the Creditors' Committee to review and provide analysis regarding the Debtors' organizational and financial structure, their history of operations and their intercompany indebtedness to ascertain the most accurate and appropriate manner in which to allocate value among the estates' unsecured creditors. FTI prepared analyses based upon various scenarios and assumptions given to FTI by members of the Creditors' Committee.

On September 30, 2009, the standing members of the Creditors' Committee, KDW, Proskauer, Milbank and FTI conducted a day long meeting at Milbank's main offices in New York City for the express purpose of attempting to consensually resolve disputes which existed from the very inception of the Creditors' Committee.

Among the driving considerations that led the Class 3A Committee Representatives and Class 3B Committee Representatives to agree to the Creditors' Committee Settlement were the following:

- The Uncertainty of Outcome and Cost of Litigation. Each of the Class 3A Committee Representatives and the Class 3B Committee Representatives considered the uncertainty and costs of litigating issues regarding (i) the equitable subordination or recharacterization of the intercompany debt due to Midway and (ii) the allocation of value among the various estates. Based upon analysis performed by FTI regarding the propriety of substantive consolidation under the circumstances of these Chapter 11 Cases (a summary of which is attached hereto as Exhibit 1 (the "Substantive Consolidation Analysis"), and after consulting Milbank, KDW and Proskauer, as applicable, the members of the Creditors' Committee unanimously concluded that (i) the uncertainty of the outcome of any litigation of the foregoing issues would be very high, (ii) the cost of litigating the foregoing issues could range into the millions of dollars and (iii) the delay attendant to a final litigated resolution could, at the very least, be months or perhaps years. In the final analysis, the Creditors' Committee recognized that actual recoveries by unsecured creditors could be substantially diminished and delayed absent reaching a prompt and consensual resolution of the allocation issues.
- The Complexity of Litigation. Litigation over issues of equitable subordination or recharacterization and over allocation of value would be extraordinarily expensive. As summarized in the Substantive Consolidation Analysis, FTI believes that it would be nearly impossible to separate the majority of the legal entities that comprise the Debtors, or to determine how value should be allocated to such entities on an individual basis. Any litigation over Debtor-by-Debtor allocation would be

extraordinarily fact intensive. Claims for subordination or recharacterization of Class 3A Claims would be particularly challenging where it is undisputed that creditors in Class 3A did not engage and have not engaged in improper conduct. Claims for recharacterization of Class 3A Claims as equity would be premised on an argument that the Notes were convertible into equity at the option of the holder thereof and had interest rates lower than prevailing for nonconvertible debt issuances of companies with a similar credit profile. They also would be premised on the argument that the intercompany obligations owed to Midway by the Subsidiary Debtors should be recharacterized as capital contributions.

The negotiations among the Class 3A Committee Representatives and Class 3B Committee Representatives were completely at arms-length. No Class 3A Committee Representative either held or holds a Class 3B Claim and no Class 3B Committee Representative either held or holds a Class 3A Claim. Each member of the Creditors' Committee also was and remains keenly aware of its fiduciary duties to the broader group of general unsecured creditors in these Chapter 11 Cases.

The Creditors' Committee Settlement, as summarized above, calls for substantive consolidation of the Debtors for purposes of claims treatment and distributions.

There is no express statutory authority for substantive consolidation; rather, substantive consolidation exists as an equitable remedy. *In re Owens Corning*, 419 F.3d 195 (3d Cir. 2005). The Bankruptcy Court's ability to order substantive consolidation derives from its general equitable powers under section 105(a) of the Bankruptcy Code, which provides that the Bankruptcy Court may issue orders necessary to carry out the provisions of the Bankruptcy Code. *In re DRW Property Co.* 82, 54 B.R. 489, 494 (Bankr. N.D. Tex. 1985). Some courts have also found authority for substantive consolidation in section 1123(a)(5)(C) of the Bankruptcy Code. Section 1123(a)(5)(C) provides in part, "a plan [of reorganization] shall provide adequate means for the plan's implementation, such as merger or consolidation of the debtor with one or more persons." *See, e.g., In re Stone & Webster, Inc.*, 286 B.R. 532, 541 (Bankr. D. Del. 2002) ("Courts have held that [Section 1123(a)(5)(C)] indicates Congress' intent that a chapter 11 debtor may merge or consolidate with other entities, including other debtors, as part of the reorganization process . . . substantive consolidation is expressly authorized by . . . § 1123(a)(5)(C)"). There are however, no statutorily prescribed standards for court approval of substantive consolidation. Instead, courts apply certain judicially-developed standards to determine the appropriateness of substantive consolidation. *See e.g., In re New Century TRS Holding, Inc.*, 390 B.R. 140, 160 (Bankr. D. Del. 2008) (discussing and applying the Third Circuit's *Owens Corning* test).

The Debtors and Creditors' Committee believe that the substantive consolidation requested in the Plan in connection with the Creditors' Committee Settlement is justified under section 1123(a)(5) of the Bankruptcy Code and prevailing case law. Moreover, it is in the best interests of the Debtors' estates and will promote a more expeditious and streamlined distribution and recovery process for all creditors. The proposed substantive consolidation will not affect adversely any liens or other security interests held by any prepetition secured creditors.

The Creditors' Committee Settlement calls for Class 3B Claimholders to receive a greater percentage recovery on their Claims than Class 3A Claimholders will receive on their Claims. Assuming that there will be \$34.7 million in value available for distribution to Class 3, assuming Class 3A Claims are allowed in the aggregate amount of \$154.82 million, and assuming that Class 3B Claims are allowed in the aggregate amount of \$36.66 million, holders of Class 3B Claims would receive distributions totaling \$9.2 million, allowing them to realize a recovery of 25% on their aggregate Claims. Holders of Class 3A Claims would receive distributions totaling \$25.5 million, allowing them to realize a recovery of 16.5% on their aggregate Claims.

By way of comparison, in a substantive consolidation in which all Class 3 Claims would receive *pari passu* treatment, assuming the Initial Assumptions remain unchanged, the recovery percentage to each holder of a Class 3A Claim would be 18.1%, with \$6.64 million being distributed on account of Class 3B Claims and \$28.03 million being distributed on account of Class 3A Claims. In effect, under the Creditors' Committee Settlement, assuming the Initial Assumptions remain unchanged, holders of Class 3B Claims will receive distributions of approximately \$2.53 million more than would have been distributed to them if the Creditors' Committee Settlement provided for *pari passu* treatment of holders of Class 3 Claims.

For the reasons set forth above, the Debtors and the Creditors' Committee believe that the Creditors' Committee Settlement is in the best interests of the estates and, more specifically, is in the best interests of all holders of Class 3A and Class 3B Claims.

NOTWITHSTANDING THE FOREGOING, THE FINAL AMOUNTS OF ALLOWED CLAIMS IN EACH CLASS MAY MATERIALLY EXCEED, AND THE ACTUAL AMOUNT OF VALUE TO BE DISTRIBUTED TO HOLDERS OF CLASS 3A CLAIMS AND CLASS 3B CLAIMS MAY BE MATERIALLY LESS THAN THE ESTIMATED AGGREGATE AMOUNTS STATED IN THE INITIAL ASSUMPTIONS AND, THEREFORE, POSSIBLY DECREASE THE ESTIMATED PRO RATA RECOVERY FOR SUCH HOLDERS. Actual recoveries under the Plan will be dependent upon a variety of factors including, but not limited to, whether, and to what extent, Disputed Claims are resolved in favor of the Debtors rather than the creditors asserting such Disputed Claims, and of course the outcome of any claim objections pursued by the Debtors or Liquidating Trustee and any litigation pursued by the Liquidating Trustee. Accordingly, no representation can be or is being made with respect to whether each estimated recovery shown above actually will be realized by the holders of Allowed Class 3A and 3B Claims.

11. Administrative Claims Bar Date

a. Initial Administrative Claims Bar Date.

Administrative Claims are unclassified under the Plan. Requests for payment of Administrative Claims that arose during the period from the Petition Date through and including September 30, 2009 were required to be filed and served pursuant to the procedures set forth in the Bankruptcy Court's order dated September 29, 2009 no later than December 4, 2009, the Initial Administrative Claims Bar Date. Any Person with sufficient notice of the Initial Administrative Claims Bar Date that was required to but failed to file an Administrative Claim

request on or before the Initial Administrative Claims Bar Date shall be barred from asserting such Administrative Claim against the Debtors' Estates, the Assets, the Liquidating Trust, or the Liquidating Trust Funds.

In response to the Initial Administrative Claims Bar Date, approximately thirty-four (34) Administrative Claims were filed. These Administrative Claims, some of which were filed in uncertain or unliquidated amounts, total in excess of \$4 million and consist primarily of (i) claims by certain of the Debtors' former and current officers and certain employees for postpetition wages, indemnification, and severance (see below discussion for resolution of these asserted Administrative Claims, (ii) claims by certain former Midway directors for indemnification (see below release and exculpation provisions resolving these asserted Administrative Claims); (iii) a claim by Warner for royalties alleged to be due in connection with prepetition, pre-closing sales by the Debtors under license agreements that were assumed and assigned to Warner as part of the Warner Sale Transaction (the "Warner Royalty Claim"); and (iv) claims of certain third party licensors for royalties alleged to be due in connection with postpetition, pre-closing sales by the Debtors under licenses assumed and assigned to Warner as part of the Warner Sale Transaction.

On January 11, 2010, Warner filed a Motion [the "Warner Motion", Dkt. No. 830] asserting that the Warner Royalty Claim is entitled to allowance and payment as an Administrative Claim. Warner alleges that the Warner Royalty Claim could exceed \$1.25 million. On January 19, 2010, the Debtors and Creditors' Committee each filed initial objections to the Warner Motion [Dkt. Nos. 836 and 835, respectively]. The Debtors and Creditors' Committee have asserted that, pursuant to the clear and unambiguous language of the Warner Purchase Agreement and Sale Order and pursuant to applicable law, Warner is responsible for payment of all amounts (hereafter, the "Contract Obligations") relating to pre-closing periods that did not arise (i.e. become due) under the subject license agreements until after the July 10, 2009 closing on the Warner Sale Transaction. The aggregate amount of Administrative Claims put at issue by the Warner Motion and the objections filed in response thereto could be in the several million dollar range.

Warner has filed a reply in support of the Motion. [Dkt. No. 859] The Debtors and Creditors' Committee each have filed sur-replies in response thereto. [Dkt. Nos. 868 and 870, respectively]. The Warner Motion, reply, and all objections and sur-replies in response thereto were addressed by the Court in oral argument held on February 23, 2010. The Court reserved decision with respect to the issues addressed at oral argument.

b. *Final Administrative Claims Bar Date.*

Pursuant to the Plan, all Administrative Claims accruing on or after September 30, 2009 and not otherwise paid by the Debtors in the ordinary course shall be filed with the Bankruptcy Court within forty-five (45) days following the Effective Date, and objections (if any) to Disputed Administrative Claims shall be filed no later than ninety (90) days after the Effective Date.

c. *Failure to Timely File.*

Any Entity that fails to timely file a request for the payment of an Administrative Claim shall (a) be forever barred, estopped and enjoined from asserting such Administrative Claim against each of the Debtors' Estates, the Liquidating Trust, the Assets, or the Liquidating Trust Funds (or filing a request for the allowance thereof in the event such Person received sufficient notice of the applicable Administrative Claims Bar Date); (b) not be permitted to participate in any Distribution under this Plan on account of such Administrative Claim, and (c) be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover any such Administrative Claim against the Debtors' Estates, the Liquidating Trust, the Assets, or the Liquidating Trust Funds.

12. Illinois Wage Act Adversary Proceeding

On October 28, 2009, the Debtors initiated an adversary proceeding styled *Midway Games, Inc., et al. v. Anonuevo et al.*, Adv. Proc. No. 09-52288 (KG) (the "IWA Adversary Proceeding") by filing a Verified Complaint for Declaratory and Injunctive Relief against fifteen of the Debtors' former employees at their Chicago location (the "Former Employee Defendants") and Catherine Shannon, Director of the Illinois Department of Labor (collectively with the Former Employee Defendants, the "Defendants").

Prior to the initiation of the IWA Adversary Proceeding, the Former Employee Defendants filed claims with the Illinois Department of Labor asserting that the Debtors' officers, Matthew Booty and Ryan O'Desky (the "Officers") are personally liable under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1-16, for accrued but unpaid prepetition paid time off (the "Wage Act Claims"). The Illinois Department of Labor has issued demands against the Officers for payment of the alleged claims as well as for the payment of statutory penalties.

In addition to the filing of a complaint on October 28, 2009, the Debtors also filed a Motion for Injunctive Relief seeking to enjoin the Wage Act Claims. By the complaint and motion for injunctive relief, the Debtors have sought to enjoin the Wage Act Claims and have sought a declaration from the Bankruptcy Court that the Officers did not violate and have no personal liability under the Wage Act because the unpaid prepetition PTO did not come due until after the Petition Date and therefore could not have been paid by the Debtors without violation of the Bankruptcy Code.

On December 14, 2009, the Defendants filed their respective Motions to Dismiss Complaint or, in the Alternative, Abstain (the "Motions to Dismiss"). On January 8, 2010, the Debtors filed their Answering Brief in opposition to the Motions to Dismiss. On January 19, 2010 the Defendants filed replies in support of the Motions to Dismiss. Oral argument on the Motions to Dismiss was held on January 26, 2010. On March 25, 2010, the Bankruptcy Court entered an order denying, in part, the Defendants' Motions to Dismiss and deferring decision as to the remaining issues.

Upon information and belief, as of October 9, 2009, the aggregate total of Wage Act Claims asserted against the Officers is at least \$222,554.71, including asserted statutory

penalties, which asserted penalties allegedly continue to accrue. Thirteen of the fifteen Former Employee Defendants timely filed proofs of claim asserting priority status for unpaid wages under Bankruptcy Code section 507(a)(4). The Former Employee Defendants' asserted claims against the Debtors' estates total \$111,759.59, of which \$91,869.39 is asserted as priority status. The Debtors have scheduled the two Former Employee Defendants who did not file proofs of claim as having aggregate priority claims of \$2,508.87 and aggregate general unsecured claims of \$2,048.87.

The Officers have asserted Administrative Claims or in the alternative, general unsecured claims, against the Debtors' estates for defense and indemnification relating to the Wage Act Claims [See Dkt. Nos. 751 and 752] and any similar claims. The Officers have asserted that the Debtors are obligated to indemnify and defend the Officers in connection with the Wage Act Claims pursuant to individual contractual agreements, the Midway Games Certificate of Incorporation, and applicable law.

13. Joint Chapter 11 Plan of Liquidation

The Plan will be funded by the proceeds previously generated from the Debtors' ongoing operations during the Chapter 11 Cases, together with the proceeds generated from the consummation of each of the Sale Transactions. The other potential source of Distributions to creditors would be any net proceeds obtained from prosecution of the Liquidating Trust Claims, including without limitation the Creditors' Committee Action.

The Creditors' Committee fully participated in the drafting and negotiation of the Plan, particularly the portions with respect to the Creditors' Committee Settlement and substantive consolidation of the Debtors' Estates for purposes of Distributions under the Creditors' Committee Settlement, and fully supports Confirmation of the Plan. The Plan provides that all holders of Allowed Class 1 Claims and Allowed Class 2 Claims will be paid one hundred (100%) percent of their Allowed Claims, and holders of Allowed Class 3A and Class 3B Claims will be paid their Pro Rata share of Available Cash from the Distribution Fund, based upon the agreed upon allocation set forth in the Creditors' Committee Settlement. Class 4 Claim holders and Class 5 Interest holders will not receive any Distribution on account of such Claims and Interests.

14. Dissolution of the Creditors' Committee

Upon the occurrence of the Effective Date, the Creditors' Committee will be dissolved.

ARTICLE III

THE DEBTORS' CHAPTER 11 PLAN OF LIQUIDATION

CLASS 1 AND CLASS 2 ARE UNIMPAIRED UNDER THE PLAN AND HOLDERS OF CLAIMS IN CLASS 1 AND CLASS 2 ARE CONCLUSIVELY PRESUMED TO HAVE ACCEPTED THE PLAN PURSUANT TO SECTION 1126(f) OF THE BANKRUPTCY CODE. THEREFORE, HOLDERS OF CLAIMS IN CLASS 1 AND CLASS 2 ARE NOT ENTITLED TO VOTE ON THE PLAN.

A Chapter 11 plan also may specify that certain classes will not receive any distribution of property or retain any claim against or interest in a debtor. Such classes are deemed to reject the plan and, therefore, need not be solicited to vote on the plan. **CLASS 4 CLAIMS AND CLASS 5 INTERESTS WILL RECEIVE NO DISTRIBUTION NOR RETAIN ANY PROPERTY UNDER THE PLAN AND ARE CONCLUSIVELY PRESUMED TO HAVE REJECTED THE PLAN PURSUANT TO SECTION 1126(g) OF THE BANKRUPTCY CODE. THEREFORE, NO BALLOT IS ENCLOSED FOR CLASS 4 CLAIMS AND CLASS 5 INTEREST HOLDERS.**

Under Section 1124 of the Bankruptcy Code, a class of claims is "impaired" under a plan unless the plan (a) leaves unaltered the legal, equitable and contractual rights of each holder of a claim in such class; or (b) provides, among other things, for the cure of existing defaults and reinstatement of the maturity of claims in such class. **CLASSES 3A AND 3B ARE IMPAIRED UNDER THE PLAN AND HOLDERS OF CLAIMS IN CLASSES 3A AND CLASS 3B ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN, SUBJECT TO ANY APPLICABLE LIMITATIONS. BALLOTS ARE BEING FURNISHED HEREWITH TO HOLDERS OF CLAIMS IN CLASS 3A AND CLASS 3B.**

A. Classification and Treatment of Claims and Interests

Under the Plan, Claims are classified and/or treated as discussed below. For ease of reference, estimates assume occurrence of an Effective Date during the second quarter of 2010. The actual Effective Date may vary from that date.

1. Administrative Claims (Unclassified)

a. *Description.* Administrative Claims are postpetition claims that were incurred as an actual and necessary cost or expense of preserving the Debtors' Estates during the Debtors' Chapter 11 cases. Approximately 55 claimants have asserted Administrative Claims totaling approximately \$32 million. All Administrative Claims are subject to review, reconciliation and possibly, objection. The Debtors estimate that, upon information and belief, following the claims reconciliation and objection process, Allowed Administrative Claims will aggregate approximately \$1.2 million, or possibly approximately \$6.2 million if the Warner Royalty Claim and similar third party licensor Administrative Claims are Allowed in full.

b. *Treatment.* Each holder of an Allowed Administrative Claim shall receive in full satisfaction of its Administrative Claim: (a) to the extent not already paid in full, payment in full in Cash, without interest, as soon as practicable after the later of the Effective Date and the date such Administrative Claim becomes an Allowed Administrative Claim; (b) to the extent not yet due and payable, payment in accordance with the terms and conditions of the particular transaction giving rise to the Administrative Claim; (c) to the extent such Claims are Administrative Claims of the U.S. Trustee for fees pursuant to 28 U.S.C. § 1930(a)(6), payment in full in Cash, without interest, in accordance with the applicable schedule for payment of such fees; or (d) treatment on such other less favorable terms as may be mutually agreed upon in writing between the holder of such Allowed Administrative Claim and the Debtors; *provided, however,* that interim and/or final payment of Allowed Administrative Claims approved by the

Bankruptcy Court shall be made at the time of and in accordance with such Bankruptcy Court approval.

2. Fee Claims (Unclassified)

a. *Description.* A Fee Claim is any Claim against the Debtors of a professional person employed under Sections 327 or 1103 of the Bankruptcy Code seeking compensation or reimbursement of expenses by the Bankruptcy Court in accordance with Sections 328, 330 and/or 331 of the Bankruptcy Code, and/or which is entitled to priority pursuant to Sections 503(b)(2), 503(b)(3)(F), 503(b)(4) or 503(b)(5) of the Bankruptcy Code, including any Claim of a member of the Creditors' Committee for reimbursement of expenses incurred in such member's capacity as such.

b. *Treatment.* Except as expressly set forth herein, each holder of an Allowed Fee Claim shall receive, in Cash, to the extent not already paid, the amounts allowed by the Bankruptcy Court: on or as soon as practicable following the date upon which the Bankruptcy Court enters a Final Order allowing such Fee Claim. Any and all parties requesting allowance and/or payment of a Fee Claim for any period ending on or before the Effective Date must file and serve final applications therefor no later than forty-five (45) days after the Effective Date or be forever barred from requesting allowance and payment of such Fee Claims.

3. Priority Tax Claims (Unclassified)

a. *Description.* A Priority Tax Claim is any unsecured Tax Claim, to the extent entitled to priority in payment under Section 507(a)(8) of the Bankruptcy Code. The Debtors estimate that aggregate Priority Tax Claims will approximate \$100,000.

b. *Treatment.* As soon as practicable after the later of (a) the Effective Date or (b) the date on which a Priority Tax Claim becomes an Allowed Claim, such Claim shall be paid in full in Cash without interest unless otherwise agreed in writing between the holder of such Allowed Priority Tax Claim and the Debtors or Liquidating Trustee.

4. Class 1 - Secured Claims (Unimpaired)

a. *Description.* A Secured Claim is any Claim that constitutes a secured claim pursuant to Sections 506 or 1111(b) of the Bankruptcy Code. Class 1 consists of all Secured Claims. The Debtors estimate Secured Claims will aggregate approximately \$100,000 and consist primarily of unpaid tax claims afforded secured status by applicable statutes or laws.

b. *Voting.* Class 1 Claims are not Impaired and are conclusively presumed to accept the Plan.

c. *Treatment.* Unless otherwise agreed in writing between the holder of an Allowed Class 1 Claim and the Debtors or Liquidating Trustee, on or as soon as practicable after the later of: (a) the Effective Date, or (b) the date on which a Class 1 Claim becomes an Allowed Claim, the Liquidating Trustee shall, at its election, either (1) pay from the Distribution Fund such Allowed Class 1 Claim in full in Cash, or (2) return the collateral to the holder of such Allowed Class 1 Claim.

5. Class 2 - Priority Claims (Unimpaired)

a. *Description.* A Priority Claim is any Claim to the extent entitled to priority in payment pursuant to Section 507(a) of the Bankruptcy Code, other than an Administrative Claim or Priority Tax Claim. Class 2 consists of Priority Claims against the Debtors. Class 2 Claims are not Impaired. The Debtors estimate Priority Claims will aggregate approximately \$500,000, consisting primarily of unpaid wages and employee benefits.

b. *Voting.* Class 2 Claims are not Impaired and are conclusively presumed to accept the Plan.

c. *Treatment.* On or as soon as practicable after the later of: (a) the Effective Date, or (b) the date on which a Class 2 Claim becomes an Allowed Class 2 Claim, the Liquidating Trustee shall pay from the Distribution Fund such Allowed Class 2 Claim in full in Cash without interest unless otherwise agreed in writing between the holder of such Allowed Class 2 Claim and the Debtors or Liquidating Trustee.

6. Classes 3A and 3B - General Unsecured Claims (Impaired)

a. *Substantive Consolidation.* The Debtors' Estates will be substantively consolidated for purposes of making distributions to holders of Allowed Class 3A and Class 3B Claims pursuant to the terms of the Creditors' Committee Settlement. See Article I, Section D.3, *supra*.

b. *Description.* A General Unsecured Claim is any Claim against the Debtors, other than an Administrative Claim, Fee Claim, Priority Tax Claim, Priority Claim, or Secured Claim.

c. *Voting.* Class 3A and 3B Claims are Impaired. Under Section 1126(a) of the Bankruptcy Code, holders of Class 3A and 3B Claims may vote to accept or reject the Plan.

d. *Indenture Trustee as Claim Holder.* Consistent with Bankruptcy Rule 3003(c), the Debtors will recognize the master Proofs of claim filed by the Indenture Trustee in respect of the Notes Claims. Accordingly, any Proof of Claim filed by a holder of a Notes Claim, including in particular the amounts of principal and interest due and payable on the Notes, proof of which is filed by the registered or beneficial owner of a Note, shall be disallowed as duplicative of the applicable Indenture Trustee master proof of claim, without further action or Bankruptcy Court order.

7. Class 4 – NAI Subordinated Claim (Impaired)

a. *Description.* Class 4 consists of the NAI Subordinated Claim to the extent it is an Allowed Claim.

b. *Voting.* The Class 4 Claim is Impaired and shall receive no distribution under the Plan and is deemed to have rejected the Plan.

c. *Treatment.* The Class 4 Claim shall receive no distribution of any kind under the Plan on account of such Claim.

8. Class 5 – Interests (Impaired)

a. *Description.* Class 5 consists of all holders of Interests in any of the Debtors.

b. *Voting.* Class 5 Interests are Impaired and holders of Class 5 Interests shall receive no Distribution under the Plan on account of such Interests, and are deemed to have rejected the Plan.

c. *Treatment.* Holders of Class 5 Interests shall receive no Distribution of any kind under the Plan on account of such Interests. On the Effective Date, all Interests shall be deemed canceled and of no further force and effect.

B. Means of Implementation of the Plan

1. Distributions to Creditors

Distributions under the Plan shall be funded from Available Cash. Distributions may be made utilizing any net proceeds recovered by the Debtors or Liquidating Trustee, and any net proceeds realized from the sale, transfer, or liquidation of any remaining Assets. Cash Distributions to holders of Allowed Claims shall be made by the Liquidating Trustee consistent with the Plan, the Liquidating Trust Agreement, and applicable bankruptcy law. The Liquidating Trustee shall make initial Distributions in Cash to holders of Allowed Claims on the Initial Distribution Date and thereafter as determined by the Liquidating Trustee, following consultation with the Liquidating Trust Advisory Board.

No Distribution shall be made on account of any Claim to the extent it is Disputed, unless and until such Disputed Claim becomes an Allowed Claim. The Liquidating Trustee shall determine and reserve a sufficient amount of Cash for the purpose of making Distributions with respect to Disputed, contingent, or unliquidated Claims, if and when such Claims become Allowed. Distributions to each holder of a Disputed Claim, to the extent that such Disputed Claim ultimately becomes Allowed, shall be made in accordance with the Plan.

Notwithstanding any time periods under the Plan for making Distributions, in no event shall the Liquidating Trustee be obligated to make a Distribution if, in the reasonable business judgment of the Liquidating Trustee (after consultation with the Liquidating Trust Advisory Board), the amount then on hand and the ultimate Distribution to be made would not be justified, taking into account all of the attendant costs of such Distribution. In such instance, any undistributed amount may be held over to the next Distribution.

Any federal, state or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions to be made under the Plan. All Persons holding Claims shall be required to provide any information necessary to effect the withholding of such taxes. In addition, all Distributions under the Plan shall be net of the actual and reasonable costs of making such Distributions.

Any non-Cash property of the Estates may be sold, transferred or abandoned by the Debtors or the Liquidating Trustee, so long as such sale, transfer or abandonment complies with the terms of the Plan and requirements of the Bankruptcy Code and applicable law. Any required notice of such sale, transfer, or abandonment shall be provided to the Bankruptcy Court, the U.S. Trustee, and any necessary governmental agencies. If, in the Debtors' or Liquidating Trustee's judgment, any non-Cash property cannot be sold in a commercially reasonable manner, the Debtors or the Liquidating Trustee shall have the right to abandon or otherwise dispose of such property, including by donation of such property to a charity or a local state or county entity. Except in the case of willful misconduct or gross negligence, no Person in interest shall have a cause of action against the Debtors, the Liquidating Trustee, or any director, officer, employee, consultant or professional of any of the foregoing arising from or related to the disposition of non-Cash property in accordance with the terms of the Plan.

As of the Effective Date, all bank accounts established by the Debtors to fund Distributions shall be held by the Liquidating Trustee, on behalf of the Estates, subject to the provisions of the Plan, without further action or need for further Bankruptcy Court order.

2. Payment to Notes Indenture Trustee

a. *Indenture Trustee Fees.* The Liquidating Trustee shall pay, on or as soon as reasonably practicable after the Effective Date, all Indenture Trustee Fees, in full in Cash, without application to or approval of the Bankruptcy Court and without a reduction to the recoveries of the holders of the Notes. Notwithstanding the foregoing, to the extent any Indenture Trustee Fees are not paid, the Indenture Trustee may assert its charging lien against any recoveries received on behalf of the holders of the Notes for payment of such unpaid amounts.

b. *Additional Indenture Trustee Fees and Expenses.* To the extent that the Indenture Trustee provides services related to Distributions pursuant to the Plan, the Indenture Trustee will receive from the Liquidating Trustee, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable expenses incurred in connection with such services.

c. *Payments on Note Claims to be Made to Indenture Trustee.* The Distributions to be made under the Plan to holders of Allowed Note Claims shall be made to the Indenture Trustee, which, subject to the right of the Indenture Trustee to assert its Indenture Trustee Charging Lien against the Distributions, shall transmit the Distributions to the holders of such Allowed Note Claims in accordance with the applicable Indenture.

d. *Liquidating Trustee's Retention of Third Party to Implement Distributions.* The Liquidating Trustee may employ or contract with other Persons or entities to assist in or make the Distributions required under the Plan.

e. *Liquidating Trust Fund Reserve Amount.* On the Effective Date or as soon thereafter as practicable, the Liquidating Trustee shall establish and maintain the Liquidating Trust Fund Reserve Amount which shall consist of an amount of Cash estimated to be necessary to satisfy obligations under the Plan and the payment of professional and other fees and expenses

to be incurred by the Debtors or the Liquidating Trustee in implementing and consummating the terms of the Plan, winding up the affairs of the Debtors, and otherwise completing the tasks necessary to close the Chapter 11 Cases. The Liquidating Trustee may from time to time and in its sole discretion decrease or increase the Liquidating Trust Fund Reserve Amount by transferring funds to or from the Distribution Fund, the Disputed Claims Reserve (after settlement), or from proceeds of the Liquidating Trust Claims.

f. *Disputed Claims Reserve.*

1. *Establishment of Disputed Claims Reserve; Distributions from Disputed Claims Reserve.* On the Effective Date or as soon thereafter as practicable, the Liquidating Trustee may also separately establish and maintain the Disputed Claims Reserve for any distributable amounts required to be set aside on account of Disputed Claims. If applicable, the Liquidating Trustee shall make a Catch-Up Distribution from the Disputed Claims Reserve on account of a Disputed Claim only when and to the extent that such Disputed Claim has become an Allowed Claim pursuant to the entry of a Final Order or agreement among the Liquidating Trustee and claimant. No Distribution shall be made on account of any Claim to the extent it is Disputed, unless and until such Disputed Claim becomes an Allowed Claim.
2. *Investment of Disputed Claims Reserves.* In respect of the Disputed Claims Reserve for Disputed Claims against the Debtors, the Liquidating Trustee shall be permitted, from time to time, to invest all or a portion of the Cash in each of the Disputed Claims Reserve in Permissible Investments.
3. *Release of Funds from Disputed Claims Reserve.* To the extent a Disputed Class 3A or Class 3B Claim against a Debtor is disallowed, the Cash and other property in the Disputed Claims Reserve that otherwise would be distributed in respect of such Claim pursuant to Section 8.05 of the Plan will instead be distributed or allocated in accordance with Section 8.06 of the Plan.
4. *Expedited Determination of Taxes With Respect to Disputed Claims Reserve.* The Liquidating Trustee may request an expedited determination of taxes of the Disputed Claims Reserve, under Section 505(b) of the Bankruptcy Code for all returns filed for or on behalf of the Disputed Claims Reserve for all taxable periods through the dissolution of the Disputed Claims Reserve.

g. *Subsequent Distributions.* After the Effective Date, to the extent Cash is available for Distribution, from whatever source, to holders of Allowed Class 3A Claims and Class 3B Claims, the Liquidating Trustee shall: allocate such Cash Pro Rata among the holders

of Allowed Class 3A and 3B Claims that were Allowed on the Effective Date or subsequently have become Allowed on or before such Distribution in accordance with the Creditors' Committee Settlement and the holders of any still pending Disputed Class 3A and 3B Claims (to the extent provided by the Plan); with the amount allocated to Allowed Class 3A and 3B Claims retained in the Disputed Claims Reserve to be administered in accordance with Article VIII of the Plan, *provided, however*, that any Distributions made from the Disputed Claims Reserve shall be net of certain costs and expenses as provided in the Plan. Notwithstanding the foregoing, any Disputed Claim which, if Allowed, would have been paid in full prior to any Class 3A or 3B Claim shall be paid in full from the Disputed Claim Reserve if and to the extent it is subsequently Allowed.

3. Treatment of Executory Contracts and Unexpired Leases

a. Assumption or Rejection of Executory Contracts and Unexpired Leases

Pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between any of the Debtors and any Person will be deemed rejected by the Debtors, as of the Effective Date, except for any executory contract or unexpired lease (i) that has been assumed pursuant to an order of the Bankruptcy Court, which order may include the Confirmation Order, or (ii) as to which a separate motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Confirmation Date.

4. Rejection.

1. *Executory Contracts and Unexpired Leases to be Rejected.* On the Effective Date, by entry of the Confirmation Order, the Debtors, pursuant to Section 365 of the Bankruptcy Code, shall be deemed to have rejected all of their remaining Executory Contracts and Unexpired Leases except those that: (i) have been assumed pursuant to an order of the Bankruptcy Court, which may include the Confirmation Order, or (ii) are the subject of motions to assume or reject pending on the Effective Date. The Confirmation Order will constitute an order of the Bankruptcy Court approving such assumption or rejection pursuant to Section 365 of the Bankruptcy Code as of the Effective Date.
2. *Deadline to File Rejection Damage Claims.* Each Person who is a party to an Executory Contract or Unexpired Lease rejected under the Plan must file with the Bankruptcy Court and serve on counsel for the Liquidating Trustee, not later than thirty (30) days after the Effective Date, a proof of claim for damages alleged to arise from the rejection of the applicable contract or lease. A failure to timely file a rejection damage claim will result in such Person being forever barred from filing a rejection damage claim and such Person will not receive any Distribution related to such alleged rejection damages.

5. Corporate Action

Each of the matters provided for under the Plan involving any corporate action to be taken or required by the Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized and approved without any requirement of further action by the Debtors, the Debtors' shareholders or the applicable board of directors or other corporate governing body. Without limiting the foregoing, including, without limitation, Section 6.05 of the Plan, the Debtors (and their management) will be authorized in their sole discretion, to dissolve or otherwise terminate on the Effective Date (i) a Debtor's existence, by filing a certificate of dissolution and a copy of the Confirmation Order with the Secretary of State of their respective States of incorporation, (ii) the existence of wholly-owned non-Debtor subsidiaries, or (iii) any remaining health, welfare or benefit plans. As of the Effective Date, neither the Debtors nor the Liquidating Trustee shall be required to file any document, or take any other action, to withdraw any Debtor's business operation from any state in which it previously conducted business operations. The Confirmation Order may contain directing language to the appropriate governmental units to such effect. Following the Effective Date and the filing of appropriate forms with the Securities and Exchange Commission, it is expected that the SEC will deregister Midway's shares and terminate its reporting requirements.

6. Dismissal of Officers and Directors and Dissolution of Debtors and Board

Upon the Effective Date, (i) the existing board of directors or other managing entity for each Debtor and any remaining officer of any Debtor shall be dismissed and (ii) each of the Debtors shall be deemed dissolved without any further action required.

7. Liquidating Trust.

a. Preservation of Records and Documents.

The Liquidating Trustee shall: (i) take commercially reasonable efforts to preserve all records and documents (including any electronic records or documents) related to the Assets and Causes of Action (including, the Liquidating Trust Claims), as applicable and necessary, for a period of five (5) years from the Effective Date or, if actions with respect to any applicable Causes of Action are then pending, until the Liquidating Trustee notifies the Liquidating Trust Beneficiaries such records are no longer required to be preserved; and (ii) provide the Liquidating Trust, the Liquidating Trust Beneficiaries and their respective counsel, agents and advisors, with reasonable access to such records and documents, subject to appropriate confidentiality protections.

b. Discovery

The Liquidating Trustee shall be authorized to employ Bankruptcy Rule 2004 and any other bankruptcy tools of discovery as such are available to the Estates.

8. Miscellaneous Distribution Provisions

a. *Unclaimed Property.* If a Distribution under the Plan remains unclaimed for six (6) months following the date of the attempted Distribution thereof, then, except as otherwise specifically provided below, the holder of the applicable Allowed Claim shall cease to be entitled to such Distribution and such Distribution shall be transferred to the Liquidating Trust Reserve Amount or otherwise distributed in accordance with the terms of the Plan. After final Distributions have been made in accordance with the terms of the Plan and the Liquidating Trust Agreement, if the amount of undeliverable Cash remaining is less than \$10,000.00, the Liquidating Trustee, in his or her or its sole discretion, may donate such amount to a charity.

b. *Method and Delivery of Cash Distributions.* Any Cash Distribution to be made pursuant to the Plan may be made by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law. Cash payments made pursuant to the Plan shall be in good currency and funds of the United States of America, by the means agreed to by the payor and the payee, including by check or wire transfer, or in the absence of an agreement, by such commercially reasonable manner as the payor shall determine in its sole discretion. All Distributions by check shall be deemed made at the time such check is duly deposited in the United States mail, postage prepaid. All Distributions by wire transfer shall be deemed made as of the date the Federal Reserve or other wire transfer is made. Except as otherwise agreed with the holder of an Allowed Claim, Distributions to holders of Allowed Claims shall be distributed by mail upon compliance by the holder with the provisions of the Plan: (a) at the address set forth on the respective proof of claim filed by the holder of such Claim; (b) at the address set forth in any written certification of address change timely delivered to the Liquidating Trustee after the date of filing of any related proof of claim; or (c) at the address reflected in the applicable Debtor's Schedules or books and records if no proof of claim has been filed and the Liquidating Trustee has not received a timely written notice of a change of address.

c. *Holding and Investment of Undeliverable Distributions.* If any Distribution to a holder of an Allowed Claim is returned to the Liquidating Trustee as undeliverable, no further Distributions will be made to such holder unless and until the Liquidating Trustee is notified in writing of such holder's then-current address. Undeliverable Distributions shall be held by the Liquidating Trustee for the benefit of the Liquidating Trust Beneficiaries, pursuant to the Plan until such time as the applicable Distribution becomes deliverable. Undeliverable Cash will be held in segregated bank accounts in the name of the Liquidating Trustee for the benefit of the potential claimants of such funds. The Liquidating Trustee holding undeliverable Cash may invest such Cash in Permissible Investments.

d. *Disputes Over Identity of Claim Holder.* If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Liquidating Trustee may, in lieu of making a Distribution to such Person, make such Distribution into a segregated account until the disposition thereof shall be determined by Bankruptcy Court order or by written agreement among the interested parties to such dispute.

e. *Time Bar to Cash Payments.* Checks issued by the Liquidating Trustee in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Liquidating

Trustee by the holder of the Allowed Claim to whom such check originally was issued on or before one hundred twenty (120) days after the date the check becomes null and void. After such date, if such request was not given, a holder shall have forfeited its right to such Distribution, and the funds represented by such check shall be distributed to other holders of Allowed Claims pursuant to the Plan as part of a subsequent Distribution.

f. *Fractional Cents.* Notwithstanding any other provisions of the Plan to the contrary, no payment of fractional cents will be made under the Plan. Cash will be issued to holders entitled to receive a Distribution of Cash in whole cents (rounded to the nearest whole cent when and as necessary).

g. *No Distribution in Excess of Allowed Amount of Claim.* Notwithstanding anything in the Plan to the contrary, no holder of an Allowed Claim shall receive, respecting such Claim, any Distribution (of a value set forth herein) in excess of the Allowed amount of such Claim.

h. *De Minimis Distributions.* No Cash payment of less than \$50.00 shall be required to be made to the holder of any Claim.

i. *Withholding Taxes.* Any federal or state withholding taxes or other amounts required to be withheld under any applicable law shall be deducted and withheld from any Plan Distributions. In order to receive a Distribution, each holder of an Allowed Claim must provide a tax identification number (and/or other information required under applicable law). The Liquidating Trustee shall otherwise comply, to the extent applicable, with all tax withholding and reporting requirements imposed under applicable law.

j. *Objections to Claims.* Except as otherwise set forth in the Plan and unless otherwise ordered by the Bankruptcy Court, all objections to Claims shall be filed with the Bankruptcy Court and served on the applicable claimant on or prior to one hundred and eighty (180) days after the later of: (a) the Effective Date; and (b) the date a Claim is filed with the Bankruptcy Court and served on counsel for the Debtors or the Liquidating Trustee, as applicable. The Liquidating Trustee, before or after such deadline, may seek to extend such deadline by motion to the Bankruptcy Court.

k. *Prosecution of Objections to Claims.* Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, upon the Effective Date and thereafter the Liquidating Trustee shall have the exclusive right to make and file objections to Claims and Administrative Claims in the Chapter 11 Cases. Except as set forth herein, nothing in the Plan, the Confirmation Order or any order in furtherance of Confirmation shall constitute, or be deemed to constitute, a waiver or release of any right, claim, or Cause of Action by the Liquidating Trustee, including but not limited to, any right of setoff, or other legal or equitable defense which the applicable Debtor possessed immediately prior to the commencement of the Chapter 11 Cases, against or with respect to any Claim or Administrative Claim. Except as set forth in the Plan, upon Confirmation, the Liquidating Trustee shall have, retain, reserve and be entitled to assert all Causes of Action which the Debtors had immediately prior to the commencement of the Chapter 11 Cases fully as if the Chapter 11 Cases had not been commenced.

l. *Estimation of Claims.* The Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any disputed, contingent or unliquidated Claim or Administrative Claim regardless of whether the Debtors or the Creditors' Committee have previously objected to such Claim or Administrative Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim or Administrative Claim at any time during litigation concerning any objection thereto. In the event that the Bankruptcy Court estimates any disputed, contingent or unliquidated Claim or Administrative Claim, that estimated amount will constitute either the Allowed amount of such Claim or Administrative Claim or a maximum limitation on such Claim or Administrative Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, then the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim or Administrative Claim. All of the aforementioned claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims and Administrative Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

m. *Controversy Concerning Impairment.* If a controversy arises as to whether any Claims or Interests are impaired under the Plan, the Bankruptcy Court, after notice and a hearing, shall determine such controversy on or before the Confirmation Date.

n. *Settlement of Claims.* Subsequent to the Effective Date, the Liquidating Trustee on behalf of the Debtors shall have the authority to resolve any Disputed Claim or Disputed Administrative Claim subject only to the filing of a notice of such settlement with the Bankruptcy Court. Any such settlement shall be binding under the Plan and upon all parties in interest in the Chapter 11 Cases.

o. *Setoff and Recoupment.* In the event any of the Debtors have a claim of any nature whatsoever against a holder of a Claim or Administrative Claim, the Liquidating Trustee may, but is not required to, setoff against such holder's Claim or Administrative Claim (and any Distributions or other rights to receive property arising out of such Claim or Administrative Claim under the Plan) the Debtors' or Liquidating Trustee's claim against such holder, subject to the provisions of Section 553 of the Bankruptcy Code and other applicable law. Neither the failure to setoff nor the allowance of any Claim or Administrative Claim under the Plan shall constitute a waiver or release by the Debtors, the Creditors' Committee, or the Liquidating Trustee of any claims or defenses that the Debtors or the Creditors' Committee or Liquidating Trustee have against a the holder of such Claim, all of which are expressly preserved. Nothing contained or omitted from the Plan shall limit, adversely affect, or otherwise impair any rights of setoff or recoupment the Debtors, the Creditors' Committee and/or the Liquidating Trustee may possess, as against all third parties.

C. Certain Risk Factors

1. The financial information included in the Disclosure Statement may be incomplete.

Although the Debtors have used their best efforts to ensure the accuracy of the financial information provided in this Disclosure Statement, the financial information contained in this Disclosure Statement has not been audited in certain respects is estimated, and is based upon an analysis of data available at the time of the preparation of the Plan and Disclosure Statement. While the Debtors believe that such financial information fairly reflects the finances of the Debtors as of the date of the Disclosure Statement, the Debtors do not warrant or represent that the information contained herein and attached hereto is without inaccuracies or complete.

2. Parties in interest may object to the Debtors' classification of Claims.

Section 1122 of the Bankruptcy Code provides that a chapter 11 plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, it cannot be assured that the Bankruptcy Court will reach the same conclusion.

3. The Debtors may not be able to secure Confirmation of the Plan.

It cannot be assured that the Debtors will be able to obtain the requisite acceptances to confirm the Plan. Even if the requisite acceptances are received, the Bankruptcy Court may not confirm the Plan. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court may still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation have not been met.

4. Certain tax implications of the Debtors' bankruptcy and liquidation may increase the tax liability of the Debtors.

The U.S. federal income tax implications of consummation of the Plan to holders of Claims are complex and subject to uncertainty. See Article IV, "Certain U.S. Federal Income Tax Consequences of the Plan," for discussion of the income tax consequences for creditors and the Debtors resulting from the consummation of the Plan. If you have questions about the tax implications of the Plan, you should consult an attorney or other professional.

5. Certain events may cause the dilution of Distributions to holders of Allowed Claims in Class 3A and Class 3B under the Plan.

Distributions to holders of Allowed Claims in Class 3A and Class 3B may be diluted as a result of one or more of the following: (i) the projected creditor recovery analysis does not include estimates for any rejection damage, contingent, Disputed and/or unliquidated Claims in Classes 3A and 3B (to the extent any such Claims become Allowed Claims, the aggregate amount of Allowed Claims in Class 3A and Class 3B will increase while the total Cash or other property to be distributed to such Class may remain the same or decrease, thereby

diluting recoveries for creditors); (ii) the allowance of any unanticipated, unknown, or unliquidated Claims, of whatever nature; or (iii) the allowance of the Warner Royalty Claim and the allowance of some or all of the similar third party licensor Administrative Claims in amounts yet to be determined.

D. Effect of Plan on Claims and Interests

1. Discharge

Pursuant to Section 1141(d)(3) of the Bankruptcy Code, Confirmation of the Plan will not discharge the Debtors; *provided, however,* upon Confirmation of the Plan, the occurrence of the Effective Date and Distributions hereunder, Creditors may not seek payment or recourse against or otherwise be entitled to any Distribution from the Liquidating Trust or Liquidating Trust Funds except as expressly provided in the Plan and the Liquidating Trust Agreement.

2. Settlement of Claims and Releases

Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a holder of an Allowed Claim may have with respect to such Allowed Claim or any Distribution to be made pursuant to the Plan on account of such Allowed Claim. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Claims or controversies and entry of the Confirmation Order will constitute the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors and their respective creditors and is fair, equitable and reasonable. **Upon a Creditor's receipt of a Distribution on account of such Creditors' Allowed Claim pursuant to the Plan, such Creditor forever shall be barred from amending any proof of claim upon which such Allowed Claim is based.**

3. Term of Bankruptcy Injunction or Stay

Except as otherwise expressly provided in the Plan or the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and which are in effect on the Confirmation Date, shall remain in full force and effect until the Effective Date.

4. Exculpation

The Plan contains the following exculpation: The Debtors, the Creditors' Committee and its members and each of their respective affiliates, officers who provided service after the Petition Date, directors who provided service after the Petition Date, managers, employees, members or agents (each acting in such capacity), and any professional Persons employed by any of them, will not have or incur any liability to any Person for any action taken or omitted to be taken in connection with or related to or arising out of, the formulation, preparation, dissemination, negotiation, implementation, confirmation, or consummation of this Plan, the Disclosure Statement, any motion, order,

release, settlement, transaction, or other agreement or document created or entered into or approved by the Bankruptcy Court, or any other post-Petition Date action taken or omitted to be taken in connection with this Plan or any other matter or proceeding in the Chapter 11 Cases, and all Claims based upon or arising out of such actions or omissions will be forever barred, waived and released; *provided, however*, that nothing herein shall affect the liability of any Person arising from any act, omission, transaction, agreement, event or other occurrence, constituting willful misconduct, gross negligence, fraud or criminal conduct. For the avoidance of doubt, the foregoing exculpation and release provisions, and those release provisions set forth in Section 10.06 of the Plan, include William C. Bartholomay, Peter C. Brown, Joseph A. Califano, and Robert N. Waxman and with respect to each of Messrs. Bartholomay, Brown, Califano, and Waxman, are (i) in exchange for and in full satisfaction and release of all claims, of whatever nature, including without limitation prepetition Claims and Administrative Claims, asserted or that may be asserted by any of them, or by any assignee or subrogee of same, against any of the Debtor Released Parties (as defined in Section 10.06 of the Plan) in connection with the Debtors or their Chapter 11 Cases, and (ii) in exchange for the immediate dismissal, with prejudice, upon entry of the Confirmation Order, of Messrs. Bartholomay, Brown, Califano, and Waxman's pending appeal of the final cash collateral order. Each of Messrs. Bartholomay, Brown, Califano, and Waxman have agreed to the exculpation and mutual releases set forth in Sections 10.04 and 10.06 of the Plan and have agreed that the Confirmation Order will expressly provide for such exculpation and mutual releases.

5. Injunction

The Plan provides and the Confirmation Order shall provide, among other things, that any Person (other than the Debtors, the Creditors' Committee, the Debtors' Estates or the Liquidating Trustee) who has held, holds, or may hold a claim against or interest in the Debtors' Estates, the Assets, the Liquidating Trust, or the Liquidating Trust Funds, or any claim against or interest in any Person (including any Debtor) for which the Debtors' Estates or the Liquidating Trust are or may be directly liable or indirectly liable by way of contribution, indemnity (including an obligation to pay defense costs under the Plan or otherwise) or otherwise is, with respect to any such claim or interest, permanently enjoined from and after the Effective Date from taking any of the following actions (other than actions taken in the Bankruptcy Court or in any of the Bankruptcy Cases to enforce any rights or obligations under the Plan or to defend challenges to the validity or amount of a Disputed Claim): (i) asserting, commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting any of the Debtors' Estates, the Assets, the Liquidating Trust, or the Liquidating Trust Funds on account of any claim for which the Debtors or Liquidating Trustee are directly or indirectly liable by way of contribution, indemnity or otherwise, including without limitation any State Wage Claims; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against any of the Debtors' Estates, the Assets, the Liquidating Trust, or the Liquidating Trust Funds; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien of any kind against the Debtors' Estates, the Assets, the Liquidating

Trust, or the Liquidating Trust Funds on account of any claim for which any of the Debtors or Liquidating Trustee are or may be directly or indirectly liable by way of contribution, indemnity or otherwise; (iv) asserting any right of setoff of any kind, directly or indirectly, against any obligation due to any of the Debtors' Estates or the Liquidating Trust, on account of any claims for which any of the Debtors' Estates or Liquidating Trust are or may be directly or indirectly liable by way of contribution, indemnity or otherwise; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; and (vi) prosecuting, commencing, continuing or otherwise asserting any right, claim or cause of action released pursuant to the Plan or that is otherwise inconsistent with the provisions of the Plan. Any Person injured by any willful violation of such injunction shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages, from the willful violator(s). Notwithstanding the foregoing, holders of Disputed Claims are not enjoined from and shall retain all rights to defend or prosecute such Disputed Claims in the Bankruptcy Court, including, without limitation, the right to assert affirmative defenses, setoff, or recoupment, if applicable.

6. Releases by Debtors.

The Plan provides that except as otherwise expressly provided in the Plan and subject to the terms of any prior court orders, each of the Debtors and any Person or entity seeking to exercise rights or claims of or on behalf of the Debtors or the Debtors' Estates shall be deemed to have waived, released and discharged (i) any of the other Debtors, (ii) any of the Named Officers, present directors, and the Former Directors, (iii) the Creditors' Committee and any of its members, but solely in their capacities as members of the Creditors' Committee, and (iv) any professionals employed by the Debtors or Creditors' Committee in the Chapter 11 Cases (collectively, the "Debtor Released Parties"), from all claims (as such term is defined in section 101(5) of the Bankruptcy Code), obligations, suits, damages, demands, debts, rights, or causes of action that may be brought by or on behalf of the Debtors or the Debtors' Estates against the Debtor Released Parties of whatever kind or nature, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, in law or equity, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date, relating to or in connection with the Debtors, the Chapter 11 Cases, the conduct of the Debtors' business, or this Plan; provided, however, that, except as to the matters alleged in the Creditors' Committee Action against the Former Directors, the foregoing release (i) will have no effect on the liability of any Debtor Released Parties arising from an act, omission, transaction, agreement, event or other occurrence constituting willful misconduct, gross negligence, fraud or criminal conduct and (ii) will not constitute a release or waiver of any defense available to the Debtors or the Liquidating Trustee in connection with any Disputed Claim (including Administrative Claims) asserted against the Debtors, the Debtors' Estates or the Liquidating Trust by any Debtor Released Party. The definition of Debtor Released Parties does not include NAI, Sumco or Sumner Redstone but does include each of the Former Directors; provided, however, that, as to Shari E. Redstone ("Redstone") and Robert J. Steele ("Steele"), the releases described in Section 10.06 of the Plan shall be in exchange for and full satisfaction of all claims, of whatever nature, including without limitation prepetition Claims and

Administrative Claims, asserted or that may be asserted by Redstone or Steele, or by any assignee or subrogee of Redstone or Steele, against any of the Debtor Released Parties in connection with the Debtors or their Chapter 11 Cases. Each of Redstone and Steele have agreed to the mutual releases set forth herein and have agreed that the Confirmation Order will expressly provide for such releases. For the avoidance of doubt, the releases of the Former Directors as set forth in Section 10.06 of the Plan includes a release from all claims asserted or that could have been asserted against them in the Creditors' Committee Action. Notwithstanding any release provided to the Former Directors under this Plan, nothing in the Plan shall in any way prejudice claims asserted in the Creditors' Committee Action against any Person that is not a Debtor Released Party. Such claims are expressly reserved and preserved for the benefit of the Estates, and, following the Effective Date, the Liquidation Trust. The releases described herein shall be binding upon all Persons.

7. State Wage Claims.

Section 5.07 of the Plan provides that, subject to Section 5.10 of the Plan, the Debtors, and after the Effective Date, the Liquidating Trustee shall defend, indemnify and hold harmless, to the extent provided in the applicable certificates of incorporation, by-laws or similar constituent documents of any of the Debtors or by written agreement, policies, or procedures of any such Debtors or by statute, Matthew Booty, Ryan O'Desky and all other employees of any of the Debtors from and against the State Wage Claims and shall settle, compromise and/or pay any amounts required to be paid by any of Matthew Booty, Ryan O'Desky and/or, if applicable, any other employees of the Debtors, if and to the extent the State Wage Claims or any of them are adversely determined against any of Messrs. Booty and/or O'Desky and/or any other such employee. The obligations under Section 5.07 of the Plan shall be paid and performed as an Allowed Administrative Claim.

8. Corporate Indemnities for Post-Petition Date Service.

Section 5.08 of the Plan provides that notwithstanding any other term or provision contained in the Plan, but subject to Section 5.10 of the Plan, the Debtors and after the Effective Date, the Liquidating Trustee shall defend, indemnify and hold harmless any Person who has served as one of the Debtors' directors, officers or employees, or as a director, officer or employee of another corporation, partnership or other legal entity but only to the extent (a) that such Person would have been entitled to such defense, indemnification and hold harmless as of the Petition Date in the applicable certificates of incorporation, by-laws or similar constituent documents of any of the Debtors or by written agreement, policies or procedures of any of such Debtors or by statute, in each case for post-Petition Date service in such capacity and (b) that any issuer of an officer and director insurance policy is not defending, indemnifying or holding harmless such Person and (c) such Person's liability under such claim arises from a post-Petition Date act, omission, transaction, agreement, event or other occurrence in his or her capacity as an officer, director or employee (as applicable). The foregoing obligations of the Debtors and the Liquidating Trustee shall not apply to (i) the Initial Defendants (ii) any pre-Petition Date act, omission, transaction, agreement, event or other occurrence or (iii) any Claim (including Administrative Claims) filed or asserted in the Chapter 11 Cases prior to the Effective Date by a Person entitled to the protections set forth in Section 5.08 of the Plan. The obligation to defend, indemnify and hold harmless as set forth in Section 5.08 of the Plan shall be paid and performed

as an Allowed Administrative Claim. Notwithstanding the foregoing, (A) the Liquidating Trustee shall not be required to maintain any reserve for claims that may arise under Section 5.08 of the Plan and (B) the obligation to defend, indemnify and hold harmless as set forth in Section 5.08 of the Plan shall not apply to any Claims made later than the earlier of (i) the expiration of eighteen (18) months after the Effective Date or (ii) the date on which an order for a final decree closing the Chapter 11 Cases has been entered in accordance with the Bankruptcy Code and the Bankruptcy Rules.

9. Corporate Indemnities for Pre-Petition Date Service.

Section 5.09 of the Plan provides that notwithstanding any other term or provision contained in the Plan, but subject to Section 5.10 of the Plan, the Debtors, and after the Effective Date, the Liquidating Trustee shall defend, indemnify and hold harmless the Named Officers against any claim against such Persons based on conduct or acts occurring prior to the Petition Date that would have been covered under the Debtors' directors and officers insurance policy that was in effect as of the Petition Date had such claim been made immediately prior to the Petition Date; provided that the obligations of the Debtors or the Liquidating Trustee under Section 5.09 of the Plan shall not exceed an aggregate of \$500,000 and shall not apply to any Claims made later than the earlier of (i) the expiration of eighteen (18) months after the Effective Date or (ii) the date on which an order for a final decree closing the Chapter 11 Cases has been entered in accordance with the Bankruptcy Code and Bankruptcy Rules and, *provided, further*, that the foregoing defense and indemnity under Section 5.09 of the Plan shall not apply (i) to any Persons other than the Named Officers, (ii) any post-Petition act, omission, transaction, agreement, event or other occurrence or (iii) any Claim (including Administrative Claims) filed or asserted by any of the Named Officers in these Chapter 11 Cases. Furthermore, any Allowed Claims for indemnification arising under the applicable certificates of incorporation, by-laws or similar constituent documents of any of the Debtors or by written agreement, policies or procedures of any of the Debtors or by statute and relating to pre-Petition Date acts or conduct and any claims described in the first sentence of Section 5.09 of the Plan in excess of the dollar limitation or outside the time limitation shall be treated as Allowed Class 3A Claims. The Liquidating Trustee shall provide the Named Officers and all other Persons requesting written notice with at least twenty (20) days notice of the Liquidating Trustee's intent to make a final Distribution and/or to close the Chapter 11 Cases.

10. Resolution of Claims of Named Officers.

Section 5.10 of the Plan provides that the defense, indemnification and hold harmless obligations set forth in provisions of Section 5.07, 5.08 and 5.09 of the Plan and ARTICLE X of the Plan, and Confirmation of the Plan, are conditioned upon (i) the withdrawal and termination of all indemnification-based Claims filed by the Named Officers, (ii) the resolution, to the satisfaction of the Creditors' Committee, of all Claims filed by the Named Officers for severance, paid time off and any other matters prior to or in connection with the Confirmation Hearing and (iii) the acknowledgment by the Named Officers that, as of the date of Confirmation, they have no knowledge of any undisclosed claims asserted against them that would trigger the provisions of sections 5.08 or 5.09 of the Plan.

11. Preservation of Insurance

The provisions of the Plan shall not diminish or impair the enforceability of any insurance policies that may cover Claims against any Debtor or any other Person and the provisions of the Plan shall not prevent any Person from seeking coverage with respect to any Claim under any applicable insurance policies of the Debtors or otherwise.

12. Post-Confirmation Date Payments

As of the Effective Date, the Debtors, the Liquidating Trust, and the Liquidating Trustee may pay the reasonable charges they incur for professional fees, disbursements, expenses or related support services after the Confirmation Date upon the submission to the Liquidating Trustee of a detailed invoice, in respect of such fees, disbursements, expenses and related charges.

13. Release of Assets

Until the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Debtors, their Assets and property. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matters set forth in Section 13.01 of the Plan, as consistent with the Bankruptcy Code, and the Liquidating Trustee shall perform and wind up the affairs of the Debtors, as provided in the Plan, including disposing of the Debtors' Assets in accordance with the Plan.

14. Binding Effect

Except as otherwise provided in the Confirmation Order or in Section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtors and their respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder has accepted the Plan.

E. Waiver of Conditions to Confirmation and Effective Date

Each of the conditions to Confirmation of the Plan or the occurrence of the Effective Date may be waived in whole or in part by the Debtors, in consultation with the Creditors' Committee, or by the Creditors' Committee, as applicable, without notice and a hearing; provided however, that any such waiver(s) must be in writing and filed with the Bankruptcy Court if the Debtors and Creditors' Committee are not in agreement regarding such waiver. Any waiver(s) in accordance with Section 12.03 of the Plan shall not prejudice or otherwise affect the Debtors', the Creditors' Committee's or the Liquidating Trustee's rights to assert that consummation of the Plan, notwithstanding any such waiver(s), would legally or equitably moot any appeal of the Confirmation Order. The failure to satisfy or waive any condition may be asserted by the Debtors or the Creditors' Committee, as applicable, regardless of the circumstances giving rise to the failure of such condition to be satisfied (including, without limitation, any act, action, failure to act, or inaction by the Debtors or Creditors' Committee). The failure of the Debtors or the Creditors' Committee to exercise any of the foregoing rights

shall not be deemed a waiver of any other rights and each such right shall be deemed an ongoing right that may be asserted or waived (as set forth in the Plan) at any time or from time to time.

F. Closing of the Chapter 11 Cases

At such time as the Liquidating Trustee deems appropriate, after all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed by Final Order, all remaining Assets have been liquidated and converted into Cash (other than those Assets abandoned by any Debtor or the Liquidating Trustee), and such Cash has been distributed in accordance with the Plan, the Liquidating Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules. The Debtors or Liquidating Trustee shall pay quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. §1930 until the earliest to occur of a case being closed, converted, or dismissed.

G. Administrative Provisions

1. Retention of Jurisdiction.

Following Confirmation of the Plan and occurrence of the Effective Date, the Plan provides that the Bankruptcy Court shall retain jurisdiction for the following purposes, without limitation:

- a. Determination of the allowability of Claims and Administrative Claims and the validity, extent, priority, and nonavoidability of consensual and nonconsensual Liens and other encumbrances;
- b. Determination of the Debtors' tax liability pursuant to Section 505 of the Bankruptcy Code;
- c. Approval, pursuant to Section 365 of the Bankruptcy Code, of all matters and claims related to the assumption, assumption and assignment, or rejection, of any Executory Contract or Unexpired Lease of any of the Debtors;
- d. Resolution of controversies and disputes regarding the enforcement or interpretation of the Plan, the Confirmation Order, or the Bankruptcy Court's orders that survive Confirmation of the Plan;
- e. Implementation of the provisions of the Plan, and entry of orders in aid of Confirmation and consummation of the Plan and enforcing settlements or orders entered during the Chapter 11 Cases or as part of the Plan, including, without limitation, appropriate orders to protect the Debtors and the Liquidating Trustee from actions by creditors and resolution of disputes and controversies regarding property of the Debtors' Estates and of the Liquidating Trust;
- f. Modification of the Plan pursuant to Section 1127 of the Bankruptcy Code;

- g. Commencement and adjudication of any Causes of Action or Liquidating Trust Claims that arose prior to the Confirmation Date or in connection with the implementation of the Plan and other actions against third parties brought or to be brought by the Debtors, the Creditors' Committee, or the Liquidating Trustee (as a representative of the Debtors' Estates or the Liquidating Trust);
- h. Entry of a Final Order(s) closing the Chapter 11 Cases;
- i. Resolution of disputes concerning Disputed Claims, Claims for disputed Distributions, and recharacterization or equitable subordination of Claims;
- j. Resolution of any disputes concerning any release under the Plan of a non-Debtor, and indemnification provisions contained in the Plan or Confirmation Order, or concerning any injunction provision contained in the Plan or Confirmation Order;
- k. Resolution of any disputes concerning whether a Person had sufficient notice of, among other things, (i) the Chapter 11 Cases; (ii) the Bar Date, the Initial Administrative Claims Bar Date or the Final Administrative Claim Bar Date; (iii) the hearing on the approval of the Disclosure Statement (iv) the hearing on Confirmation of the Plan;
- l. Issuance of injunctions, granting and implementation of other orders, or taking such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of the Plan;
- m. Resolution of controversies and disputes regarding settlement agreements, orders, injunctions, judgments, and other matters entered or approved by the Bankruptcy Court in connection with any adversary proceeding or contested matter in the Chapter 11 Cases;
- n. Correction of any defect, cure of any omission or reconciliation of any inconsistency in the Plan, the Confirmation Order, or any other documents relating to the Plan, as may be necessary to carry out the purposes or intent of the Plan;
- o. Adjudication of any pending adversary proceeding, or other controversy or dispute, in the Chapter 11 Cases, which arose prior to the Confirmation Date and over which the Bankruptcy Court had jurisdiction prior to Confirmation of the Plan;
- p. Entry and implementation of such orders as may become necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
- q. Resolution of Administrative Claims arising under Section 503(b) of the Bankruptcy Code;
- r. Resolution of controversies and disputes regarding any Sale Transaction or any approval orders in connection therewith;

s. Determination of any other matters that may arise in connection with or related to the administration of the Debtors' Estates or the Liquidating Trust, Claims, Interests, Executory Contracts, Unexpired Leases, the Plan, this Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Disclosure Statement; and

t. Resolution of Liquidating Trust Claims.

2. Liquidating Trustee Standing.

The Liquidating Trustee shall have standing to be heard on any matter over which the Bankruptcy Court retains jurisdiction and that relates, in any manner, to the administration of the Liquidating Trust.

3. Revocation of the Plan.

The Debtors reserve the right in their absolute discretion to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation as to any or all of the Debtors does not occur, then, with respect to such Debtors, the Plan will be null and void in all respects, and nothing contained in the Plan will: (1) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or (2) prejudice in any manner the rights of any Debtors or any other party.

4. Successors and Assigns.

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the heirs, executors, administrators, successors, or assigns of such Person.

5. Severability.

Should any provision in the Plan be determined to be unenforceable following the Confirmation Date, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan, so long as the modified Plan satisfies the requirements of the Bankruptcy Code, including, without limitation, Section 1127 of the Bankruptcy Code.

6. Governing Law.

Except to the extent the Bankruptcy Code, the Bankruptcy Rules, or other federal laws apply, or as otherwise expressly provided in the Plan, the rights and obligations arising under the Plan shall be governed by the laws of the State of Delaware without giving effect to principles of conflicts of law.

7. Applicability of Section 1125 of the Bankruptcy Code

The protection afforded by Section 1125(e) of the Bankruptcy Code with regard to solicitation of acceptances or rejections of the Plan shall apply to the fullest extent provided by law, and the entry of the Confirmation Order shall constitute the determination by the Bankruptcy Court that the Debtors, and each of their respective officers, directors, partners, employees, members, agents, attorneys, accountants or other professionals, shall have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code pursuant to Section 1125(e) of the Bankruptcy Code.

ARTICLE IV

CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

A. Certain U.S. Federal Income Tax Consequences Of The Plan

To ensure compliance with IRS Circular 230, you are hereby notified that any discussion of federal tax issues herein is not intended or written to be used, and it cannot be used, by any Person for the purpose of: (A) avoiding penalties that may be imposed on them under the Tax Code, and (B) promoting, marketing or recommending to another party any transaction or matter addressed herein. This disclosure is made in accordance with the rules of Treasury Department Circular 230 governing standards of practice before the Service.

The following discussion summarizes certain U.S. federal income tax consequences to the Debtors and holders of Allowed Class 3A and Class 3B Claims arising from the implementation of the Plan. The following summary does not address the U.S. federal income tax consequences to holders of any type of Claim or Interest other than an Allowed Class 3A or Class 3B Claim. Additionally, this summary does not consider foreign, state, or local tax consequences of the Plan, nor does it purport to address the U.S. federal income tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax-exempt organizations, and investors in pass-through entities) or the tax considerations that may be relevant to taxpayers subject to special rules under the Tax Code in light of the holder's individual investment or tax circumstances.

The following summary is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations promulgated thereunder (the "Treasury Regulations"), judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service ("IRS") as in effect on the date hereof. Such authorities may be repealed, revoked or modified, or may be subject to differing interpretations, so as to result in U.S. federal income tax considerations significantly different from those discussed below. Moreover, this summary is not binding on the IRS or applicable courts, and no assurance can be provided that the conclusions reached in this summary will not be challenged by the IRS or will be sustained by a court if so challenged. The U.S. federal income tax discussion set forth below is included for general information only.

DEBTORS AND HOLDERS OF ALLOWED CLASS 3A AND CLASS 3B CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE SPECIFIC TAX CONSEQUENCES TO THEM IN CONNECTION WITH THE PLAN, INCLUDING TAX REPORTING REQUIREMENTS, THE APPLICABILITY AND EFFECT OF FOREIGN, FEDERAL, STATE, LOCAL, AND OTHER APPLICABLE TAX LAWS AND THE EFFECT OF ANY PROPOSED CHANGES IN THE TAX LAWS. NON-U.S. HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THEIR PARTICULAR TAX CONSEQUENCES.

B. Consequences to the Debtors

1. Cancellation of Debt Income

Cancellation of Debt Income (“COD”) is the amount by which discharged indebtedness (reduced by any unamortized discount) exceeds any consideration given in exchange therefor (less any consideration attributable to accrued interest), subject to certain statutory or judicial exceptions that can apply to limit the amount of COD (such as where the payment of the cancelled debt would have given rise to a tax deduction). As a result of the implementation of the Plan, and in particular the settlement and discharge of the Allowed Class 3A and Class 3B Claims, the Debtors expect to realize significant COD. While COD is generally taxable, the Tax Code provides that in lieu of paying tax on COD, a debtor in a bankruptcy case generally must reduce certain of its tax attributes such as net operating loss (“NOL”) carry forwards, current year NOLs, tax credits, and tax basis in assets by the amount of any COD realized in bankruptcy, if any, remaining as of the first day of the tax year following the debt discharge. Attributes are reduced following the determination of tax for the year in which the COD arises. Since it is not anticipated that the Debtors will have any income or own any assets after determination of the year in which it recognizes COD (the year in which the Plan becomes effective) and the Debtors will be liquidated under the Plan, the Debtors should not be adversely impacted by a reduction in their tax attributes in connection with the realization of COD.

2. Third Party Sale

Pursuant to the Plan and until the liquidation is completed, the Debtors will continue to be subject to U.S. federal income tax on their taxable income, if any, such as interest income, gain from the sale of any remaining assets, or income from operations. Upon the sale of any of the Debtors’ assets in connection with their liquidations, the Debtors will recognize gain or loss equal to the difference between: (i) the fair market value of the consideration received for each asset sold, and (ii) the Debtors’ adjusted tax basis in the asset sold. It is anticipated that substantially all of such gain will be offset by the Debtors’ NOLs. See below “Limitation on NOL Carry Forwards and Other Tax Attributes.”

3. Limitations on NOL Carry Forwards and Other Tax Attributes

In general, under Section 382 of the Tax Code, if a corporation undergoes an “ownership change,” the amount of its NOLs, credit carry forwards, and certain built-in losses (“Pre-Change Losses”) that may be utilized to offset taxable income arising following the

ownership change is generally limited to an annual amount equal to the product of: (i) the fair market value of the stock of the loss corporation immediately before the ownership change (with certain adjustments) multiplied by (ii) the “long-term tax-exempt rate” in effect for the month in which the ownership change occurs. Any unused losses may be carried forward, thereby increasing the annual limitation in the subsequent taxable year. The limitation on use of Pre-Change Losses following an ownership change is in addition to any reduction of tax attributes in connection with the realization of COD. Among other items, the annual limitation on use of NOLs is increased by a corporation’s “built-in gains” (generally, the excess of the fair market value of an asset immediately prior to an ownership change over its tax basis in the hands of the corporation at such time, hereinafter referred to as “Built-in Gains”) recognized in the 5 year period immediately following the ownership change. Built-in Gains may generally be utilized only to the extent that both: (i) the corporation had a “Net Unrealized Built-In Gain” (a “NUBIG”) as of the time of the ownership change (that is, the aggregate fair market value of the corporations assets exceeded the aggregate adjusted tax basis of the company’s assets in its hands as of such time, and (ii) the amount of the NUBIG exceeded the lesser of (A) 15% of the aggregate fair market value of the company’s assets as of the time of the ownership change, or (B) \$10,000,000 as of such time).

Prior to November 28, 2008, the Debtors had significant consolidated NOLs. However, on November 28, 2008, an “ownership change” (as defined for these purposes) as a result of the Redstone Stock Purchase Agreement significantly limited the Debtors’ NOL carryovers available for future utilization. The Debtors expect to generate additional NOLs in the current year and anticipate that they will have sufficient NOL carryovers and current year losses (taking into account the limitations on the use of such losses under Section 382 of the Code, including the rules applicable to any NUBIG) to offset any income and gain they recognize in connection with the sale of assets pursuant to the Plan. However, it should be noted that only ninety percent (90%) of the Debtors’ alternative minimum taxable income may be offset by available NOLs (as recomputed for alternative minimum tax (“AMT”) purposes). Accordingly, to the extent that the Debtors have taxable income in connection with the Plan, the Debtors may be subject to AMT even though such income would be offset by NOLs for regular income tax purposes.

Upon liquidation and disposition of the assets pursuant to the Plan, the Debtors should not incur an “ownership change” (as defined for these purposes). However, the Debtors’ NOLs will cease to exist following the liquidation of each of the Debtors.

There can be no assurance regarding the amount or availability of any of Debtors NOLs at the relevant times at which it recognizes income or gain. Any tax liability of the Debtors resulting from recognizing income or gain in excess of any available NOLs will reduce net cash available for distribution.

C. Consequences to Holders of Allowed Class 3A and Class 3B Claims

1. General Considerations

The exchange of the Allowed Class 3A and Class 3B Claims for cash will be a fully taxable transaction. In general, holders of such Allowed Claims will recognize gain or loss

in an amount equal to the difference between: (a) the sum of the cash and/or other property received in satisfaction of its Allowed Class 3A and Class 3B Claims (other than any such Allowed Claims for accrued but unpaid interest); and (b) such holder's adjusted tax basis in its Allowed Class 3A and Class 3B Claims (other than any such Allowed Claims for accrued but unpaid interest).

Gain will be recognized in connection with this transaction to the extent that the sum of the cash and/or property received by a holder with respect to the Allowed Claims exceeds such holder's adjusted tax basis in its Allowed Class 3A and Class 3B Claims. Any loss generally will be recognized only in the tax year that the holder receives a final Distribution, and then only if the aggregate value of the cash and/or property received by a holder with respect to such Allowed Claims is less than the holder's adjusted tax basis in its Allowed Class 3A and Class 3B Claims. Generally, gain or loss recognized by a holder in connection with the Plan will be capital gain or loss and will be long-term capital gain or loss if the share has been held for more than one year, and short-term capital gain or loss if the share has not been held for more than one year. Long-term capital gain of non-corporate taxpayers may be subject to more favorable tax rates than ordinary income or short-term capital gain. The deductibility of capital losses is subject to limitations.

2. Disputed Claims Reserve

From and after the Effective Date, and until such time as all of the Debtors' assets (and the proceeds thereof) can be distributed to the holders of the Allowed Class 3A and Class 3B Claims in accordance with the terms of the Plan, the Disputed Claims Reserve will be established. Distributions from the Disputed Claims Reserve will be made to holders of Disputed Claims when such Claims subsequently become Allowed Claims in Class 3A or Class 3B.

The Disputed Claims Reserve shall be treated as a "disputed ownership fund" governed by Treasury Regulations Section 1.468B-9. To the extent permitted by applicable law, the Disputed Claims Reserve shall report consistent with the foregoing for state and local income tax purposes. Accordingly, a Disputed Claim Reserve will be treated for U.S. federal income tax purposes as a C corporation and the owner of all of the assets that it holds. Any income received or accrued from the disputed property held by the Disputed Claims Reserve must be included in income by the deemed C corporation. All distributions pursuant to the Plan will be subject to withholding and reporting requirements set forth in the Plan. All parties (including Debtors and the holders of Allowed Class 3A and Class 3B Claims) shall report for tax purposes consistent with the foregoing.

3. Liquidating Trust

Assuming the Liquidating Trust is properly characterized as a "grantor trust," the Liquidating Trust Beneficiaries will be treated for U.S. federal income tax purposes as first having constructively received their pro rata share of the property transferred to the Liquidating Trust in a taxable transaction, and then having contributed such property to the Liquidating Trust. The amount of the deemed distribution to the Liquidating Trust Beneficiaries generally will be reduced by the amount of any known liabilities assumed by the Liquidating Trust or to

which the transferred property is subject. A liquidating trust qualifying as a grantor trust is itself not subject to U.S. federal income tax. The Liquidating Trust Beneficiaries, as owners of the Liquidating Trust, would be required to take into account for U.S. federal income tax purposes their respective allocable portions of any income, gain or loss recognized by such Liquidating Trust, whether or not they receive any actual distributions from the Liquidating Trust, and accordingly may recognize taxed income without the receipt of cash. As a result, Liquidating Trust Beneficiaries will not be taxable when distributions are actually made by the Liquidating Trust and, if Liquidating Trust Beneficiaries never receive an amount previously treated as income as a distribution from the Liquidating Trust, the Liquidating Trust Beneficiaries may be entitled to a loss deduction. Liquidating Trust Beneficiaries would receive annual statements from the Liquidating Trust reporting their respective allocable shares of the various tax items of the Liquidating Trust.

4. Backup Withholding

All Distributions to holders of Allowed Class 3A and Class 3B Claims under the Plan are subject to any applicable withholding (including employment tax withholding). The gross amount of any Distributions paid pursuant to the Plan to a holder of Allowed Class 3A or Class 3B Claims that fails to provide the appropriate certification in accordance with applicable U.S. Treasury Regulations generally will be reduced by backup withholding at the rate applicable at the time of such Distributions. Backup withholding generally will not apply to payments made to some exempt recipients, such as a corporation or a stockholder who furnishes a correct taxpayer identification number or provides a certificate of foreign status and certain other required information.

Backup withholding is not an additional tax. Amounts that are withheld under the backup withholding rules may be refunded or credited against the holder's U.S. federal income tax liability, if any, provided that certain required information is furnished to the IRS in a timely manner. Holders of Allowed Class 3A and Class 3B Claims should consult their own tax advisors regarding the application of backup withholding in their particular circumstance and the availability of and procedure for obtaining an exemption from backup withholding under current law.

The foregoing summary has been provided for informational purposes only. The Debtors and all holders of Allowed Class 3A and Class 3B Claims should consult their tax advisors concerning the federal, state, local and other tax consequences applicable under the Plan.

ARTICLE V

ALTERNATIVES TO THE PLAN

The Debtors, in consultation with and the full support of the Creditors' Committee, have determined that the Plan is the most practical means of providing maximum recoveries to creditors. Alternatives to the Plan which have been considered and evaluated by the Debtors during the course of the Chapter 11 Cases include (a) liquidation of the Debtors' remaining Assets under Chapter 7 of the Bankruptcy Code, and (b) different Chapter 11 plans

than the Plan. The consideration by the Debtors and Creditors Committee of these alternatives to the Plan has led them to conclude that the Plan, in comparison, offers the best odds of a greater recovery to creditors on a more expeditious timetable, and in a manner which minimizes certain inherent risks in any other course of action available to the Debtors.

A. Liquidation Under Chapter 7 of the Bankruptcy Code

If the Plan or any other Chapter 11 plan for the Debtors cannot be confirmed under Sections 1129(a) or 1129(b) of the Bankruptcy Code, the possibility exists that the Chapter 11 Cases may be converted, separately, to cases under Chapter 7 of the Bankruptcy Code. If so, a trustee or trustees would be elected or appointed in each of the Debtors' respective Chapter 7 cases to liquidate any remaining Assets of the Debtors for Distribution to creditors pursuant to Chapter 7 of the Bankruptcy Code. If a trustee is appointed and the remaining Assets of the Debtors are liquidated under Chapter 7 of the Bankruptcy Code, all creditors holding Allowed Class 3A and Class 3B Claims could receive Distributions of a lesser value on account of their Allowed Claims and likely would have to wait a longer period of time to receive such Distributions than they would under the Plan. This is true for several reasons.

First, substantially all of the Debtors' assets other than the Causes of Action have already been liquidated. Any Chapter 7 trustee or trustees, after the time necessary for electing or appointing him, her or them, would not be in a position to achieve high liquidation values for any remaining Assets and would likely invest a considerable amount of time and effort to become familiar with the applicable Debtors' background and remaining Assets (including Causes of Action, which require successful prosecution to become liquid) and to investigate the facts underlying the multitude of Claims filed against the applicable Estates. This process would be time-consuming and administratively expensive. It cannot compare favorably to proceeding under the structure of the Plan, which is derived from the Debtors' existing, collective knowledge of their collective affairs and Assets, is based on the analysis the Debtors and Creditors' Committee have performed to date concerning Claims, and establishes expeditious processes for implementation.

In addition, in a Chapter 7 setting, there can be no assurance that the Assets of the Debtors would be treated in the manner provided for under the Plan, particularly under the Creditors' Committee Settlement with respect to Class 3A and Class 3B Claims. The Debtors and Creditors' Committee believe that the proposed treatment of the Debtors' collective Assets under the Plan is more efficient, less expensive and more likely to result in maximum Distributions than in separate Chapter 7 cases for each of the Debtors. Similarly, the Plan provides specific procedures for efficient and expeditious allowance or disallowance of Claims, and for prompt Distributions to holders of certain Allowed Claims, which would likely not be available in separate Chapter 7 cases for the Debtors.

Thus, Holders of Allowed Class 3A and Class 3B Claims are likely to receive Distributions of equal or lesser value under a Chapter 7 liquidation than under the Plan.

B. Alternatives to Chapter 11 Plan

If the Plan is not confirmed, the Debtors or any other party in interest may attempt to formulate an alternative Chapter 11 plan which might provide for the liquidation of the Debtors' Assets other than as provided in the Plan. However, since a significant portion of the Debtors' Assets have already been liquidated and the Plan provides for the distribution of the proceeds of the liquidation and any non-liquidated Assets in accordance with the priorities established by the Bankruptcy Code, the Debtors believe that no alternative Chapter 11 plan would necessarily be an improvement upon the Plan. Any attempt to formulate an alternative Chapter 11 plan would necessarily delay creditors' receipt of distributions yet to be made and, due to the incurrence of additional administrative expenses during such period of delay and the injection of substantial uncertainty as to the ultimate outcome of expected litigation, may provide for smaller Distributions to holders of Allowed Claims than are currently provided for in the Plan. Accordingly, the Debtors believe that the Plan will enable all creditors to realize the greatest possible recovery on their respective Claims with the least delay.

ARTICLE VI

CONCLUSION AND RECOMMENDATION

THE DEBTORS AND CREDITORS' COMMITTEE BELIEVE THAT THE PLAN COMPLIES IN ALL RESPECTS WITH CHAPTER 11 OF THE BANKRUPTCY CODE AND RECOMMEND TO HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN THAT THEY VOTE TO ACCEPT THE PLAN. SUCH HOLDERS ARE REMINDED THAT TO BE COUNTED, EACH ORIGINAL BALLOT, SIGNED AND MARKED TO INDICATE THE HOLDER'S VOTE, MUST BE RECEIVED BY THE VOTING AGENT NO LATER THAN 5:00 P.M. (PREVAILING EASTERN TIME) ON MAY 3, 2010.

Dated: March 26, 2010
Wilmington, Delaware

MIDWAY GAMES INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY AMUSEMENT GAMES, LLC

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY HOME ENTERTAINMENT INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

SURREAL SOFTWARE INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY GAMES WEST INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY STUDIOS – AUSTIN INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY INTERACTIVE INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY HOME STUDIOS INC

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY SALES COMPANY, LLC

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY STUDIOS-LOS ANGELES INC

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

EXHIBIT 1

Substantive Consolidation Analysis

Substantive Consolidation Analysis

Factors Supporting Substantive Consolidation

The Debtors consist of Midway Games Inc. ("Midway") as the parent holding company of several operating companies. While the Debtors were separate legal entities, they were engaged in the common enterprise of designing, developing, publishing and distributing video games with highly integrated financial and business affairs. Each entity contributed one or more functions to the whole and no single entity was engaged in all aspects of the business. FTI spent over 100 hours examining the Debtors' cash management systems, intellectual property, corporate structure and intercompany claims and has determined that it would be nearly impossible to separate the majority of these legal entities, or to determine a value for them on an individual basis. This is largely driven by the fact that the Debtors have never attempted to accurately allocate revenue and cost items to the legal entities in the Debtors' unconsolidated financials. It is FTI's experience that a detailed reconciliation would be required in order to maintain some sort of corporate separateness, to sustain the integrity of the legal entities and create a basis upon which FTI would be able to value the individual entities. As such, FTI has determined that a substantive consolidation is the most equitable and effective method for distribution of funds to the Class 3A and 3B creditors.

The primary factor supporting substantive consolidation is the Debtors highly integrated cash management system. The Debtors primarily utilized accounts at Midway Home Entertainment Inc. ("MHE") to manage revenue, accounts receivable and accounts payable. However, a significant portion of the AR and AP was related to titles produced by the employees of and IP controlled by other legal entities. Specifically, the Mortal Kombat Franchise was responsible for over 35% of the Debtors' Revenue during fiscal 2008 and since 2001 has been responsible for a similar percent of total revenue (Appendix A). The Mortal Kombat titles were primarily produced by employees and IP located at Midway Amusement Games LLC ("MAG"). However, the Debtors recognized a majority of this revenue at MHE. Although the Debtors recognized some expenses for the Mortal Kombat Franchise at MHE, they did not recognize all expenses at MHE. This is illustrated in the Debtors' 6/30/09 Monthly Operating Report (Appendix B). The Company recognized Mortal Kombat v. DC Comics game revenue at MHE, but failed to recognize expenses including rent, payroll and research and development at MHE. Based on FTI's review of the Debtors, there has not been any historical attempt to properly allocate revenue and costs by legal entity, and historically the Debtors have only made consolidated financial statements available to investors. If possible at all, FTI believes it would take hundreds of hours to reconcile Midway's cash management systems to determine the true cash flow of each of the subsidiaries of Midway. However, FTI does not believe the Debtors have the necessary corporate records to create this reconciliation.

Nesbit v. Gears Unlimited, Inc., 347 F.3d 72, 86 n.7 (3d Cir. 2003) summarizes a "number of different tests that courts have developed "[i]n addressing whether substantively to consolidate two entities in the bankruptcy context". In FTI's examination of the Debtors, FTI discovered several corporate and legal components in addition to the financial components addressed in the previous paragraph, which meet the requirements for substantive consolidation. Specifically, Midway, the parent company of the Debtors, owns 100% of the Debtors against

which there are 3B claims, including: MHE, MAG, Midway Interactive, Inc. (which in turn owns 100% of Midway Games West, Inc.), Surreal Software, Inc., Midway Studios – Austin, Inc., and Midway Studios, Los Angeles, Inc. (See Appendix C for the Debtors’ Organizational Chart of Legal Entities). There are no Class 3A claims at the Subsidiary Debtors. Moreover, all of these legal entities share overhead, accounting and other related expenses. It should be noted that the domestic entities also share directors and management. Both MAG and MHE were managed by their sole member, Midway, and share common management teams. This further supports the deeply entwined relationships between the Debtors’ primary legal entities.

In entering into the Creditors’ Committee Settlement (as defined in the Plan), each member of the Creditors’ Committee considered the above items, as well as the potentially enormous costs and delays that the Debtors’ estates would suffer in litigating contested issues of value allocation, subordination, recharacterization and substantive consolidation. In order to avoid such costs and delays, the Class 3A Committee Representatives and Class 3B Committee Representatives (as such terms are defined in the Plan) have concluded that the substantive consolidation and creditor treatment provided in the Creditors’ Committee Settlement will benefit and be in the best interests of all creditor classes. FTI agrees with the Creditors’ Committee in this regard. FTI believes that, absent the Creditors’ Committee Settlement, the legal and professional fees to resolve issues such as allocation of value and substantive consolidation through litigation could cost the Debtors’ estates and their creditors millions of dollars, and many months of delay. Further, the books and records of the subsidiaries and Midway in this case are so hopelessly intertwined, given that, historically, Midway has not allocated costs and revenues to the legal entities that generated them, that we are facing a humpty dumpty situation. In other words, even if the estates were to undertake the time and expense in attempting to reconcile the books and records that would be required to perform a reasonable valuation of the corporate entities within the group, FTI doubts that there are adequate records to reconstruct something that the Debtors historically have not undertaken to reconcile or track themselves.

Appendix A

Mortal Kombat Franchise - Profitability by Title - 2001 through November 2008

Note: Mortal Kombat IP is held primarily at Midway Amusement Games, LLC, however, Accounts Receivable and Revenue are booked at Midway Home Entertainment, Inc.

	FRONTLINE FIGHTING MK Deadly Alliance	FRONTLINE FIGHTING MK Deception	BRAND EXTENSION MK Shaolin Monks	FRONTLINE FIGHTING MK Armageddon	HANDHELD MK Unchained	HANDHELD MKDs	FRONTLINE FIGHTING MK vs DCU	Total
Units	3,748,162	2,929,295	1,153,883	2,037,583	418,583	152,594	1,932,280	11,772,320
Gross Sales	\$ 106,553,070	\$ 75,014,506	\$ 34,244,353	\$ 52,229,582	\$ 8,601,070	\$ 3,841,361	\$ 88,059,960	\$ 368,549,902
Royalty Revenues	\$ 334,993	\$ 98,541	\$ 40,163	\$ 766,482	\$ -	\$ -	\$ 550,554	\$ 1,790,732
Gross Sales	\$ 106,888,062	\$ 75,113,048	\$ 34,284,516	\$ 52,996,063	\$ 8,601,070	\$ 3,841,361	\$ 88,610,514	\$ 370,334,634
PP	\$ 6,235,455	\$ 8,928,042	\$ 5,037,020	\$ 6,240,047	\$ 1,425,609	\$ 816,612	\$ 12,849,971	\$ 41,532,757
Coop	\$ (135,197)	\$ 3,138,938	\$ 1,503,467	\$ 1,925,522	\$ 286,472	\$ 82,412	\$ 2,869,211	\$ 9,670,825
Net Sales	\$ 100,787,805	\$ 63,046,067	\$ 27,744,029	\$ 44,830,494	\$ 6,888,989	\$ 2,947,336	\$ 72,891,332	\$ 319,131,052
COS	\$ 33,888,542	\$ 23,794,021	\$ 10,347,113	\$ 17,242,079	\$ 2,624,127	\$ 1,475,655	\$ 21,166,167	\$ 110,537,704
Sales Commission	\$ 3,069,999	\$ 381,976	\$ 213,652	\$ 268,008	\$ 47,061	\$ 13,279	\$ 294,964	\$ 4,288,940
Advertising	\$ 7,501,019	\$ 10,504,162	\$ 5,799,685	\$ 4,308,834	\$ 52,384	\$ 98,507	\$ 8,235,536	\$ 36,500,128
License Royalties	\$ 61,686	\$ 1,500	\$ -	\$ -	\$ -	\$ -	\$ 8,931,784	\$ 8,994,970
Excess Royalties	\$ 48	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 48
Engine Royalties	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 412,898	\$ 412,898
InHouse Royalties	\$ 5,332,903	\$ 2,033,465	\$ 85,541	\$ 1,195,593	\$ 197,522	\$ 41,619	\$ 3,464,376	\$ 12,351,020
Total Costs	\$ 49,854,197	\$ 36,715,124	\$ 16,445,992	\$ 23,014,514	\$ 2,921,095	\$ 1,629,060	\$ 42,505,724	\$ 173,085,706
Total COH	\$ 50,933,608	\$ 26,330,943	\$ 11,298,037	\$ 21,815,980	\$ 3,967,894	\$ 1,313,277	\$ 30,385,608	\$ 146,045,346
Product Development Costs	\$ 8,264,897	\$ 10,150,627	\$ 10,827,701	\$ 12,059,414	\$ 1,985,446	\$ 842,758	\$ 14,794,049	\$ 58,924,890
Profit/(Loss) for Title	\$ 42,666,711	\$ 16,180,316	\$ 470,336	\$ 9,756,566	\$ 1,982,448	\$ 470,519	\$ 15,591,560	\$ 87,120,456

MOR-3: BALANCE SHEETS
JUNE 30, 2009

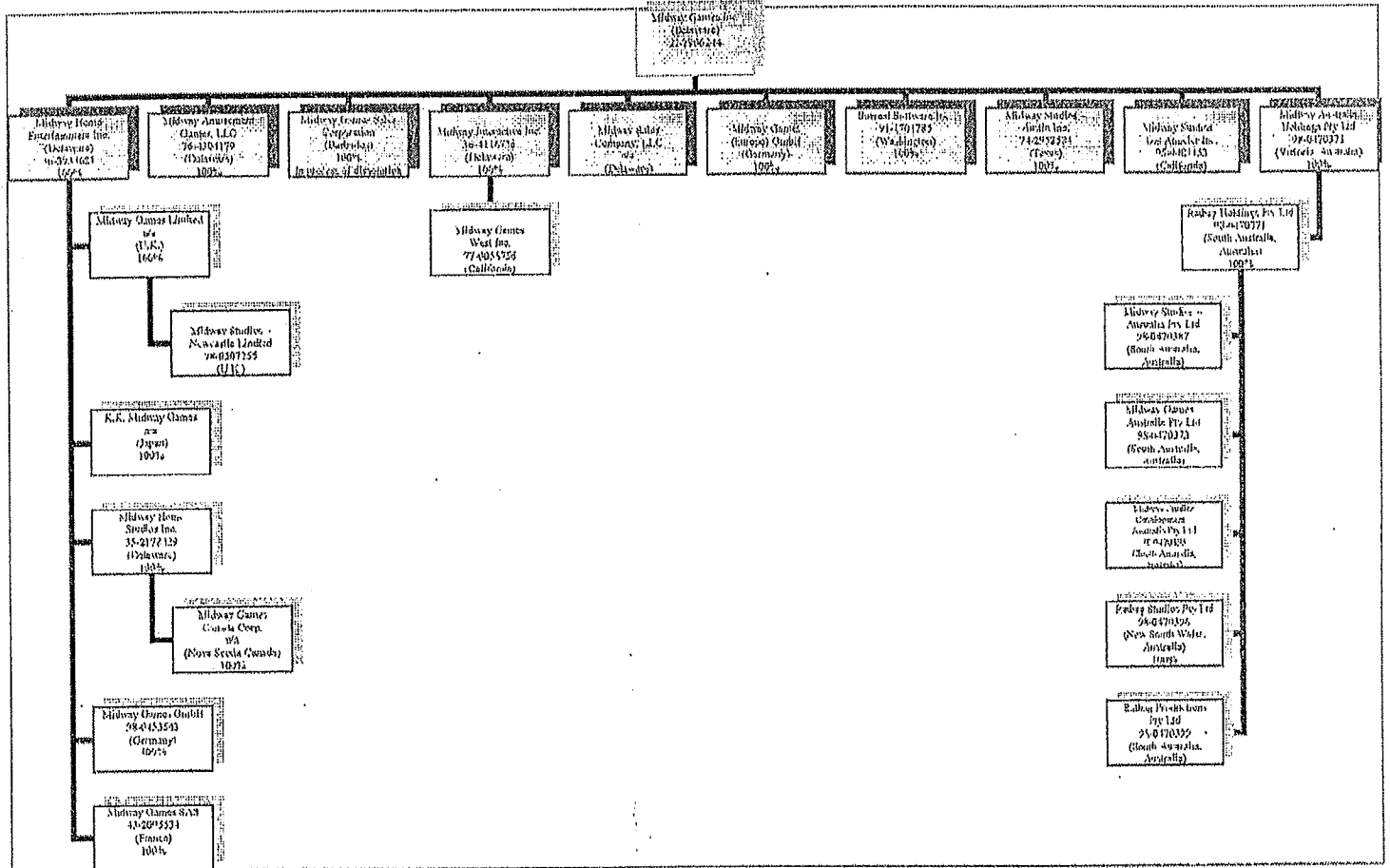
Case number for individual Debtors	Midway Home Entertainment, Inc. 09-10467	Midway Amusement Clubs, LLC 09-10466	Midway Interactive Inc. 09-10468	Midway Games West Inc. 09-10472	Midway Home Studios Inc. 09-10473	Midway Sales Company, LLC 09-10474
ASSETS						
CURRENT ASSETS						
Cash and cash equivalents (2)	\$ 883,536.33	\$ 7,073,969.48	\$ -	\$ -	\$ -	\$ -
Restricted cash	-	-	-	-	-	-
Receivables, net	12,638,334.76	1,825,613.89	-	-	-	-
Inventories	3,508,687.17	-	-	-	-	-
Capitalized product development costs	30,852,245.58	-	-	-	-	-
Prepaid expenses and other current assets	3,387,025.48	1,714,318.46	-	-	-	-
TOTAL CURRENT ASSETS	51,269,829.32	10,613,901.83	-	-	-	-
Restricted cash	-	-	-	-	-	-
Assets held for sale	-	-	-	-	-	-
Capitalized product development costs	0.36	-	-	-	-	-
Property and equipment, net	2,427,613.93	1,678,354.81	-	-	-	-
Goodwill (3)	27,614,515.11	-	-	-	-	-
Investment in subsidiaries (4)	-	-	29,265,000.00	(29,265,000.00)	-	-
Due from Debtors	227,346,748.94	299,291,019.07	430,000.00	32,428,938.86	-	-
Due from non-Debtor MCI subsidiaries	30,076,490.93	-	-	-	-	-
Other assets	245,667.23	97,333.31	-	-	-	-
TOTAL ASSETS	\$ 319,180,866.02	\$ 311,680,609.02	\$ 29,695,000.00	\$ 9,012,938.86	\$ -	\$ -
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)						
LIABILITIES NOT SUBJECT TO COMPROMISE (Post-petition)						
Amounts due to insiders (5)	-	-	-	-	-	-
Accounts payable	1,422,255.89	332,448.22	-	-	-	-
Accrued compensation and related benefits (6)	5,273,602.60	57,503.96	-	-	-	-
Accrued royalties	6,102,668.01	-	-	-	-	-
Accrued selling and marketing	166,248.57	-	-	-	-	-
Deferred revenue	1,966,963.36	812,641.58	-	-	-	-
Other accrued liabilities (7)	4,993,751.87	6,510,048.30	-	-	-	-
TOTAL POST-PETITION LIABILITIES	19,925,490.30	7,712,642.06	-	-	-	-
LIABILITIES SUBJECT TO COMPROMISE (Pre-Petition) (8)						
Secured liabilities	\$ 1,086.71	\$ -	\$ -	\$ -	\$ -	\$ -
Priority liabilities	475,566.78	940,880.31	-	-	-	-
Non-priority liabilities	301,256,534.72	565,089,447.05	22,957,000.00	48,011,629.43	-	-
TOTAL PRE-PETITION LIABILITIES	301,733,188.21	566,030,327.36	22,957,000.00	48,011,629.43	-	-
Due to Debtors	2,170,693.21	15,250,654.06	-	-	-	-
Due to non-Debtor MCI subsidiaries	555,010.79	-	-	-	-	-
Deferred income taxes	12,684,104.60	-	-	-	-	-
Deferred rent	141,249.51	-	-	-	-	-
STOCKHOLDERS' EQUITY (DEFICIT)	1,000.00	-	2,750,000.00	(186,000.00)	-	-
Common stock	-	-	-	-	-	-
Additional paid-in capital	1,704,243.52	-	2,750,000.00	(186,000.00)	-	-
Retained earnings (accumulated deficit)	264,786.48	(277,313,014.46)	3,988,000.00	(38,812,690.57)	-	-
Postpetition contributions (distributions) (draws) (6)	-	-	-	-	-	-
Treasury stock	-	-	-	-	-	-
TOTAL STOCKHOLDERS' EQUITY (DEFICIT)	1,970,030.00	(277,313,014.46)	6,738,000.00	(38,998,690.57)	-	-
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)	\$ 339,180,866.02	\$ 311,680,609.02	\$ 29,695,000.00	\$ 9,012,938.86	\$ -	\$ -

MOR-3: BALANCE SHEETS (continued)
JUNE 30, 2009

Case number for Individual Debtors	Surreal Software Inc. 09-10469	Midway Studios - Austin Inc. 09-10470	Midway Studios - Los Angeles Inc. 09-10471	Midway Games Inc. 09-10465	Total of All Debtors (1)
ASSETS					
CURRENT ASSETS					
Cash and cash equivalents (2)	\$ 5,809.96	\$ 6,231.92	\$ 2,428.41	\$ 9,453,150.91	\$ 17,425,127.01
Restricted cash	-	-	-	246,531.34	246,531.34
Receivables, net	-	-	-	988.71	14,464,937.36
Inventories	-	-	-	-	3,508,687.37
Capitalized product development costs	-	-	-	-	30,852,245.58
Prepaid expenses and other current assets	187,517.54	58,963.10	7,745.72	55,359.21	5,410,929.51
TOTAL CURRENT ASSETS	193,327.50	65,195.02	10,174.13	9,756,030.17	71,908,458.17
Restricted cash	-	-	-	675,000.00	675,000.00
Assets held for sale	-	-	-	2,346,400.00	2,346,400.00
Capitalized product development costs	-	-	-	-	0.36
Property and equipment, net	724,338.69	1,019,974.51	101,743.96	460,084.76	6,412,110.66
Goodwill (3)	2,585,900.56	1,192,298.99	2,254,887.17	-	39,496,601.83
Investment in subsidiaries (4)	-	-	-	21,472,773.11	21,472,773.11
Due from Debtors	-	230,397.65	156,098.20	652,097,896.21	1,212,181,098.03
Due from non-Debtor MGI subsidiaries	-	-	-	3,797,879.35	33,874,370.28
Other assets	60,025.63	-	-	-	403,028.17
TOTAL ASSETS	\$ 3,563,392.38	\$ 2,507,866.17	\$ 2,522,903.46	\$ 690,606,063.60	\$ 1,388,769,839.51
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)					
LIABILITIES NOT SUBJECT TO COMPROMISE (Post-petition)					
Amounts due to Insiders (5)	-	-	-	-	-
Accounts payable	80,005.53	18,979.42	(2,695.56)	562,832.19	2,413,825.69
Accrued compensation and related benefits (6)	313,313.71	(7,980.10)	57,096.90	(93,375.14)	5,600,161.03
Accrued royalties	-	-	-	-	6,102,668.01
Accrued selling and marketing	-	-	-	-	166,248.57
Deferred revenue	-	-	-	-	2,779,605.14
Other accrued liabilities (7)	(52,701.52)	126,154.43	5,920.11	1,224,280.09	12,807,452.28
TOTAL POST-PETITION LIABILITIES	340,617.72	137,153.75	60,321.45	1,693,737.14	29,869,962.62
LIABILITIES SUBJECT TO COMPROMISE (Pre-Petition) (8)					
Secured liabilities	-	4,029.62	-	29,314,909.04	29,320,025.37
Priority liabilities	174,824.30	49,081.40	4,884.62	275,066.23	1,920,303.64
Non-priority liabilities	49,855,100.84	64,750,961.03	30,531,064.78	381,634,912.93	1,463,686,830.78
TOTAL PRE-PETITION LIABILITIES	49,630,125.14	64,804,072.05	30,535,949.40	411,224,888.20	1,494,927,179.79
Due to Debtors	3,965,383.70	20,786.28	45,469.79	28,899,208.99	50,352,196.03
Due to non-Debtor MGI subsidiaries	-	-	-	318,366.71	874,277.50
Deferred income taxes	-	-	-	-	12,684,304.00
Deferred rent	167,490.44	216,520.48	-	-	525,260.23
STOCKHOLDERS' EQUITY (DEFICIT)					
Common stock	-	-	-	935,403.55	936,403.55
Additional paid-in capital	4,187,009.00	2,575,167.27	3,594,163.08	522,497,846.03	537,122,428.90
Retained earnings (accumulated deficit)	(54,727,033.62)	(65,245,833.66)	(31,713,000.26)	(265,180,352.25)	(728,739,138.34)
Postpetition contributions (distributions) (draws) (6)	-	-	-	-	-
Treasury stock	-	-	-	(9,783,034.77)	(9,783,034.77)
TOTAL STOCKHOLDERS' EQUITY (DEFICIT)	(50,540,024.62)	(62,670,666.39)	(28,118,837.18)	248,469,862.56	(200,463,340.66)
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)	\$ 3,563,392.38	\$ 2,507,866.17	\$ 2,522,903.46	\$ 690,606,063.60	\$ 1,388,769,839.51

Appendix C

Midway Organizational Chart of Legal Entities



Appendix D

Intercompany Claims as of 6/30/09

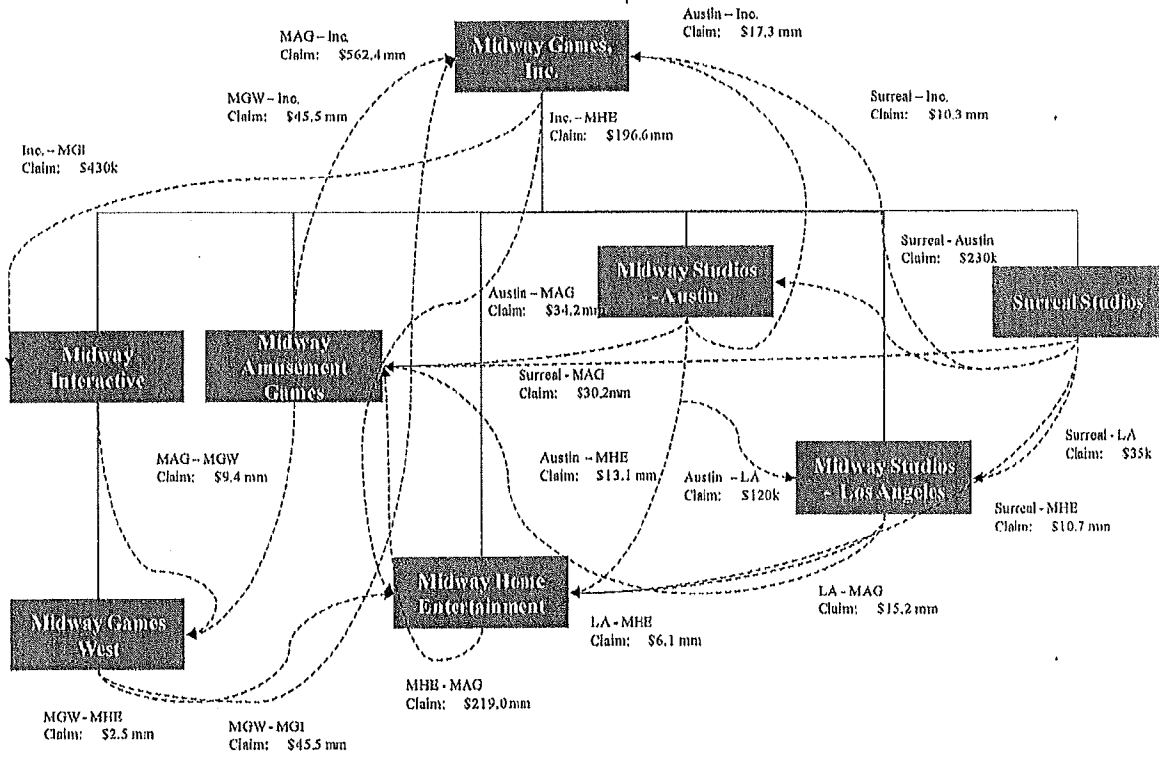


EXHIBIT A

Plan of Liquidation

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11
: :
MIDWAY GAMES INC., *et al.*, : Case No. 09-10465 (KG)
: (Jointly Administered)
Debtors.¹ :

DEBTORS' JOINT CHAPTER 11 PLAN OF LIQUIDATION

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Attorneys for Midway Games Inc, *et al.*,
Debtors and Debtors in Possession

¹ The Debtors are: Midway Games Inc., Midway Home Entertainment Inc., Midway Amusement Games, LLC, Midway Interactive Inc., Surreal Software Inc., Midway Studios - Austin Inc., Midway Studios - Los Angeles Inc., Midway Games West Inc., Midway Home Studios Inc., and Midway Sales Company, LLC.

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	
MIDWAY GAMES INC., et al.,)	Chapter 11
)	
Debtors.)	Case No. 09-10465 (KG)
)	Jointly Administered

JOINT CHAPTER 11 PLAN OF LIQUIDATION

Midway Games Inc. ("Midway" or "Parent"), Midway Home Entertainment Inc. ("MHE"), Midway Amusement Games, LLC ("MAG"), Midway Interactive Inc. ("Midway Interactive"), Surreal Software Inc. ("Surreal Software"), Midway Studios – Austin Inc. ("Midway Austin"), Midway Studios - Los Angeles Inc. ("Midway L.A."), Midway Games West Inc. ("Midway Games West"), Midway Home Studios Inc. ("Midway Home Studios") and Midway Sales Company, LLC ("Midway Sales") (except for Midway, the "Subsidiary Debtors") (collectively, Midway and the Subsidiary Debtors shall be referred to as the "Debtors"), debtors and debtors in possession under Chapter 11 of the Bankruptcy Code, with the full support of the Creditors' Committee, hereby propose this Joint Chapter 11 plan of liquidation (as such may be amended or modified, including any exhibits or schedules thereto, the "Plan") as their plan to be confirmed by the United States Bankruptcy Court for the District of Delaware pursuant to Section 1129 of Title 11 of the United States Code, 11 U.S.C. §101 et seq. The Debtors are proponents of this Plan within the meaning of Section 1129 of the Bankruptcy Code, 11 U.S.C. § 1129. Reference is made to the Debtors' joint disclosure statement, filed contemporaneously with this Plan (the "Disclosure Statement"), for a discussion of the Debtors' history, businesses and properties and the events in these Chapter 11 Cases and for a summary and analysis of this Plan.

**ARTICLE I
RULES OF INTERPRETATION, COMPUTATION OF TIME; DEFINITIONS**

(a) *Generally.* For purposes of this Plan, unless otherwise provided herein: any reference in this Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (b) any reference in this Plan to an existing document or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified, or supplemented pursuant to this Plan; (c) any reference to a Person as a holder of a Claim includes that Person's heirs, successors and assigns; (d) all references herein to Sections, Articles, and Exhibits are references to sections, articles, and exhibits of or to this Plan; (e) the words "herein," "hereunder," "hereof," "hereto" and others

of similar inference refer to this Plan in its entirety rather than to a particular portion of this Plan, unless otherwise specified; (f) captions and headings included herein are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (g) all references to “his” shall include references to “her” or “its”, where deemed appropriate; (h) subject to the provisions of any contract, articles of incorporation, code of regulations, similar constituent documents, instrument, release, or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; (i) the rules of construction set forth in Section 102 of the Bankruptcy Code will apply; (j) to the extent there is an inconsistency between any of the express provisions of this Plan and any provision of any exhibit hereto or the Liquidating Trust Agreement or the Disclosure Statement, this Plan shall govern, (k) to the extent the express provisions of this Plan, the Liquidating Trust Agreement, the Disclosure Statement, or any document executed in connection therewith, the Confirmation Order or any documents executed in connection with the Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing) conflicts with or is in any way inconsistent with the terms of the Confirmation Order, the terms and provisions of the Confirmation Order shall govern.

(b) *Exhibits.* Unless otherwise noted, all exhibits attached to this Plan are incorporated into and are a part of this Plan as if set forth in full herein and, to the extent not annexed hereto, such exhibits shall be filed with the Bankruptcy Court prior to the Confirmation Hearing as part of the Plan Supplement and shall be deemed part of this Plan. Copies of exhibits can be obtained upon reasonable written request to Michael D. DeBaecke, Esquire, of Blank Rome LLP, 1201 N. Market Street, Suite 800, Wilmington, DE 19801, counsel to the Debtors.

(c) *Time Periods.* In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

(d) *Definitions.* As used in this Plan, the following terms have the respective meanings specified below (such meanings to be equally applicable to both the singular and the plural, and masculine and feminine forms of the terms defined). Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1.01 “*Administrative Claim*” means any right to payment constituting a cost or expense of administration of the Chapter 11 Cases pursuant to Sections 503(b) and 507(a)(2) or 507(b) of the Bankruptcy Code, including but not limited to: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the Debtors’ business; (b) any indebtedness or obligations incurred or assumed by the Debtors in connection with the conduct of their business; and (c) all fees and charges assessed against the Estates pursuant to Section 1930 of chapter 123 of title 28 of the United States Code; *provided, however,* that the term Administrative Claim does not include any Fee Claim.

1.02 “*Allowed*” means a Claim, Secured Claim, Administrative Claim, Fee Claim, Priority Claim or Priority Tax Claim: (a) (i) proof of which has been timely filed with the

Bankruptcy Court or has been deemed timely filed by a Final Order, or if no such proof of claim is so filed, which has been scheduled by the Debtors other than as disputed, contingent or unliquidated, and (ii) as to which no party in interest has timely filed an objection, a motion to equitably subordinate, or otherwise sought to limit recovery within the time limits specified in this Plan or permitted by the Bankruptcy Court, or (b) which is allowed by a Final Order of the Bankruptcy Court (other than the Confirmation Order), or (c) which is allowed by this Plan pursuant to the Confirmation Order, except that in the case of this subpart (c) the relevant Claim, Secured Claim, Administrative Claim, Fee Claim, Priority Claim or Priority Tax Claim shall be allowed only as of the Effective Date.

1.03 “Allowed Claim” means a Claim to the extent it is Allowed.

1.04 “Allowed [Class] Claim” means a Claim that is Allowed in a specified class or of a specified type; for example, Allowed Class 3A Claim.

1.05 “Assets” means all assets of each of the Debtors of any nature whatsoever, including, without limitation, the property of the Estates under Section 541 of the Bankruptcy Code, including Cash, contractual rights arising under prior Bankruptcy Court orders and any and all other claims, Causes of Action, Liquidating Trust Claims and rights of the Debtors arising under federal or state law and any interests in property, real and personal, tangible and intangible.

1.06 “Available Cash” means, as determined by the Debtors as of the Effective Date, the amount of Cash in the Distribution Fund, less the amount of Cash estimated to be necessary to fund adequately the (i) Allowed Administrative Claims, Allowed Fee Claims, Allowed Secured Claims, Allowed Priority Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims and Allowed Class 2 Claims; and (ii) the Administrative Reserve; (iii) the Disputed Claims Reserve; and (iv) the Liquidating Trust Reserve Amount.

1.07 “Avoidance Action” means an action pursuant to Section 510, 542, 543, 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code brought by or on behalf of the Debtors or the Debtors’ Estates or the Liquidating Trust.

1.08 “Ballot” means the form transmitted to Creditors by the Balloting Agent for voting to accept or reject this Plan in accordance with Section 1126 of the Bankruptcy Code.

1.09 “Balloting Agent” means Epiq Bankruptcy Solutions, LLC.

1.10 “Bankruptcy Code” means Sections 101, et seq. of Title 11 of the United States Code, as now in effect or hereafter amended.

1.11 “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware or any other court or adjunct thereof exercising competent jurisdiction over the Chapter 11 Cases.

1.12 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as amended from time to time, and the local rules of the Bankruptcy Court, as applicable to the Chapter 11 Cases.

1.13 “Bar Date” means July 15, 2009 or August 11, 2009 (as to governmental units) with respect to Claims arising before the Petition Date.

1.14 “Bar Date Order” means the Order Establishing Bar Dates for Filing Proofs of Claims and Approving Form and Manner of Notice Thereof entered by the Bankruptcy Court in the Debtors’ Chapter 11 Cases on May 21, 2009, as the same may be amended, modified or supplemented.

1.15 “Business Day” means any day other than Saturday, Sunday or a “legal holiday” as such term is defined in Bankruptcy Rule 9006(a).

1.16 “Cash” means cash and cash equivalents in lawful currency of the United States of America, including, but not limited to, bank deposits, checks, and other similar items.

1.17 “Catch-Up Distribution” means a Distribution of Cash to the holder of an Allowed Class 3 Claim in the amount of such holder’s Pro Rata share of Available Cash that it would have received but for such Allowed Claim having been treated as a Disputed Claim or partially Disputed Claim at the time of the Distribution(s) to certain other holders of Allowed Class 3 Claims; provided that no interest shall be distributable or accrue with respect thereto.

1.18 “Causes of Action” means any and all claims, causes of action, demands, rights, actions, bills, suits, damages, injuries, remedies, accounts, powers, privileges, licenses and franchises of any Debtor of any kind or character whatsoever, known, unknown, accrued or to accrue, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, whether arising before, on or after the Petition Date, in contract or in tort, in law or in equity, or under any other theory of law, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, including, without limitation, Avoidance Actions.

1.19 “Chapter 11 Cases” means these cases (No. 09-10465 et seq. (KG)) filed by the Debtors, which are jointly administered in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code.

1.20 “Claim” means a claim against any of the Debtors, as such term is defined in Section 101(5) of the Bankruptcy Code.

1.21 “Class” means a group of Claims or Interests as classified under this Plan.

1.22 “Confirmation” means the entry of the Confirmation Order on the docket of the Bankruptcy Court.

1.23 “Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court’s docket.

1.24 “Confirmation Hearing” means the hearing at which the Bankruptcy Court approves this Plan and Confirmation Order.

1.25 “Confirmation Order” means the order of the Bankruptcy Court confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

1.26 “Creditor” means a Person that holds an Allowed Claim.

1.27 “Creditors’ Committee” means the Official Committee of Unsecured Creditors of the Debtors first appointed in the Chapter 11 Cases by the Office of the United States Trustee on February 23, 2009, and as hereafter constituted.

1.28 “Creditors’ Committee Action” means that adversary proceeding initiated in the Chapter 11 Cases by the Creditors’ Committee against a number of former directors of Midway and the former controlling shareholders of Midway, including, without limitation, National Amusements, Inc. (“NAI”), Sumco, Inc. (“Sumco”), Sumner Redstone, Shari E. Redstone, Robert J. Steele, Joseph A. Califano, Robert N. Waxman, William C. Bartholomay, and Peter C. Brown and identified as Adv. Pro. No. 09-50968 (KG), as such action has been or may be amended from time to time.

1.29 “Creditors’ Committee Settlement” means that settlement and compromise reached among the members of the Creditors’ Committee that hold Claims against Midway and the members of the Creditors’ Committee that hold Claims against the Subsidiary Debtors as reflected in this Plan. The Debtors did not participate and were not involved in the negotiations and deliberations surrounding the Creditors’ Committee Settlement.

1.30 “Disclosure Statement” means the disclosure statement respecting this Plan approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code, as the same may be amended, modified or supplemented.

1.31 “Disputed Claim” means a Claim (or any portion thereof) as to which: (a) an objection has been timely filed, and such objection has not been: (i) withdrawn, or (ii) overruled or denied in whole by a Final Order; (b) before the deadline for an objection to the Claim to be filed, the amount of the Claim specified in the applicable proof of claim that exceeds the amount of any corresponding Claim scheduled by the Debtors in the Schedules or such Claim is scheduled as disputed, contingent or unliquidated by the Debtors; (c) there is a dispute as to classification of the Claim; (d) there is a dispute as to the appropriate estimated amount of such Claim under Section 502(c) of the Bankruptcy Code; (e) the Claim is contingent or unliquidated; (f) the Claim is subject to dispute, contest, offset, setoff, recoupment, defense, or counterclaim asserted in an adversary proceeding or contested matter before the Bankruptcy Court at the time of any Distribution pursuant to Section 502(d) of the Bankruptcy Code or otherwise applicable law; or (g) the Claim is not otherwise an Allowed Claim.

1.32 “Disputed Claims Reserve” means the reserve established pursuant to Section 8.05 of this Plan.

1.33 “Distribution” means the distribution of Cash from the Distribution Fund in accordance with this Plan and Liquidating Trust, as well as any supplemental distributions from the Distribution Fund occurring from time to time.

1.34 “Distribution Address” means the last known address of a Creditor, whether derived from the Schedules, a proof of claim filed with the Court, a notice of transfer of Claim filed pursuant to Bankruptcy Rule 3001(e), or other written notification to the Debtors or the Liquidating Trustee concerning where a Distribution under this Plan is to be sent.

1.35 “Distribution Date” means the date on which a Distribution is made pursuant to this Plan to holders of Allowed Claims and includes, without limitation, the Initial Distribution Date.

1.36 “Distribution Fund” means the Cash available for (i) payment, in accordance with the provisions of this Plan and orders of the Bankruptcy Court entered on the docket of the Chapter 11 Cases, of Allowed Administrative Claims, Allowed Fee Claims, Allowed Secured Claims, Allowed Priority Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims, Allowed Class 2 Claims and Allowed Claims in Class 3A and 3B and (ii) funding of the Disputed Claims Reserve and the Liquidating Trust Reserve Amount.

1.37 “Distribution Record Date” means the close of business on the business day immediately preceding any Distribution Date.

1.38 “Effective Date” means the date the conditions set forth in Section 11.02 of this Plan are satisfied or waived.

1.39 “Estate” means the estate created for each of the Debtors in their Chapter 11 Cases pursuant to Section 541 of the Bankruptcy Code.

1.40 “Executory Contract” means any executory contract within the meaning of Section 365 of the Bankruptcy Code in effect between the Debtors and another Person as of the Petition Date.

1.41 “Fee Claim” means any Claim against the Debtors of a professional Person employed under Section 327 or 1103 of the Bankruptcy Code in accordance with Sections 328, 330 and/or 331 of the Bankruptcy Code.

1.42 “File” or “Filed” means file or filed with the Bankruptcy Court in the Chapter 11 Cases.

1.43 “Final Administrative Claims Bar Date” has the meaning set forth in Section 3.02(B) of this Plan.

1.44 “Final Order” means an order or judgment, as entered on the docket of the applicable court, that has not been reversed, modified or amended, is not stayed and as to which the time to appeal or to seek review or rehearing or petition for certiorari has expired without an appeal or application for review or rehearing or petition having been Filed, or, if Filed that remains pending.

1.45 “Former Directors” means William C. Bartholomay, Peter C. Brown, Joseph A. Califano, Shari E. Redstone, Robert J. Steele, and Robert N. Waxman.

1.46 “General Unsecured Claim” means any Claim against any of the Debtors, other than a Secured Claim, Administrative Claim, Fee Claim, Priority Claim, or Priority Tax Claim.

1.47 “Impaired” means any Class, or any Claim or Interest in a Class, that is impaired within the meaning of Section 1124 of the Bankruptcy Code and shall include, without limitation, Class 3 Claims.

1.48 “Indenture Trustee” means Wells Fargo Bank, National Association solely in its capacity as Indenture Trustee of the Notes.

1.49 “Indentures” means, collectively, (i) the Indenture, dated as of September 19, 2005, between Midway Games Inc. and Wells Fargo Bank, National Association, as Indenture Trustee, and (ii) the Indenture, dated as of May 30, 2006, between Midway Games Inc. and Wells Fargo Bank, National Association, as Indenture Trustee.

1.50 “Indenture Trustee Charging Lien” means any Lien or other priority in payment to which the Indenture Trustee is entitled, pursuant to the Indentures, against distributions to be made to holders of Allowed Note Claims, for payment of any Indenture Trustee Fee.

1.51 “Indenture Trustee Fee” means the reasonable compensation, fees, expenses, disbursements and indemnity claims, including, without limitation, attorneys’ and agents’ fees, expenses and disbursements, incurred by the Indenture Trustee, whether prior to or after the Petition Date and whether prior to or after the consummation of this Plan.

1.52 “Initial Administrative Claims Bar Date” means December 4, 2009.

1.53 “Initial Assumptions” has the meaning set forth in Section 6.09(A) of this Plan.

1.54 “Initial Defendants” means each of the defendants originally named in the Creditors’ Committee Action. For the avoidance of doubt, the Initial Defendants are NAI, Sumco, Sumner Redstone, and each of the Former Directors.

1.55 “Initial Distribution Date” means the date on which the first Distribution is made by the Liquidating Trustee to holders of Allowed Class 3A and Class 3B Claims in accordance with the terms of this Plan and Liquidating Trust Agreement. The Initial Distribution Date shall occur as soon as practicable after the Effective Date.

1.56 “Intercompany Claim” means any Claim held by any Debtor against any other Debtor.

1.57 “Interest” means: (a) an equity interest in Midway or a Subsidiary Debtor as the context dictates, or (b) any warrant, option, or other contractual right to purchase an equity interest in Midway or any Subsidiary Debtor.

1.58 “IRS” means the Internal Revenue Service of the United States of America.

1.59 “Liquidating Trust” means the liquidating trust established on the Effective Date, in accordance with this Plan and Liquidating Trust Agreement, for the benefit of the Liquidating Trust Beneficiaries to which the Assets will be transferred; the Liquidating Trust shall conduct no business and shall qualify as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d).

1.60 “Liquidation Trust Advisory Board” means the board established and constituted as provided in the Liquidating Trust Agreement for the purpose of reviewing, advising and guiding the activities and performance of the Liquidating Trustee, and having the rights and responsibilities set forth in the Liquidating Trust Agreement. The members of the Liquidating Trust Advisory Board will be identified in the Plan Supplement.

1.61 “Liquidating Trust Agreement” means the trust agreement between the Debtors, the Creditors Committee and the Liquidating Trustee that, among other things, creates and establishes the Liquidating Trust, describes the powers, duties and responsibilities of the Liquidating Trustee, and provides for the liquidation and distribution of the Assets, which trust agreement shall be substantially in the form filed in the Plan Supplement.

1.62 “Liquidating Trust Beneficiaries” means each holder of an Allowed Class 3A and 3B Claim.

1.63 “Liquidating Trust Interest” has the meaning set forth in the Liquidating Trust Agreement.

1.64 “Liquidating Trust Claims” means all Causes of Action asserted, or which may be asserted, by or on behalf of any of the Debtors or any of the Debtors’ Estates, including those Causes of Action set forth in the Creditors’ Committee Action.

1.65 “Liquidating Trustee” means the Person selected by the Creditors’ Committee, as set forth in the Plan Supplement, or, after the Effective Date, such other Person appointed by the Liquidating Trust Advisory Board in accordance with the Liquidating Trust Agreement, or as otherwise determined by the Bankruptcy Court.

1.66 “Liquidating Trust Fund Reserve Amount” means a reserve of \$2 million, which reserve shall be in place to fund all expenses of administration of the Liquidating Trust, including, but not limited to, the fees and expenses of the professionals selected pursuant to the Liquidating Trust Agreement and the costs related thereto and any obligations under sections 5.07, 5.08, and 5.09 of the Plan.

1.67 “Liquidating Trust Funds” means the \$2 million of Cash used to initially fund the Liquidating Trust Fund Reserve Amount plus any Cash transferred by the Debtors, any Cash generated from the liquidation of remaining Assets, any amounts held in the Disputed Claims Reserve, any proceeds recovered by the Litigation Trust from the Litigation Trust Claims, and any other funds that become available to the Liquidating Trust.

1.68 “Lien” means “lien” as defined in Section 101(37) of the Bankruptcy Code.

1.69 “NAI” means National Amusements, Inc.

1.70 “NAI Subordinated Claim” means the Claim asserted by NAI against Midway arising from the Unsecured Subordinated Loan Agreement, dated February 29, 2008, between NAI and Midway, which Claim is contractually subordinated to the Claims of the Noteholders.

1.71 “Named Officers” means Mathew Booty, Ryan O’Desky, Deborah K. Fulton and Miguel Iribarren.

1.72 “NBA” means NBA Properties, Inc.

1.73 “Net Distributable Value” (“NDV”) means the Available Cash for Distribution to holders of Allowed Class 3A and Class 3B Claims after payment or funding of all Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Fee Claims and the Liquidating Trust Fund Reserve Amount and Disputed Claims Reserve.

1.74 “Noteholders” means the beneficial owners of the Notes.

1.75 “Notes” means, collectively, the 6.0% Convertible Senior Notes due 2025, and the 7.125% Convertible Senior Notes due 2026, issued by Midway pursuant to the Indentures.

1.76 “Ordinary Course Payment” means a payment by any of the Debtors of a liability incurred in the ordinary course of business after the Petition Date.

1.77 “Person” means any individual, corporation, partnership, limited liability company, association, indenture trustee, estate, trust, an unincorporated organization, joint stock company, joint venture, the Creditors’ Committee, Interest holders, creditor, administrative expense claimant, United States trustee, governmental unit or any other entity.

1.78 “Petition Date” means February 12, 2009.

1.79 “Permissible Investments” has the meaning set forth in Section 6.02(D)(iv).

1.80 “Plan Supplement” means the compilation of documents and form of documents, schedules and exhibits to be Filed on or before seven (7) days prior to the Voting Deadline and which may be amended from time to time until Confirmation.

1.81 “Priority Claim” means any unsecured Claim to the extent entitled to priority in payment pursuant to Section 507(a) of the Bankruptcy Code, other than an Administrative Claim or Priority Tax Claim.

1.82 “Priority Tax Claim” means any unsecured Claim to the extent entitled to priority in payment under Section 507(a)(8) of the Bankruptcy Code.

1.83 “Pro Rata” means, when used with reference to a Distribution of property pursuant to Articles III, V and XIII of this Plan, proportionately so that with respect to a particular Allowed Claim, the ratio of (i)(A) the amount of property distributed on account of such Claim to (B) the amount of such Claim, is the same as the ratio of (ii)(A) the amount of property distributed on account of all Allowed Claims of the Class in which such Claim is included to (B) the amount of all Allowed Claims in that Class and all other Classes receiving the same treatment.

1.84 “Purchaser” means:

A. with respect to the Warner Purchase Agreement, Warner and its permitted successors and assigns;

B. with respect to any other purchaser of Assets of any of the Debtors, such purchaser and its permitted successors and assigns.

1.85 “Sale Transactions” means the Warner Transaction and any and all other transactions pursuant to which Assets of the Debtors have or will be sold.

1.86 “Schedules” means the schedules, as may have been amended from time to time, of assets and liabilities filed by the Debtors with the Bankruptcy Court in accordance with Sections 521 and 1106(a)(2) of the Bankruptcy Code.

1.87 “Secured Claim” means any Claim to the extent such claim constitutes a secured Claim pursuant to Sections 506 or 1111(b) of the Bankruptcy Code.

1.88 “State Wage Claims” means the claims asserted after the Petition Date or which may be asserted after the Petition Date against Matthew Booty and/or Ryan O’Desky or any other former employees of any of the Debtors under the *Illinois Wage Payment and Collection Act*, 820 ILCS 115/1.16, relating to wages, vacation pay, or other compensation-related amounts allegedly due former employees of one or more of the Debtors, and any similar claims asserted after the Petition Date against any current or former employees of any of the Debtors under any similar state statutes.

1.89 “Tax Code” means the Internal Revenue Code of 1986, as amended.

1.90 “Treasury Regulations” means final, temporary and proposed regulations promulgated by the U.S. Treasury Department in respect of the Tax Code.

1.91 “Unexpired Lease” means any unexpired lease of real or personal property within the meaning of Section 365 of the Bankruptcy Code in effect between any of the Debtors and another Person as of the Petition Date.

1.92 “U.S. Trustee” means the Office of the United States Trustee for Region 3.

1.93 “Voting Deadline” means the deadline to vote on this Plan as may be set by the Bankruptcy Court.

1.94 “Warner” means Warner Bros. Entertainment Inc.

1.95 “Warner Purchase Agreement” means that certain Asset Purchase Agreement, dated as of May 20, 2009, by and among Midway and the other sellers listed on Schedule A thereto and Warner, as may be amended consistent with the Warner Sale Order.

1.96 “Warner Sale Motion” means the sale motion filed by the Debtors with the Bankruptcy Court seeking authority to consummate the Warner Transaction.

1.97 “Warner Sale Order” means the order approving the Sale Transaction among Midway and Warner entered in the Chapter 11 Cases on July 1, 2009 at Docket No. 477.

1.98 “Warner Transaction” means the transaction evidenced and authorized by the Warner Purchase Agreement and the Warner Sale Order.

ARTICLE II
CREDITORS’ COMMITTEE SETTLEMENT;
SUBSTANTIVE CONSOLIDATION OF ASSETS AND LIABILITIES
OF DEBTORS; CANCELLATION OF INTERCOMPANY CLAIMS

2.01 *Settlement and Compromise.* As more fully described herein, this Plan will implement the Creditors’ Committee Settlement, pursuant to which the Estates will be substantively consolidated for purposes of the classification and treatment of claims and distributions to Creditors in Classes 3A and 3B in accordance with the provisions of Section 6.09 of this Plan. Although the Debtors were not party to the negotiations that led to the Creditors’ Committee Settlement, the Debtors have agreed to seek implementation of the Creditors’ Committee Settlement through this Plan. To the extent necessary, this Plan constitutes a motion for approval of the aforementioned compromise and settlement pursuant to Bankruptcy Rule 9019 and Section 1123(b)(3) of the Bankruptcy Code and consistent with Section 1129 of the Bankruptcy Code. The Confirmation Order, subject to the occurrence of the Effective Date, will constitute an order of the Bankruptcy Court finding and determining that such compromise and settlement is (a) in the best interests of the Debtors, their Estates, and creditors holding Claims in Class 3A and Class 3B, (b) fair, equitable and reasonable, (c) made in good faith and (d) approved by the Bankruptcy Court.

2.02 *Substantive Consolidation.* The Plan also shall serve as a motion by the Debtors seeking entry, pursuant to Section 105 of the Bankruptcy Code, of an order authorizing, upon the Effective Date, the substantive consolidation of the Estates and all of the debts of all of the

Debtors for purposes of classifying and treating all Claims under this Plan, including for voting, confirmation and Distribution purposes; provided, however, that the Creditors' Committee Settlement specifically provides for treatment of holders of Claims in Class 3A, Class 3B and Class 4 in the manner specified in Section 6.09 of this Plan. Substantive consolidation will not (i) alter the state of incorporation of any Debtor for purposes of determining the applicable law of any of the Causes of Action, (ii) alter or impair the legal and equitable rights of the Liquidating Trustee to enforce any of the Causes of Action, or (iii) otherwise impair, release, discharge, extinguish or affect any of the Causes of Action or issues raised as a part thereof.

If substantive consolidation is ordered as provided herein, then on and after the Effective Date, and subject to the Creditors' Committee Settlement's treatment of Claims in Class 3A, Class 3B and Class 4, all assets and liabilities of the Debtors shall be treated under the Liquidating Trust as though they were merged into the Estate of Midway for purposes of treatment of and distributions on Allowed Claims. All guarantees by any Debtor of the obligations of any other Debtor shall be eliminated so that any Claim and any guarantee thereof by any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be treated as one collective obligation of the Debtors. Substantive consolidation shall not affect any prepetition or postpetition guarantees, Liens, or security interests that are required to be maintained under the Bankruptcy Code, under this Plan, or in connection with contracts or leases that were assumed or entered into during the Chapter 11 Cases. Any alleged defaults under any applicable agreement with the Debtors arising from substantive consolidation under this Plan shall be deemed cured as of the Effective Date. Notwithstanding anything in this Plan or in the Confirmation Order to the contrary, the entry of the Confirmation Order ordering substantive consolidation of the Estates shall not have any effect upon the separate and distinct legal entities as they existed at the time of any prepetition transaction that is the subject of any litigation asserting claims for fraudulent conveyance; *provided, however*, that the foregoing provisions shall not serve to prejudice or compromise whatever rights, if any, the Debtors or the Liquidating Trustee, as applicable, may have to contend in any pending or future adversary proceeding that the Debtors or the Liquidating Trustee, as applicable, may prosecute claims for fraudulent conveyance arising from transfers made by one or more of the Debtors based on any theory or doctrine, including any federal, state, or common law alter-ego, veil-piercing, or any other theory or doctrine that would permit or require the disregard of corporate separateness, or facts as they existed at the time of the transaction in question. Substantive consolidation shall not affect the obligation of each Debtor or the Liquidating Trustee to pay quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. §1930 until the earliest to occur of a case being closed, converted, or dismissed.

2.03 *Cancellation of Intercompany Claims.* Upon the Effective Date, all Intercompany Claims and Interests will be extinguished except as necessary to preserve the Causes of Action and the other Liquidating Trust Assets.

ARTICLE III
TREATMENT OF UNCLASSIFIED CLAIMS

3.01 *Administrative Claims.* Administrative Claims are unclassified under this Plan. Each holder of an Allowed Administrative Claim shall receive: (a) to the extent not already paid in full, payment in full in Cash, without interest, as soon as practicable after the later of the Effective Date and the date such Administrative Claim becomes an Allowed Administrative Claim; or (b) to the extent not yet due and payable, payment in accordance with the terms and conditions of the particular transaction giving rise to the Administrative Claim; or (c) to the extent such Claims are Administrative Claims of the U.S. Trustee for fees pursuant to 28 U.S.C. § 1930(a)(6), payment in full in Cash in accordance with the applicable schedule for payment of such fees; or (d) treatment on such other terms as may be mutually agreed upon in writing between the holder of such Allowed Administrative Claim and the Debtors or the Liquidating Trustee; *provided, however*, that interim and/or final payment of Allowed Administrative Claims shall be made in accordance with this Plan or subsequent Bankruptcy Court approval.

3.02 *Administrative Claim Bar Dates.*

A. *Initial Administrative Claims Bar Date.* Requests for payment of Administrative Claims that arose during the period from the Petition Date through and including September 30, 2009 were required to be filed and served pursuant to the procedures set forth in the Bankruptcy Court's order dated September 29, 2009 no later than the Initial Administrative Claims Bar Date. Any Person that was required to but failed to file such an Administrative Claim request on or before the Initial Administrative Claims Bar Date forever shall be barred from asserting such Administrative Claim against the Debtors or the Estates.

B. *Final Administrative Claims Bar Date.* All Administrative Claims accruing on or after September 30, 2009 and not otherwise paid in the ordinary course of the Debtors' business shall be filed with the Bankruptcy Court within forty-five (45) days following the Effective Date (the "*Final Administrative Claims Bar Date*"), and objections (if any) to such Administrative Claims shall be filed no later than ninety (90) days after the Effective Date.

C. *Failure to Timely File.* Any Person that fails to file a timely request for the payment of an Administrative Claim shall (a) be forever barred, estopped and enjoined from asserting such Administrative Claim against each of the Debtors, the Liquidating Trust, the Assets, or the Liquidating Trust Funds (or filing a request for the allowance thereof in the event such Person received sufficient notice of the applicable Administrative Claims Bar Date); (b) not be permitted to participate in any Distribution under this Plan on account of such Administrative Claim, and (c) be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover any such Administrative Claim against the Debtors, the Liquidating Trust, the Assets, or the Liquidating Trust Funds.

3.03 *Fee Claims.* Fee Claims are unclassified under this Plan. Each holder of an Allowed Fee Claim shall receive, in Cash, to the extent not already paid, the amounts allowed by the Bankruptcy Court: (a) on or as soon as practicable following the date upon which the Bankruptcy Court enters a Final Order allowing such Allowed Fee Claim; or (b) upon such other

terms as may be mutually agreed upon between the holder of such Allowed Fee Claim and the Debtors or the Liquidating Trustee. Any and all parties requesting allowance and/or payment of a Fee Claim for any period ending on or before the Effective Date must file and serve final fee applications therefor no later than forty-five (45) days after the Effective Date or be forever barred from requesting allowance of such Fee Claims.

3.04 *Priority Tax Claims.* Priority Tax Claims are unclassified under this Plan. As soon as practicable after the later of (a) the Effective Date or (b) the date on which a Priority Tax Claim becomes an Allowed Claim, such Allowed Priority Tax Claim shall be paid in full in Cash unless otherwise agreed in writing between the holder of such Allowed Priority Tax Claim and the Debtors or the Liquidating Trustee.

ARTICLE IV **CLASSIFICATION OF CLAIMS AND INTERESTS**

4.01 *General Rules of Classification.* A Claim or Interest is classified in a particular Class for voting and Distribution purposes only to the extent the Claim or Interest has not been paid, released or otherwise satisfied and qualifies within the description of that Class, and is classified in another Class or Classes to the extent any remainder of the Claim or Interest qualifies within the description of such other Class or Classes.

For purposes of this Plan, Claims and Interests are classified as follows:

4.02 “Class 1 Claims” shall consist of all Allowed Secured Claims against any Debtor.

4.03 “Class 2 Claims” shall consist of all Allowed Priority Claims against any Debtor.

4.04 “Class 3A Claims” shall consist of all Allowed General Unsecured Claims against Midway, except the Class 4 Claim.

4.05 “Class 3B Claims” shall consist of all Allowed General Unsecured Claims against any Subsidiary Debtor.

4.06 “Class 4 Claim” shall consist of the NAI Subordinated Claim to the extent it is an Allowed Claim.

4.07 “Class 5 Interests” shall consist of all Interests.

ARTICLE V **TREATMENT OF CLASSES OF CLAIMS AND INTERESTS**

Each Allowed Claim shall receive the treatment specified below for the applicable Class in full settlement and satisfaction of all rights of the holder with respect to such Allowed Claim; *provided, however*, that the holder of such Claim may agree in writing to receive less favorable treatment. The treatment of Claims herein shall be consistent with the priority scheme set forth in Section 507 of the Bankruptcy Code.

5.01 *Class 1 Secured Claims.* Class 1 is not Impaired. On or as soon as practicable after the later of: (a) the Effective Date, or (b) the date on which a Class 1 Claim becomes an Allowed Claim, the Liquidating Trustee shall, at its election, either (1) pay such Allowed Class 1 Claim in full in Cash, without interest, or (2) return the collateral securing such claim to the holder of such Allowed Class 1 Claim.

5.02 *Class 2 Priority Claims.* Class 2 is not Impaired. On or as soon as practicable after the later of: (a) the Effective Date, or (b) the date on which a Class 2 Claim becomes an Allowed Class 2 Claim, the Liquidating Trustee shall pay such Allowed Class 2 Claim in full in Cash, without interest.

5.03 *Class 3A General Unsecured Claims against Midway.* Class 3A is Impaired. On or as soon as practicable after the later of: (a) the Effective Date or (b) the date any such Class 3A General Unsecured Claim becomes an Allowed Class 3A Claim, the Liquidating Trustee shall pay such Allowed Class 3A Claim its Pro Rata share of Net Distributable Value in accordance with the Creditors' Committee Settlement.

5.04 *Class 3B General Unsecured Claims against Subsidiary Debtors.* Class 3B is impaired. On or as soon as practicable after the later of: (a) the Effective Date or (b) the date any such Class 3B General Unsecured Claim becomes an Allowed Class 3B Claim, the Liquidating Trustee shall pay such Allowed Class 3B Claim its Pro Rata share of the Net Distributable Value in accordance with the Creditors' Committee Settlement.

5.05 *Class 4 NAI Subordinated Claim against Midway.* Class 4 is Impaired. The Class 4 Claim shall receive no Distribution of any kind under this Plan on account of such Claim in accordance with the Creditors' Committee Settlement and is deemed to reject this Plan.

5.06 *Class 5 Interests.* *Class 5 is Impaired.* Class 5 Interests shall receive no Distribution of any kind under this Plan on account of such Interests and are deemed to reject this Plan, except the Debtors that hold Interests in any of the other Debtors are deemed to accept this Plan. On the Effective Date all warrants, options or other contractual rights to purchase an Interest in Midway or any Subsidiary Debtor shall be deemed canceled and of no further force and effect.

5.07 *State Wage Claims.* Subject to Section 5.10 of this Plan, Debtors, and after the Effective Date, the Liquidating Trustee shall defend, indemnify and hold harmless, to the extent provided in the applicable certificates of incorporation, by-laws or similar constituent documents of any of the Debtors or by written agreement, policies, or procedures of any such Debtors or by statute, Matthew Booty, Ryan O'Desky and all other employees of any of the Debtors from and against the State Wage Claims and shall settle, compromise and/or pay any amounts required to be paid by any of Matthew Booty, Ryan O'Desky and/or, if applicable, any other employees of the Debtors, if and to the extent the State Wage Claims or any of them are adversely determined against any of Messrs. Booty and/or O'Desky and/or any other such employee. The obligations under this Section 5.07 shall be paid and performed as an Allowed Administrative Claim.

5.08 *Corporate Indemnities for Post-Petition Date Service.* Notwithstanding any other term or provision contained herein, but subject to Section 5.10 of this Plan, Debtors, and after the Effective Date, the Liquidating Trustee shall defend, indemnify and hold harmless any Person who has served as one of the Debtors' directors, officers or employees, or as a director, officer or employee of another corporation, partnership or other legal entity but only to the extent (a) that such Person would have been entitled to such defense, indemnification and hold harmless as of the Petition Date in the applicable certificates of incorporation, by-laws or similar constituent documents of any of the Debtors or by written agreement, policies or procedures of any of such Debtors or by statute, in each case for post-Petition Date service in such capacity and (b) that any issuer of officer and director insurance policy is not defending, indemnifying or holding harmless such Person and (c) such Person's liability under such claim arises from a post-Petition Date act, omission, transaction, agreement, event or other occurrence in his or her capacity as an officer, director or employee (as applicable). The foregoing obligations of the Debtors and the Liquidating Trustee shall not apply to (i) the Initial Defendants (ii) any pre-Petition Date act, omission, transaction, agreement, event or other occurrence or (iii) any Claim (including Administrative Claims) filed or asserted in these Chapter 11 Cases prior to the Effective Date by a Person entitled to the protections set forth in this Section 5.08. The obligation to defend, indemnify and hold harmless as set forth in this Section 5.08 shall be paid and performed as an Allowed Administrative Claim. Notwithstanding the foregoing, (A) the Liquidating Trustee shall not be required to maintain any reserve for claims that may arise under this Section 5.08 and (B) the obligation to defend, indemnify and hold harmless as set forth in this Section 5.08 shall not apply to any Claims made later than the earlier of (i) the expiration of eighteen (18) months after the Effective Date or (ii) the date on which an order for a final decree closing the Chapter 11 Cases has been entered in accordance with the Bankruptcy Code and the Bankruptcy Rules.

5.09 *Corporate Indemnities for Pre-Petition Date Service.* Notwithstanding any other term or provision contained in this Plan, but subject to Section 5.10 of this Plan, the Debtors, and after the Effective Date, the Liquidating Trustee shall defend, indemnify and hold harmless the Named Officers against any claim against such Persons based on conduct or acts occurring prior to the Petition Date that would have been covered under the Debtors' directors and officers insurance policy that was in effect as of the Petition Date had such claim been made immediately prior to the Petition Date; provided that the obligations of the Debtors or the Liquidating Trustee under this Section 5.09 shall not exceed an aggregate of \$500,000 and shall not apply to any Claims made later than the earlier of (i) the expiration of eighteen (18) months after the Effective Date or (ii) the date on which an order for a final decree closing the Chapter 11 Cases has been entered in accordance with the Bankruptcy Code and Bankruptcy Rules and, provided, further, that the foregoing defense and indemnity under this Section 5.09 shall not apply (i) to any Persons other than the Named Officers, (ii) any post-Petition act, omission, transaction, agreement, event or other occurrence or (iii) any Claim (including Administrative Claims) filed or asserted by any of the Named Officers in these Chapter 11 Cases. Furthermore, any Allowed Claims for indemnification arising under the applicable certificates of incorporation, by-laws or similar constituent documents of any of the Debtors or by written agreement, policies or procedures of any of the Debtors or by statute and relating to pre-Petition Date acts or conduct and any claims described in the first sentence of this Section 5.09 in excess of the dollar limitation or outside the time limitation shall be treated as Allowed Class 3A Claims. The

Liquidating Trustee shall provide the Named Officers and all other Persons requesting written notice with at least twenty (20) days notice of the Liquidating Trustee's intent to make a final Distribution and/or to close the Chapter 11 Cases.

5.10 *Resolution of Claims of Named Officers.* The defense, indemnification and hold harmless obligations set forth in provisions of Section 5.07, 5.08 and 5.09 above and ARTICLE X of this Plan, and Confirmation of this Plan, are conditioned upon (i) the withdrawal and termination of all indemnification-based Claims filed by the Named Officers, (ii) the resolution, to the satisfaction of the Creditors' Committee, of all Claims filed by the Named Officers for severance, paid time off and any other matters prior to or in connection with the Confirmation Hearing and (iii) the acknowledgment by the Named Officers that, as of the date of Confirmation, they have no knowledge of any undisclosed claims asserted against them that would trigger the provisions of sections 5.08 or 5.09 of the Plan.

ARTICLE VI

MEANS OF IMPLEMENTATION OF THE PLAN

6.01 *The Sale Transactions.* The Debtors, or the Liquidating Trustee, as the case may be, shall fulfill any remaining obligations of the Estates in respect of the Sale Transactions, subject to the Estates' rights and claims in respect of such Sale Transactions.

6.02 *Liquidating Trust.*

A. *Establishment of Liquidating Trust.* On or prior to the Effective Date, the Debtors, the Creditors' Committee and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall take all other steps necessary to establish the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries in accordance with and pursuant to the terms of this Plan. The terms of the Liquidating Trust Agreement, together with this Plan, shall define the obligations, duties, compensation, indemnification and exculpation of the Liquidating Trustee in full.

B. *Funding of Liquidating Trust.* The Liquidating Trust will be funded with all of the Assets, including the Liquidating Trust Claims, on the Effective Date of this Plan.

C. *Appointment of Liquidating Trustee.* The identity of the Liquidating Trustee will be designated in the Plan Supplement. The structure and governance of the Liquidating Trust shall be determined and will be set forth in the Liquidating Trust Agreement included in the Plan Supplement. The Liquidating Trustee shall be the sole representative of the Debtors with respect to Causes of Action for purposes of Section 1123(b)(3)(B) of the Bankruptcy Code and, upon the Effective Date, subject to the provisions of the Liquidating Trust Agreement, such Causes of Action shall be subject to the exclusive control and authority of the Liquidating Trustee. Any recoveries by the Liquidating Trust will be maintained in the Distribution Fund and distributed by the Liquidating Trustee to holders of Allowed Claims in accordance with this Plan and the Liquidating Trust Agreement. In the event the Liquidating Trustee is no longer willing or able to serve as trustee, then the Liquidating Trustee's successor shall be appointed by the Liquidating Trust Advisory Board in accordance with the provisions of

the Liquidating Trust Agreement and notice of the appointment of such successor Liquidating Trustee shall be filed with the Bankruptcy Court.

D. *Provisions Applicable to Liquidating Trust.*

(i) *Transfer and Vesting of Liquidating Trust Assets in Liquidating Trust.* Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date and periodically thereafter if additional Assets become available, the Debtors and the Creditors' Committee shall be deemed to have automatically transferred to the Liquidating Trust all of their right, title, and interest in and to all of such Assets, including, without limitation, the Liquidating Trust Claims, and in accordance with Section 1141 of the Bankruptcy Code, all such Assets shall automatically irrevocably vest in the Liquidating Trust free and clear of all Claims and Liens, subject only to the Allowed Claims of the applicable Liquidating Trust Beneficiaries, as set forth in this Plan, and the reasonable fees and expenses of administering the applicable Liquidating Trust, including, without limitation, the reasonable fees and expenses of its Liquidating Trustee, as provided in the Liquidating Trust Agreement. Thereupon, the Debtors and Creditors' Committee shall have no interest in or with respect to such additional Assets or the Liquidating Trust. All rights in connection with the vesting and transfer of the Assets, including the Liquidating Trust Claims, and any attorney-client privileges, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidating Trust shall vest in the Liquidating Trust. The Liquidating Trust Claims shall also include any other claims or causes of action against third parties not presently asserted by the Debtors or Creditors' Committee. All bank accounts established by the Debtors shall be transferred to and held by the Liquidating Trustee on behalf of the Liquidating Trust Beneficiaries, subject to the provisions of this Plan and the Liquidating Trust Agreement. The Debtors, the Creditors' Committee and the Liquidating Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges, protections and immunities.

Notwithstanding the foregoing, for purposes of Section 553 of the Bankruptcy Code, the transfer of the Liquidating Trust Claims to the Liquidating Trust will not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Notwithstanding anything to the contrary in this Plan, the transfer of the Liquidating Trust Claims does not diminish, and fully preserves, any defenses a defendant would have if such Liquidating Trust Claims had been retained by the Debtors.

(ii) *Preservation of Confidences and Attorney-Client Privilege.* To effectively investigate, marshal, defend or pursue the Assets, including the Liquidating Trust Claims, the Debtors, the Creditors' Committee, the Liquidating Trust, the Liquidating Trustee and the Liquidating Trust Advisory Board, and all counsel thereto, must be able to exchange information with each other on a confidential basis and cooperate in common interest efforts without waiving any applicable privilege. Given the common interests of the parties and the Liquidating Trust's position as successor to the Assets, including the Liquidating Trust Claims, sharing such information in the manner described in the previous sentence, shall not waive or limit any applicable privilege or exemption from disclosure or discovery related to such information. The Debtors, the Creditors' Committee, the Liquidating Trustee and the

Liquidating Trust Advisory Board are authorized to take all necessary actions to effectuate the transfer of such privileges. The Confirmation Order will provide that the receipt by the Liquidating Trustee and the Liquidating Trust Advisory Board of transferred privileges shall be without waiver in recognition of the joint and/or successorship interest in prosecuting claims on behalf of the Debtors' estates. Notwithstanding any agreement or order entered by the Bankruptcy Court to the contrary, the Creditors' Committee will be permitted to share any discovery obtained prior to and after the Effective Date with the Liquidating Trustee and the Liquidating Trustee Advisory Board.

(iii) *Treatment of Liquidating Trust for U.S. Federal Income Tax Purposes; No Successor-in-Interest.* The Liquidating Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treasury Regulation Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Accordingly, the Liquidating Trustee shall in an expeditious but orderly manner, liquidate and convert to Cash the Assets, including, the Liquidating Trust Claims, make timely distributions of the proceeds therefrom to the Liquidating Trust Beneficiaries and not unduly prolong their duration. The Liquidating Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Liquidating Trust Agreement.

The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating Trust. For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Assets by the Debtors to the Liquidating Trust, as set forth in the Liquidating Trust Agreement, as a transfer of such assets by the Debtors to the Liquidating Trust Beneficiaries entitled to distributions from the Liquidating Trust Assets, followed by a transfer by such beneficiaries to the Liquidating Trust. Thus, the Liquidating Trust Beneficiaries shall be treated as the grantors and owners of a grantor trust for U.S. federal income tax purposes.

As soon as practicable after the Effective Date, the Liquidating Trustee (to the extent that he or she deems it necessary or appropriate in his or her sole discretion) shall value the Assets in the Liquidating Trust, based on the good faith determination of the Liquidating Trustee, and shall apprise his or her Liquidating Trust Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

(iv) *Investment and Distribution of Liquidating Trust Assets.* The right and power of the Liquidating Trustee to invest the Assets transferred to the Liquidating Trust, the proceeds thereof, or any income earned by the Liquidating Trust, shall be limited to the right and power to (i) invest such Assets (pending distributions in accordance with this Plan) in investments consistent with Section 345 of the Bankruptcy Code and which are (a) direct obligations of, or obligations guaranteed by, the United States of America, or (b) obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; *provided, however*, that

the scope of any such investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise ("Permissible Investments").

Subject to the provisions of this Article VI, the Liquidating Trustee shall distribute to the Liquidating Trust Beneficiaries all Available Cash plus all net cash proceeds from the subsequent liquidation of the Assets (including as Cash for this purpose, all Cash equivalents) at such time intervals as decided by the Liquidating Trustee following consultation with the Liquidating Trust Advisory Board, pursuant to and in accordance with the terms of this Plan and the Liquidating Trust Agreement. The Liquidating Trustee shall make distributions from the Liquidating Trust no less frequently than once per twelve-month period, such period to be measured from the Effective Date; *provided, however*, that the Liquidating Trustee may, following consultation with the Liquidating Trust Advisory Board, cause the Liquidating Trust to retain an amount of net cash proceeds or net cash income reasonably necessary to maintain the value of its Assets or to meet Claims and contingent liabilities (including Disputed Claims). The Liquidating Trustee may also determine that in a given period or on the anniversary of the Effective Date, there are insufficient assets to make a Distribution.

In accordance with and subject to the provisions of the Liquidating Trust Agreement, upon the creation of the Liquidating Trust, the Liquidating Trustee shall reserve no less than the Liquidating Trust Fund Reserve Amount to satisfy obligations under the Plan and the payment of professional and other fees and expenses to be incurred by the Debtors or the Liquidating Trustee in implementing and consummating the terms of this Plan, winding up the affairs of the Debtors and otherwise completing the tasks necessary for the operation and administration of the Liquidating Trust and to close the Chapter 11 Cases.

The Liquidating Trustee shall require any Liquidating Trust Beneficiary or other distributee to furnish to the Liquidating Trustee in writing its Employer or Taxpayer Identification Number as assigned by the IRS and the Liquidating Trustee may condition any distribution to any Liquidating Trust Beneficiary or other distributee upon receipt of such identification number.

(v) *Liquidating Trustee's Authority and Duties.* From and after the Effective Date, the Liquidating Trustee shall serve as trustee of the Liquidating Trust, and shall have all powers, rights and duties of a trustee, as set forth in the Liquidating Trust Agreement. Among other things, the Liquidating Trustee shall, subject to the Liquidating Trust Agreement: (a) administer this Plan; (b) hold and administer the Assets, including the Liquidating Trust Claims, (c) subject to the obligation to consult with the Liquidating Trust Advisory Board, have the sole authority and discretion on behalf of the Liquidating Trust to evaluate and determine strategy with respect to any and all Liquidating Trust Claims Action, and to litigate, settle, transfer, release or abandon and/or compromise in any manner any and all such Liquidating Trust Claims on any terms and conditions as it may determine in good faith based on the best interests of the Liquidating Trust Beneficiaries, (d) have the power and authority to retain, as an expense of the Liquidating Trust, attorneys, advisors, other professionals and employees as may

be appropriate to perform the duties required of the Liquidating Trustee hereunder or in the Liquidating Trust Agreement, (e) invest, segregate, deposit, reserve and distribute Cash, (f) make distributions to the Liquidating Trust Beneficiaries as provided in the Liquidating Trust Agreement and this Plan, (g) have the right to receive reasonable compensation for performing services as the Liquidating Trustee and to pay the reasonable fees, costs and expenses of any counsel, professionals, advisors or employees as may be necessary to assist the Liquidating Trustee in performing the duties and responsibilities required under this Plan and the Liquidating Trust Agreement, (h) file, litigate, settle, compromise or withdraw objections to Claims as set forth in Article XII herein, (i) have the right to provide periodic reports and updates to the Liquidating Trust Board and the Liquidating Trust Beneficiaries regarding the status of the administration of the Assets, including, the Liquidating Trust Claims, and the liabilities and transfers of the Liquidating Trust, (j) file customary quarterly reports with the Bankruptcy Court within forty-five (45) days of the end of the applicable quarterly period and serve copies of such reports on Persons requesting written notice thereof, (k) pay quarterly fees when due to the Office of the United States Trustee until the earliest to occur of a Debtor's case being closed, converted, or dismissed, and (l) file appropriate tax returns. The Liquidating Trustee may also consult the Liquidating Trust Advisory Board at such times and with respect to such issues relating to the conduct of the Liquidating Trust as the Liquidating Trustee considers desirable and in accordance with the terms of the Liquidating Trust Agreement.

(vi) *Sale, Transfer or Abandonment of Non-Cash Property.* Any non-Cash property of the Estates may be sold, transferred or abandoned by the Liquidating Trustee, so long as such sale, transfer or abandonment complies with the terms of this Plan and requirements of the Bankruptcy Code and applicable law. Notice of such sale, transfer, or abandonment shall be provided to the Bankruptcy Court, the U.S. Trustee, and any necessary governmental agencies. If, in the Liquidating Trustee's judgment, any non-Cash property cannot be sold in a commercially reasonable manner, the Liquidating Trustee shall have the right to abandon or otherwise dispose of such property, including by donation of such property to a charity or a local state or county Person. Except in the case of willful misconduct, gross negligence, fraud or criminal conduct, no Person or party in interest shall have a cause of action against the Liquidating Trustee, arising from or related to the disposition of non-Cash property in accordance with the terms of this Plan.

(vii) *Termination of Liquidating Trust.* The Liquidating Trust will terminate as soon as practicable, but in no event later than the fifth (5th) anniversary of the Effective Date; provided, however, that, on or prior to the date of such termination, the Bankruptcy Court, upon motion by a party-in-interest, may extend the term of the Liquidating Trust for a finite period, if such an extension is necessary to liquidate the Assets or for other good cause. Notwithstanding the foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is obtained prior to the expiration of each extended term; provided further, however, that the Liquidating Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a grantor trust for U.S. federal income tax purposes.

(viii) *Termination of Liquidating Trustee.* The duties, responsibilities and powers of the Liquidating Trustee shall terminate in accordance with the terms of the Liquidating Trust Agreement.

(ix) *Exculpation; Indemnification.* **As further set forth in the Liquidating Trust Agreement, the Liquidating Trustee, the members of the Liquidating Trust Advisory Board, and their respective professionals, and any duly authorized agent or representative thereof (in its capacity as such) are hereby exculpated and, from the Assets, indemnified and held harmless from and against liabilities, including, without limitation, reasonable attorneys' fees arising out of or due to their actions or omissions, or consequences in respect of the Debtors and Plan implementation or consummation, other than acts arising from each such Person's willful misconduct, gross negligence, fraud or criminal conduct.**

(x) *Preservation of Records and Documents.* The Liquidating Trustee shall: (i) take commercially reasonable efforts to preserve all records and documents (including any electronic records or documents) related to the Assets and Causes of Action (including, the Liquidating Trust Claims), as applicable and necessary, for a period of five (5) years from the Effective Date or, if actions with respect to any applicable Causes of Action are then pending, until the Liquidating Trustee notifies the Liquidating Trust Beneficiaries such records are no longer required to be preserved; and (ii) provide the Liquidating Trust, the Liquidating Trust Beneficiaries and their respective counsel, agents and advisors, with reasonable access to such records and documents.

(xi) *Discovery.* The Liquidating Trustee shall be authorized to employ Bankruptcy Rule 2004 and any other bankruptcy tools of discovery as such are available to the Estates.

6.03 *Dismissal of Officers and Directors and Dissolution of Debtors and Board.* Upon the Effective Date, (i) the existing board of directors of any Debtor and any remaining officer of any Debtor shall be dismissed and (ii) each of the Debtors shall be deemed dissolved without any further action required on the part of the Debtors, the shareholders of the Debtors, or the officers and directors of the Debtors.

6.04 *Binding Effect.* Except as otherwise expressly provided in this Plan, on and after the Effective Date, this Plan shall bind the Creditors' Committee and all Holders of Claims and Equity Interests.

6.05 *Corporate Action.* Each of the matters provided for under this Plan involving any corporate action to be taken or required by the Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized and approved without any requirement of further action by the Debtors, the Debtors' shareholders or the Debtors' boards of directors or managers. Without limiting the foregoing, including, without limitation, this Section 6.05 of this Plan, the Debtors (and their respective boards of directors or managing bodies) are hereby authorized in their sole discretion, to dissolve or otherwise terminate on the Effective Date (i) their existence, by filing a certificate of dissolution and a copy

of the Confirmation Order with the Secretary of State of their respective States of incorporation, (ii) the existence of wholly-owned non-Debtor subsidiaries, or (iii) any remaining health, welfare or benefit plans. As of the Effective Date, neither the Debtors nor the Liquidating Trustee shall be required to file any document, or take any other action, to withdraw any Debtor's business operation from any state in which it previously conducted business operations. The Confirmation Order shall contain directing language to the appropriate governmental units to such effect.

6.06 *Effectuating Documents and Further Transactions.* The Debtors, the Creditors' Committee and the Liquidating Trustee shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of this Plan.

6.07 *Cancellation of Notes, Instruments, Indentures and Interests.* On the Effective Date, except to the extent provided otherwise in this Plan, any non-executory agreement, note, instrument, certificate or other document evidencing or creating any Claim or Equity Interest in or against any of the Debtors, including without limitation the Notes and the Indentures, shall be automatically cancelled, discharged and terminated and of no further force and effect, without any further act or action by the Debtors or the Indenture Trustee, and deemed surrendered without further act or action under any applicable agreement, law, regulation, order or rule and any obligations of the Debtors under the agreements, notes, instruments, certificates or other documents governing such Claims and Interests shall be terminated provided, however, that the Notes and the Indentures shall continue in effect solely for the purposes of (i) allowing Noteholders to receive their Distributions hereunder, (ii) allowing the Indenture Trustee to make the Distributions to be made on account of the Notes, and (iii) permitting the Indenture Trustee to assert its Indenture Trustee Charging Lien against such Distributions for payment of the Indenture Trustee Fee. The cancellation of Interests effected by this Plan shall be without affect on and without prejudice to any claims asserted on behalf of the Estates in the Creditors' Committee Action.

6.08 *Closing of the Chapter 11 Cases.* At such time as the Liquidating Trustee deems appropriate, after all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed by Final Order, all remaining Assets have been liquidated and converted into Cash or otherwise disposed of or abandoned, including Liquidating Trust Claims and such Cash has been distributed in accordance with this Plan, the Liquidating Trustee shall seek an order from the Bankruptcy Court for a final decree closing the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

6.09 *Creditors' Committee Settlement.* The principal terms of the Creditors' Committee Settlement were reached during discussions that took place in October, 2009 between the members of the Creditors Committee that hold Class 3A and Class 3B Claims respectively. The Debtors were not party to those negotiations and deliberations. The terms and provisions of the Creditors' Committee Settlement are set forth below and are to be implemented by this Plan:

A. *Initial Assumptions.* Distributions on account of Allowed Class 3A Claims and Class 3B Claims and the determination that Class 4 Claims will receive no

Distributions are based upon the following initial preliminary assumptions made by the Creditors' Committee in October, 2009 (the "*Initial Assumptions*"):

(i) Net Distributable Value ("NDV") available to holders of Class 3A Claims and Class 3B Claims after payment of all Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Claims, Allowed Priority Tax Claims, Allowed Fee Claims and the Liquidating Trust Reserve, is estimated to be \$34.67 million.

(ii) Aggregate Allowed Class 3A Claims of \$154.82 million;

(iii) Aggregate Allowed Class 3B Claims of \$36.66 million; and

(iv) Allowed Class 4 Claims, but for the substantive consolidation, would be structurally subordinate to the payment in full of the Class 3B Claims and are contractually subordinate to payment in full of the Notes which constitute substantially all of the Class 3A Claims. Midway is a holding company and substantially all of its Assets were owned by its subsidiaries. Because of the substantial disparity between the NDV and the total amount of Class 3A and Class 3B Claims, it is unlikely that under any set of circumstances there would ever be any Assets available to make a Distribution to the holders of Allowed Class 4 Claims. Therefore, Class 4 Claims are disregarded for purposes of the Creditors' Committee Settlement.

B. *Substantive Consolidation.* The Estates are to be substantively consolidated and Intercompany Claims are to be cancelled as set forth in this Plan.

C. *Treatment/Distribution of Class 3A and Class 3B Creditors.* Creditors holding Class 3A Claims and Class 3B Claims would realize the following amounts and percentages based upon the Initial Assumptions:

(i) Each Creditor holding an Allowed Class 3A Claim will receive, on a Pro Rata basis with other Creditors holding Allowed Class 3A Claims, its share of approximately \$25.5 million of NDV, representing an estimated 16.5% recovery on its Allowed Class 3A Claim.

(ii) Each Creditor holding an Allowed Class 3B Claim will receive, on a Pro Rata basis with other Creditors holding Allowed Class 3B Claims, its share of approximately \$9.2 million of NDV, or an estimated 25% recovery on its Allowed Class 3B Claim.

(iii) In the event NDV increases or decreases from the figure set forth in the Initial Assumptions, Distributions to Allowed Class 3B Claims and to Allowed Class 3A Claims will be adjusted ratably such that the ratio of each Class' aggregate respective recovery will remain unchanged until all Allowed Class 3B Claims have been paid in full.

(iv) In the event that either or both of the aggregate Allowed Class 3A Claims or Allowed Class 3B Claims increase or decrease from the amounts identified in the Initial Assumptions, Distributions to holders of such Allowed Claims will be adjusted such that

the ratio of each Class' aggregate respective recovery will remain unchanged until all Allowed Class 3B Claims have been paid in full.

(v) Attached hereto as Exhibit A are recovery sensitivity tables which show the recoveries to holders of Allowed Class 3A Claims and holders of Allowed Class 3B Claims in the event of changes to any of the components comprising the Initial Assumptions.

(vi) Attached hereto as Exhibit B is a liquidation analysis prepared by FTI Consulting at the request of the Creditors Committee.

D. *Intercompany Claims.* Intercompany Claims will be extinguished and cancelled as of the Effective Date and will receive no distribution.

E. The Liquidating Trustee shall pay, on or as soon as reasonably practicable after the Effective Date, all Indenture Trustee Fees, in full in Cash, up to a maximum amount of [\$_____] without application to or approval of the Bankruptcy Court and without a reduction to the recoveries of the holders of the Notes. Notwithstanding the foregoing, to the extent any Indenture Trustee Fees are not paid by the Liquidating Trustee, the Indenture Trustee may assert its charging lien against any recoveries received on behalf of the holders of the Notes for payment of such unpaid amounts. The Liquidating Trustee also shall pay, on or as soon as reasonably practicable after the Effective Date, all reasonable attorneys' fees and expenses incurred by the NBA in connection with the Chapter 11 Cases since the Petition Date without application to or approval of the Bankruptcy Court.

F. From and after the Effective Date, the Indenture Trustee shall be exculpated from any claims, causes of action and other assertions of liability arising out of the exercise and discharge (or the omission) of the powers and duties conferred upon such Indenture Trustee by the Indenture or this Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of this Plan, or applicable law, including without limitation in connection with the negotiation of any terms of this Plan, including, in particular, the terms of the Creditors' Committee Settlement embodied herein, except for any act, omission, transaction, agreement, event or other occurrence constituting willful misconduct, gross negligence, fraud or criminal conduct of the Indenture Trustee. No holder of a Claim or other party in interest shall have or pursue any claim or cause of action against the Indenture Trustee for making Distributions in accordance with the Creditors' Committee Settlement, this Plan, or for otherwise implementing the provisions of this Plan.

G. As of the Effective Date, each holder of a Claim that votes in favor of the Plan shall be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, or then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or prior to the Effective Date in any way relating to the Notes, the Debtors, and the Chapter 11 Cases, including without limitation in connection with the negotiation of any terms of this Plan, including, in particular, the terms of the Creditors' Committee Settlement embodied herein, that

such Person has, had or may have, against the Indenture Trustee and any of its respective present or former directors, officers, employees, agents, representatives, attorneys, accountants, underwriters, investment bankers or financial advisors and any of their respective successors or assigns; provided, however, that the releases set forth herein will have no effect on the liability of the Indenture Trustee arising from any act, omission, transaction, agreement, event or other occurrence constituting willful misconduct, gross negligence, fraud or criminal conduct of the Indenture Trustee.

H. As of and on the Effective Date, the Debtors, their Estates, and any of their successors, assigns or representatives, shall be deemed to have waived, released and discharged all rights or claims, whether based upon tort, fraud, contract or otherwise, and whether arising out of the Chapter 11 Cases, cash collateral orders, or otherwise, including without limitation in connection with the negotiation of any terms of this Plan, including, in particular, the terms of the Creditors' Committee Settlement embodied herein, which they possessed or may possess prior to the Effective Date against the Indenture Trustee, and its present or former directors, officers, employees, agents, representatives, attorneys, accountants, underwriters, investment bankers or financial advisors, and any of their respective successors or assigns; provided, however, that the release set forth herein will have no effect on the liability of the Indenture Trustee arising from any act, omission, transaction, agreement, event or other occurrence constituting willful misconduct, gross negligence, fraud or criminal conduct of the Indenture Trustee.

ALTHOUGH THE DEBTORS AND CREDITORS COMMITTEE BELIEVE THAT THE ABOVE ESTIMATED PRO RATA RECOVERIES FOR THE HOLDERS OF ALLOWED CLASS 3A AND 3B CLAIMS WERE REASONABLE WHEN MADE, THE FINAL AMOUNTS OF ALLOWED CLAIMS IN EACH CLASS MAY MATERIALLY EXCEED, AND THE ACTUAL AMOUNT OF NDV MAY BE MATERIALLY LESS THAN THE ESTIMATED AGGREGATE AMOUNTS STATED IN THE INITIAL ASSUMPTIONS ABOVE AND, THEREFORE, POSSIBLY DECREASE THE ESTIMATED PRO RATA RECOVERY FOR SUCH HOLDERS. Actual recoveries under this Plan will be dependent upon a variety of factors including, but not limited to, whether, and to what extent, Disputed Claims are resolved in favor of the Debtors' Estates rather than the creditors asserting such Disputed Claims, and of course the marshaling and liquidation of any remaining Assets and the outcome of any litigation pursued by the Liquidating Trustee. Accordingly, no representation can be or is being made with respect to whether each estimated recovery shown above actually will be realized by the holders of Allowed Class 3A and 3B Claims.

ARTICLE VII
ACCEPTANCE OR REJECTION
OF THIS PLAN OR CONSENT TO DIFFERENT TREATMENT

7.01 *Classes of Claims Entitled to Vote; Presumed Acceptances by Unimpaired Classes.* Allowed Claims in Class 3A and Class 3B are Impaired under this Plan. Under Section 1126(a) of the Bankruptcy Code, holders of Allowed Claims in Class 3A and Class 3B may vote to accept or reject this Plan. Allowed Claims in Class 1 and Class 2 are not Impaired under this

Plan and therefore, under Section 1126(f) of the Bankruptcy Code, holders of such Allowed Claims are conclusively presumed to accept this Plan.

7.02 *Classes of Claims and Interests Not Entitled to Vote.* The Class 4 Claim and Class 5 Interests are Impaired, and are not entitled to receive any Distribution under this Plan on account of such Claims or Interests. Under Section 1126(g) of the Bankruptcy Code, holders of the Class 4 Claim and Class 5 Interests are deemed to reject this Plan.

7.03 *Acceptance by Voting Classes of Claims and Interests.* Each beneficial holder of an Allowed Class 3A or Class 3B Claim, will have accepted this Plan if it votes to accept this Plan by: (a) appropriately marking the Ballot for the Class in which such Allowed Claim is placed under this Plan, and (b) timely returning such ballot as instructed on the face thereof. Any Ballot not executed in accordance with the filing instructions on the Ballot pertaining to this Plan shall not be counted for voting purposes. A class of claims will be determined to have accepted this Plan if the Bankruptcy Court determines that this Plan has been accepted by a majority in number and two-thirds in dollar amount of those claims actually voting in such class.

7.04 *Cramdown.* If one (but not both) of Class 3A or Class 3B accepts this Plan in accordance with Sections 1126 and 1129(a) of the Bankruptcy Code, the Debtors may request that the Bankruptcy Court confirm this Plan in accordance with Section 1129(b) of the Bankruptcy Code as to non-accepting Classes, without the necessity of amending this Plan or providing any further notice. Notwithstanding the foregoing, the Debtors reserve the right to alter, amend, modify, revoke or withdraw this Plan or any document in the Plan Supplement, including to amend or modify it to satisfy the requirements of Section 1129(b) of the Bankruptcy Code, if necessary.

ARTICLE VIII

TREATMENT OF CLAIMS AND DISTRIBUTIONS UNDER THIS PLAN

8.01 *Distribution.* Except as otherwise provided in this Article VIII, Distributions to holders of Allowed Claims will be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable. As soon as practicable following the occurrence of the Effective Date the Liquidating Trustee shall make Distributions. Distributions under this Plan shall be funded from Cash on hand, net of reserves. The Plan contemplates the ongoing liquidation of the Debtors' remaining Assets, and the use of sale and litigation proceeds to fund Distributions to Creditors, including any net proceeds from the Creditors' Committee Action and other Causes of Action. Cash Distributions to holders of Allowed Claims shall be made by the Liquidating Trustee and in such order as is determined by the Liquidating Trustee consistent with this Plan, the Liquidating Trust Agreement and applicable bankruptcy law.

8.02 *Liquidating Trust Distributions.* The Liquidating Trustee, on behalf of the Liquidating Trust, or such other Entity as may be designated in accordance with the Liquidating Trust Agreement, will make the Distributions required under this Plan in accordance with this Plan and the Liquidating Trust Agreement and in accordance with the priorities set forth in the Bankruptcy Code, and administer and liquidate any Assets in the Liquidating Trust and otherwise wind down the Estates, including, without limitation, the following which shall be

funded with Cash-on-hand: (a) general administration costs (e.g., trustee/trust fees, etc.), (b) access to and review of information for any and all potential Claims, (c) access to and review of information for any and all Causes of Action, (d) analysis and assessment related to Claims objection/resolution, (e) analysis and assessment related to Causes of Action, (f) preparation of Claims objection/resolution, (g) preparation and/or prosecution of Causes of Action, and (h) Distribution of proceeds.

8.03 *Liquidating Trustee's Retention of Third Party to Implement Distributions.* The Liquidating Trustee may employ or contract with other Persons to assist in or make the Distributions required under this Plan.

8.04 *Liquidating Trust Fund Reserve Amount.* On the Effective Date or as soon thereafter as Practicable, the Liquidating Trustee shall establish and maintain the Liquidating Trust Fund Reserve Amount, which shall consist of an amount of Cash projected to be necessary to satisfy the payment of professional and other fees and expenses to be incurred by the Debtors or the Liquidating Trustee in implementing and consummating the terms of this Plan, winding up the affairs of the Debtors, and otherwise completing the tasks necessary to close the Chapter 11 Cases, as well as any obligations under sections 5.07, 5.08, and 5.09 of this Plan. Consistent with and in compliance with the provisions of the Plan, the Liquidating Trustee may from time to time following consultation with the Liquidating Trust Advisory Board, and in its sole discretion decrease or increase the Liquidating Trust Fund Reserve by transferring funds to or from the Distribution Fund, the Disputed Claims Reserve (after settlement), or the proceeds of the Causes of Action.

8.05 *Disputed Claims Reserve.*

A. *Establishment of Disputed Claims Reserve; Distributions from Disputed Claims Reserve.* On the Effective Date or as soon thereafter as practicable, the Liquidating Trustee may also separately establish and maintain the Disputed Claims Reserve for any distributable amounts required to be set aside on account of Disputed Claims. If applicable, the Liquidating Trustee shall make a Catch-Up Distribution from the Disputed Claims Reserve on account of a Disputed Claim only when and to the extent that such Disputed Claim has become an Allowed Claim pursuant to the entry of a Final Order. No Distribution shall be made on account of any Claim to the extent it is Disputed, unless and until such Disputed Claim becomes an Allowed Claim.

B. *Investment of Disputed Claims Reserve.* In respect of the Disputed Claims Reserve, the Liquidating Trustee, shall be permitted, from time to time, to invest all or a portion of the Cash in the Disputed Claims Reserve in Permissible Investments.

C. *Release of Funds from Disputed Claims Reserve.* To the extent a Disputed Class 3A or 3B Claim against a Debtor is disallowed, the Cash and other property that otherwise would be distributed pursuant to this Section 8.05 will instead be distributed or allocated in accordance with Section 8.06.

D. *Expedited Determination of Taxes With Respect to Disputed Claims Reserve.*

The Liquidating Trustee may request an expedited determination of taxes of the Disputed Claims Reserve, under Section 505(b) of the Bankruptcy Code for all returns filed for or on behalf of the Disputed Claims Reserve for all taxable periods through the dissolution or termination of the Disputed Claims Reserve.

8.06 . *Subsequent Distributions.* After the Effective Date, to the extent Cash is available for Distribution, from whatever source, to holders of Allowed Class 3A and Class 3B Claims, the Liquidating Trustee shall: allocate such Cash Pro Rata among the holders of Allowed Class 3A and 3B Claims that were Allowed on the Effective Date or subsequently have become Allowed on or before such Distribution in accordance with the Creditors' Committee Settlement and the holders of any still pending Disputed Class 3A and 3B Claims (to the extent provided by this Plan); with the amount allocated to Allowed Class 3A and 3B Claims retained in the Disputed Claims Reserve to be administered in accordance with Article VIII of this Plan, provided, however, that any Distributions from the Disputed Claims Reserve shall be net of certain costs and expenses as provided in this Plan. Notwithstanding the foregoing, any non-Class 3A or non-Class 3B Disputed Claim which, if Allowed, would have been paid in full prior to any Class 3A or Class 3B Claim shall be paid in full from the Disputed Claims Reserve if and to the extent it is subsequently Allowed.

8.07 *Distributions to Noteholders.*

A. *Distributions to Holders of Note Claims.* Notwithstanding any provision contained in this Plan to the contrary, the distribution provisions contained in the Indentures shall continue in effect to the extent necessary to authorize the Indenture Trustee to receive and distribute to the holders of Allowed Note Claims, Distributions pursuant to this Plan on account of Allowed Note Claims, and shall terminate completely upon completion of all such Distributions.

B. *Indenture Trustee Fees.* In order not to reduce the amount of the Distributions payable to the holders of the Note Claims, the Liquidating Trustee shall pay, on or as soon as reasonably practicable after the Effective Date, all Indenture Trustee Fees, in full in Cash, without application to or approval of the Bankruptcy Court and without a reduction to the recoveries of the holders of the Notes. Notwithstanding the foregoing, to the extent any Indenture Trustee Fees are not paid, the Indenture Trustee may assert its charging lien against any recoveries received on behalf of the holders of the Notes for payment of such unpaid amounts.

C. *Additional Trustee's Fees and Expenses.* To the extent that the Indenture Trustee provides services related to Distributions pursuant to this Plan, the Indenture Trustee will receive from the Liquidating Trustee, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable expenses incurred in connection with such services.

D. *Payments on Note Claims to be Made to Indenture Trustee.* The Distributions to be made under this Plan to holders of Allowed Note Claims shall be made to the Indenture

Trustee, which, subject to the right of the Indenture Trustee to assert its Indenture Trustee Charging Lien against the Distributions, shall transmit the Distributions to the holders of such Allowed Note Claims in accordance with the Applicable Indenture.

8.08 *Preservation of Subordination Rights.* Except as otherwise provided herein, or in a subsequent agreement between the Liquidating Trustee and the beneficial holder of an Allowed Claim, all subordination rights and claims relating to the subordination by the Debtors or the Liquidating Trustee of any Allowed Claim shall remain valid, enforceable and unimpaired in accordance with Section 510 of the Bankruptcy Code or otherwise.

8.09 *Miscellaneous Distribution Provisions.*

A. *Unclaimed Property.* If a Distribution under this Plan remains unclaimed for six (6) months following the date of the attempted Distribution thereof, then, except as otherwise specifically provided below, the holder of the applicable Allowed Claim shall cease to be entitled to such Distribution and such Distribution shall be transferred to the Administrative Reserve or otherwise distributed in accordance with the terms of this Plan. After final Distributions have been made in accordance with the terms of this Plan and the Liquidating Trust Agreement, if the amount of undeliverable Cash remaining is less than \$10,000, the Liquidating Trustee, in his or her sole discretion, may donate such amount to a charity.

B. *Method and Delivery of Cash Distributions.* Any Cash Distribution to be made pursuant to this Plan may be made by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law. Cash payments made pursuant to this Plan shall be in good currency and funds of the United States of America. All Distributions by wire transfer shall be deemed made as of the date the Federal Reserve or other wire transfer is made. Except as otherwise agreed with the holder or an Allowed Claim, Distributions to holders of Allowed Claims shall be distributed by mail upon compliance by the holder with the provisions of this Plan: (a) at the address set forth on the respective proof of claim filed by the holder of such Claim; (b) at the address set forth in any written certification of address change delivered to the Liquidating Trustee) after the date of filing of any related proof of claim; or (c) at the address reflected in the applicable Debtor's Schedules or books and records if no proof of claim has been filed and the Liquidating Trustee has not received a timely written notice of a change of address.

C. *Holding and Investment of Undeliverable Distributions.* If any Distribution to a holder of an Allowed Claim is returned to the Liquidating Trustee as undeliverable, no further Distributions will be made to such holder unless and until the applicable Liquidating Trustee is notified in writing of such holder's then-current address. Undeliverable Distributions shall be held by the Liquidating Trustee for the benefit of the Liquidating Trust Beneficiaries, pursuant to this Section 8.09(C) until such time as a Distribution becomes deliverable. Undeliverable Cash will be held in a segregated bank account in the name of the Liquidating Trustee for the benefit of the potential claimants of such funds. The Liquidating Trustee holding undeliverable Cash may invest such Cash in Permissible Investments.

D. *Disputes Over Identity of Claim Holder.* If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Liquidating Trustee may, in lieu of making a Distribution to such Person, make such Distribution into a segregated account until the disposition thereof shall be determined by Bankruptcy Court order or by written agreement among the interested parties to such dispute.

E. *Time Bar to Cash Payments.* Checks issued by the Liquidating Trustee in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Liquidating Trustee by the holder of the Allowed Claim to whom such check originally was issued on or before one hundred twenty (120) days after the date the check becomes null and void. After such date, if such request was not given, a holder shall have forfeited its right to such Distribution, and the funds represented by such check shall be distributed to other holders of Allowed Claims pursuant to Section 8.06 of this Plan as part of a subsequent Distribution.

F. *Fractional Cents.* Notwithstanding any other provisions of this Plan to the contrary, no payment of fractional cents will be made under this Plan. Cash will be issued to holders entitled to receive a Distribution of Cash in whole cents (rounded to the nearest whole cent when and as necessary).

G. *No Distribution in Excess of Allowed Amount of Claim.* Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive, respecting such Claim, any Distribution (of a value set forth herein) in excess of the Allowed amount of such Claim.

H. *De Minimis Distributions.* No Cash payment of less than \$50.00 shall be required to be made to the holder of any Claim with respect to an interim Distribution or final Distribution.

I. *Withholding Taxes.* Any federal or state withholding taxes or other amounts required to be withheld under any applicable law shall be deducted and withheld from any Plan Distributions. In order to receive a Distribution, each holder of an Allowed Claim must provide a tax identification number (and/or other information required under applicable law). The Liquidating Trustee shall otherwise comply, to the extent applicable, with all tax withholding and reporting requirements imposed under applicable law.

8.10 *Objections to Claims.* Except as otherwise set forth in this Plan and unless otherwise ordered by the Bankruptcy Court, all objections to Claims shall be filed with the Bankruptcy Court and served on the applicable claimant on or prior to one hundred and eighty (180) days after the later of: (a) the Effective Date; and (b) the date a Claim is filed with the Bankruptcy Court and served on counsel for the Debtors or the Liquidating Trustee, as applicable. The Liquidating Trustee may seek to extend such time to object to Claims, by motion to the Bankruptcy Court.

8.11 *Prosecution of Objections to Claims.* Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, upon the Effective Date and thereafter the

Liquidating Trustee shall have the exclusive right to make and file objections to Claims in the Chapter 11 Cases. Except as set forth herein, nothing in this Plan, the Confirmation Order or any order in furtherance of Confirmation, shall constitute, or be deemed to constitute, a waiver or release of any right, claim, or Cause of Action by the Liquidating Trustee, including but not limited to, any right of setoff, or other legal or equitable defense which the applicable Debtor possessed immediately prior to the commencement of the Chapter 11 Cases, against or with respect to any Claim. Except as set forth in this Plan, upon Confirmation, the Liquidating Trustee shall have, retain, reserve and be entitled to assert all Causes of Action which the Debtors had immediately prior to the commencement of the Chapter 11 Cases fully as if the Chapter 11 Cases had not been commenced.

8.12 *Estimation of Claims.* The Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any disputed, contingent or unliquidated Claim (including, without limitation, any Administrative Claim) regardless of whether the Debtors or the Creditors' Committee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any disputed, contingent or unliquidated Claim (including, without limitation, any Administrative Claim), that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, then the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims (including, without limitation, any Administrative Claim) may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

8.13 *Settlement of Claims.* Subsequent to the Effective Date, the Liquidating Trustee shall have the authority to resolve any Disputed Claim for an Allowed Claim subject only to the filing of a notice of such settlement with the Bankruptcy Court. Any such settlement shall be binding under this Plan and upon all parties in interest in the Chapter 11 Cases.

8.14 *Setoff and Recoupment.* In the event the Debtors have a claim of any nature whatsoever against a holder of a Claim, the Liquidating Trustee may, but is not required to, setoff against such holder's Claim (and any Distributions or other rights to receive property arising out of such Claim under this Plan) the Debtors' or Liquidating Trustee's claim against such holder, subject to the provisions of Section 553 of the Bankruptcy Code and other applicable law. Neither the failure to setoff nor the allowance of any Claim under this Plan shall constitute a waiver or release by the Debtors, the Creditors' Committee, or the Liquidating Trustee of any claims that the Debtors or the Creditors' Committee or Liquidating Trustee have against a the holder of such Claim, all of which are expressly preserved. Nothing contained or omitted from this Plan shall limit, adversely affect, or otherwise impair any rights of setoff or recoupment the Debtors, the Creditors' Committee and/or the Liquidating Trustee may possess, as against all third parties.

ARTICLE IX
EXECUTORY CONTRACTS

9.01 *Rejection.*

A. *Unexpired Leases and Executory Contracts to be Rejected.* On the Effective Date, by entry of the Confirmation Order, the Debtors, pursuant to Section 365 of the Bankruptcy Code, shall be deemed to have rejected all of their Executory Contracts and Unexpired Leases except those that: (i) have been assumed pursuant to an order of the Bankruptcy Court, which may include the Confirmation Order, or (ii) are the subject of motions to assume or reject pending on the Effective Date, including, without limitation, in respect of the Sale Transactions. The Confirmation Order will constitute an order of the Bankruptcy Court approving such assumption or rejection pursuant to Section 365 of the Bankruptcy Code as of the Effective Date.

B. *Deadline to File Rejection Damage Claims.* Each Person who is a party to an Executory Contract or Unexpired Lease rejected under this Plan must file with the Bankruptcy Court and serve on counsel for the Liquidating Trustee, not later than sixty (60) days after the Effective Date, a proof of claim for damages alleged to arise from the rejection of the applicable contract or lease or such Person shall be forever barred from filing a Claim and will not receive a Distribution related to such alleged rejection damages.

ARTICLE X
SETTLEMENT, SATISFACTION,
EXCULPATION, INJUNCTION AND RELEASE

10.01 *Discharge.* Pursuant to Section 1141(d)(3) of the Bankruptcy Code, Confirmation of this Plan will not discharge the Debtors; *provided, however,* upon Confirmation of this Plan, the occurrence of the Effective Date and Distributions hereunder, Creditors may not seek payment or recourse against or otherwise be entitled to any Distribution from the Liquidating Trust Assets except as expressly provided in this Plan and the Liquidating Trust Agreement.

10.02 *Settlement of Claims and Releases.* Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under this Plan, the provisions of this Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or any Distribution to be made pursuant to this Plan on account thereof. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors and their respective estates, property, Creditors and Interest holders, and is fair, equitable and reasonable. **Upon a Creditor's receipt of a Distribution on account of an Allowed Claim pursuant to the Plan, such Creditor forever shall be barred from amending any proof of claim upon which such Allowed Claim may be based.**

10.03 *Term of Bankruptcy Injunction or Stay.* Except as otherwise expressly provided in this Plan or the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and which are in effect on the Confirmation Date, shall remain in full force and effect until the Effective Date.

10.04 *Exculpation.* **The Debtors, the Creditors' Committee and its members and each of their respective affiliates, officers who provided service after the Petition Date, directors who provided service after the Petition Date, managers, employees, members or agents (each acting in such capacity), and any professional Persons employed by any of them, will not have or incur any liability to any Person for any action taken or omitted to be taken in connection with or related to or arising out of, the formulation, preparation, dissemination, negotiation, implementation, confirmation, or consummation of this Plan, the Disclosure Statement, any motion, order, release, settlement, transaction, or other agreement or document created or entered into or approved by the Bankruptcy Court, or any other post-Petition Date action taken or omitted to be taken in connection with this Plan or any other matter or proceeding in the Chapter 11 Cases, and all Claims based upon or arising out of such actions or omissions will be forever barred, waived and released; provided, however, that nothing herein shall affect the liability of any Person arising from any act, omission, transaction, agreement, event or other occurrence, constituting willful misconduct, gross negligence, fraud or criminal conduct. For the avoidance of doubt, the foregoing exculpation and release provisions, and those release provisions set forth in Section 10.06 below, include William C. Bartholomay, Peter C. Brown, Joseph A. Califano, and Robert N. Waxman and with respect to each of Messrs. Bartholomay, Brown, Califano, and Waxman, are (i) in exchange for and in full satisfaction and release of all claims, of whatever nature, including without limitation prepetition Claims and Administrative Claims, asserted or that may be asserted by any of them, or by any assignee or subrogee of same, against any of the Debtor Released Parties (as defined in Section 10.06 below) in connection with the Debtors or their Chapter 11 Cases, and (ii) in exchange for the immediate dismissal, with prejudice, upon entry of the Confirmation Order, of Messrs. Bartholomay, Brown, Califano, and Waxman's pending appeal of the final cash collateral order. Each of Messrs. Bartholomay, Brown, Califano, and Waxman have agreed to the exculpation and mutual releases set forth in Sections 10.04 and 10.06 herein and have agreed that the Confirmation Order will expressly provide for such exculpation and mutual releases.**

10.05 *Injunction.* This Plan provides and the Confirmation Order shall provide, among other things, that any Person (other than the Debtors, the Creditors' Committee, the Debtors' Estates or the Liquidating Trustee) who has held, holds, or may hold a claim against or interest in the Debtors' Estates, the Assets, the Liquidating Trust, or the Liquidating Trust Funds, or any claim against or interest in any Person (including any Debtor) for which the Debtors' Estates or the Liquidating Trust are or may be directly liable or indirectly liable by way of contribution, indemnity (including an obligation to pay defense costs under this Plan or otherwise) or otherwise is, with respect to any such claim or interest, permanently enjoined from and after the Effective Date from taking any of the following actions (other than actions taken in the Bankruptcy Court or in any of the Bankruptcy Cases to enforce any rights or obligations under this Plan or to defend

challenges to the validity or amount of a Disputed Claim): (i) asserting, commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting any of the Debtors' Estates, the Assets, the Liquidating Trust, or the Liquidating Trust Funds on account of any claim for which the Debtors or Liquidating Trustee are directly or indirectly liable by way of contribution, indemnity or otherwise, including without limitation any State Wage Claims; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against any of the Debtors' Estates, the Assets, the Liquidating Trust, or the Liquidating Trust Funds; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien of any kind against the Debtors' Estates, the Assets, the Liquidating Trust, or the Liquidating Trust Funds on account of any claim for which any of the Debtors or Liquidating Trustee are or may be directly or indirectly liable by way of contribution, indemnity or otherwise; (iv) asserting any right of setoff of any kind, directly or indirectly, against any obligation due to any of the Debtors' Estates or the Liquidating Trust, on account of any claims for which any of the Debtors' Estates or Liquidating Trust are or may be directly or indirectly liable by way of contribution, indemnity or otherwise; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan; and (vi) prosecuting, commencing, continuing or otherwise asserting any right, claim or cause of action released pursuant to this Plan or that is otherwise inconsistent with the provisions of this Plan. Any Person injured by any willful violation of such injunction shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages, from the willful violator(s). Notwithstanding the foregoing, holders of Disputed Claims are not enjoined from and shall retain all rights to defend or prosecute such Disputed Claims in the Bankruptcy Court, including, without limitation, the right to assert affirmative defenses, setoff, or recoupment, if applicable.

10.06 *Releases By Debtors.* Except as otherwise expressly provided in this Plan and subject to the terms of any prior court orders, each of the Debtors and any Person or entity seeking to exercise rights or claims of or on behalf of the Debtors or the Debtors' Estates shall be deemed to have waived, released and discharged (i) any of the other Debtors, (ii) any of the Named Officers, present directors, and the Former Directors, (iii) the Creditors' Committee and any of its members, but solely in their capacities as members of the Creditors' Committee, and (iv) any professionals employed by the Debtors or Creditors' Committee in the Chapter 11 Cases (collectively, the "Debtor Released Parties"), from all claims (as such term is defined in section 101(5) of the Bankruptcy Code), obligations, suits, damages, demands, debts, rights, or causes of action that may be brought by or on behalf of the Debtors or the Debtors' Estates against the Debtor Released Parties of whatever kind or nature, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, in law or equity, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date, relating to or in connection with the Debtors, the Chapter 11 Cases, the conduct of the Debtors' business, or this Plan; *provided, however*, that, except as to the matters alleged in the Creditors' Committee Action against the Former

Directors, the foregoing release (i) will have no effect on the liability of any Debtor Released Parties arising from an act, omission, transaction, agreement, event or other occurrence constituting willful misconduct, gross negligence, fraud or criminal conduct and (ii) will not constitute a release or waiver of any defense available to the Debtors or the Liquidating Trustee in connection with any Disputed Claim (including Administrative Claims) asserted against the Debtors, the Debtors' Estates or the Liquidating Trust by any Debtor Released Party. The definition of Debtor Released Parties does not include NAI, Sumco or Sumner Redstone but does include each of the Former Directors; provided, however, that, as to Shari E. Redstone ("Redstone") and Robert J. Steele ("Steele"), the releases described in this Section 10.06 shall be in exchange for and full satisfaction of all claims, of whatever nature, including without limitation prepetition Claims and Administrative Claims, asserted or that may be asserted by Redstone or Steele, or by any assignee or subrogee of Redstone or Steele, against any of the Debtor Released Parties in connection with the Debtors or their Chapter 11 Cases. Each of Redstone and Steele have agreed to the mutual releases set forth herein and have agreed that the Confirmation Order will expressly provide for such releases. For the avoidance of doubt, the releases of the Former Directors as set forth in this Section 10.06 includes a release from all claims asserted or that could have been asserted against them in the Creditors' Committee Action. Notwithstanding any release provided to the Former Directors under this Plan, nothing in the Plan shall in any way prejudice claims asserted in the Creditors' Committee Action against any Person that is not a Debtor Released Party. Such claims are expressly reserved and preserved for the benefit of the Estates, and, following the Effective Date, the Liquidation Trust. The releases described herein shall be binding upon all Persons.

10.07 *Preservation of Claims.* Nothing in this Plan shall discharge, release, limit or impair the rights or defenses of the Debtors, the Creditors' Committee or the Liquidating Trustee with respect to any Claims or Interests. The Debtors, the Creditors' Committee and the Liquidating Trustee reserve all rights, claims, defenses, and privileges against all Persons and therefore no preclusion doctrine, including without limitation the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to them by virtue of or in connection with Confirmation, consummation or effectiveness of this Plan. Upon the occurrence of the Effective Date, pursuant to Section 1123(b)(3) of the Bankruptcy Code, the Liquidating Trustee shall have the exclusive right to enforce and/or defend, as to any Person, any and all claims, Causes of Action, demands and rights of the Debtors that arose before or after the Petition Date.

10.08 *Preservation of Insurance.* The provisions of this Plan shall not diminish or impair the enforceability of any insurance policies that may cover claims against any Debtor or any other Person or prevent any Person from seeking or enforcing coverage with respect to any claim under any applicable insurance policies of the Debtors.

10.09 *Release of Assets.* Until the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Debtors, their Assets and property. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matters set forth in Section 12.01 of this Plan, and the Liquidating Trustee shall perform and wind up the affairs of the Debtors, as provided herein, including disposing of the Assets in accordance with this Plan.

10.10 *Binding Effect.* Except as otherwise provided in Section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of this Plan shall bind any holder of a Claim against, or Interest in, the Debtors and their respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under this Plan and whether or not such holder has accepted this Plan.

ARTICLE XI
CONDITIONS TO CONFIRMATION AND EFFECTIVE DATE

11.01 *Conditions to Plan Confirmation.* Except as provided in Section 11.03 below, the following are conditions precedent to Confirmation of this Plan by the Bankruptcy Court:

A. The Bankruptcy Court shall have approved by Final Order the Disclosure Statement in form and substance reasonably acceptable to the Debtors and the Creditors' Committee; and

B. The Confirmation Order shall have been entered as a Final Order in form and substance reasonably acceptable to the Debtors and the Creditors' Committee.

C. The Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been filed in form and substance reasonably acceptable to the Debtors and the Creditors' Committee.

11.02 *Conditions to Effective Date.* Except as provided in Section 11.03 below, this Plan may not be consummated, and the Effective Date shall not occur, unless each of the following conditions set forth below has been either satisfied or waived.

A. The Confirmation Order shall have been entered by the Bankruptcy Court in form and substance reasonably acceptable to the Debtors and the Creditors' Committee and shall be a Final Order;

B. The Liquidating Trust Agreement has been executed;

C. All of the Assets have been transferred to the Liquidating Trust; and

D. All other actions, documents, agreements and instruments necessary to commence implementation of this Plan shall have been received, recorded, executed, and/or delivered and/or implemented.

11.03 *Waiver of Conditions to Confirmation and Effective Date.* Each of the conditions to Confirmation of this Plan or the occurrence of the Effective Date may be waived in whole or in part by the Debtors in consultation with the Creditors' Committee, or by the Creditors' Committee, as applicable, without notice and a hearing; *provided however*, that any such waiver(s) must be in writing and filed with the Bankruptcy Court if the Debtors and Creditors' Committee are not in agreement regarding such waiver. Any waiver(s) in accordance with this

Section 11.03 shall not prejudice or otherwise affect the Debtors', the Creditors' Committee's or the Liquidating Trustee's rights to assert that the consummation of this Plan, notwithstanding any such waiver(s), would effectively legally or equitably moot any appeal of the Confirmation Order. The failure to satisfy or waive any condition may be asserted by the Debtors or the Creditors' Committee, as applicable, regardless of the circumstances giving rise to the failure of such condition to be satisfied (including, without limitation, any act, action, failure to act, or inaction by the Debtors or Creditors' Committee). The failure of the Debtors or the Creditors' Committee to exercise any of the foregoing rights shall not be deemed a waiver of any other rights and each such right shall be deemed an ongoing right that may be asserted or waived (as set forth herein) at any time or from time to time.

ARTICLE XII

ADMINISTRATIVE PROVISIONS

12.01 *Retention of Jurisdiction.* Notwithstanding Confirmation of this Plan or occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction for the following purposes, without limitation:

- A. Determination of the allowability of Claims against, or the administrative expenses of, the Debtors (except those Claims that are Allowed Claims pursuant to this Plan, unless such determination is made pursuant to a reconsideration or modification of the entire Plan), and the validity, extent, priority, and nonavailability of consensual and nonconsensual Liens and other encumbrances;
- B. Determination of the Debtors' tax liability pursuant to Section 505 of the Bankruptcy Code;
- C. Approval, pursuant to Section 365 of the Bankruptcy Code, of all matters related to the assumption and assignment, or rejection, of any Executory Contract or Unexpired Lease of any of the Debtors;
- D. Resolution of controversies and disputes regarding the enforcement or interpretation of this Plan, the Confirmation Order, or the Bankruptcy Court's orders that survive Confirmation of this Plan pursuant to this Plan or other applicable law;
- E. Implementation of the provisions of this Plan, and entry of orders in aid of Confirmation and consummation of this Plan and enforcing settlements or orders entered during the Chapter 11 Cases or as part of this Plan, including, without limitation, appropriate orders to protect the Debtors and the Liquidating Trustee from actions by creditors and resolution of disputes and controversies regarding property of the Debtors' Estates and the Liquidating Trust;
- F. Modification of this Plan pursuant to Section 1127 of the Bankruptcy Code;
- G. Commencement and adjudication of any Causes of Action that arose prior to the Confirmation Date or in connection with the implementation of this Plan and other actions against third parties brought or to be brought by the Debtors, the Creditors' Committee or

Liquidating Trustee, as representatives of the Debtors' Estates or the Liquidating Trust, as applicable;

H. Entry of a Final Order closing the Chapter 11 Cases;

I. Resolution of disputes concerning Disputed Claims, Claims for disputed Distributions and recharacterization or equitable subordination of Claims;

J. Resolution of any disputes concerning any release under this Plan of a non-Debtor or any injunction under this Plan, or in the Confirmation Order, against acts, employment of process, or actions against such non-Debtors;

K. Resolution of any disputes concerning whether an Entity had sufficient notice of, among other things, (i) the Chapter 11 Cases; (ii) the Bar Date, the Initial Administrative Claims Bar Date or the Final Administrative Claim Bar Date; (iii) the hearing on the approval of the Disclosure Statement as containing adequate information; or (iv) the hearing on Confirmation of this Plan;

L. Issuance of injunctions, granting and implementation of other orders, or taking such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of this Plan;

M. Resolution of controversies and disputes regarding settlement agreements, orders, injunctions, judgments, and other matters entered or approved by the Bankruptcy Court in connection with any adversary proceeding, discovery, or contested matter in the Chapter 11 Cases;

N. Correction of any defect, cure of any omission or reconciliation of any inconsistency in this Plan, the Confirmation Order, or any other documents relating to this Plan, as may be necessary to carry out the purposes or intent of this Plan;

O. Adjudication of any pending adversary proceeding, or other controversy or dispute, in the Chapter 11 Cases, which arose prior to the Confirmation Date and over which the Bankruptcy Court had jurisdiction prior to Confirmation of this Plan;

P. Entry and implementation of such orders as may become necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

Q. Resolution of Claims arising under Section 503(b) of the Bankruptcy Code;

R. Resolution of controversies and disputes in connection with each Sale Transaction or each Purchase Agreement or any approval orders in connection therewith;

S. Determination of any other matters that may arise in connection with or related to the administration of the Debtors' Estates or the Liquidating Trust, Claims, Interests,

Executory Contracts, Unexpired Leases, this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with this Plan or the Disclosure Statement; and

T. Resolutions of Liquidating Trust Claims.

12.02 *Liquidating Trustee Standing.* The Liquidating Trustee shall have standing to be heard on any matter over which the Bankruptcy Court retains jurisdiction and that relates, in any manner, to the administration of the Liquidating Trust.

12.03 *Revocation of this Plan.* The Debtors reserve the right in their absolute discretion to revoke or withdraw this Plan as to any or all of the Debtors prior to the Confirmation Date. If the Debtors revoke or withdraw this Plan as to any or all of the Debtors, or if Confirmation as to any or all of the Debtors does not occur, then, with respect to such Debtors, this Plan will be null and void in all respects, and nothing contained in this Plan will: (1) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or (2) prejudice in any manner the rights of any Debtors or any other party.

12.04 *Successors and Assigns.* The rights, benefits, and obligations of any Entity named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the heirs, executors, administrators, successors, or assigns of such Entity.

12.05 *Plan Supplement.* The Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims and Interests may obtain a copy of the Plan Supplement by contacting the Voting Agent, or by visiting <http://www.chapter11.epiqsystems.com>. The documents contained in the Plan Supplement are an integral part of this Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

12.06 *Post-Effective Date Fees and Expenses.* From and after the Effective Date, the Liquidating Trustee, on behalf of his or her Liquidating Trust, shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay (i) the reasonable professional fees and expenses incurred by the Liquidating Trust, including, without limitation, the reasonable fees and expenses of the former professionals of the Debtors and the Creditors' Committee in connection with the implementation and administration of the Liquidating Trust and transitioning of any of the Assets to the Liquidating Trust and (ii) any professionals retained by such Liquidating Trust, related to the consummation and to the implementation of this Plan, except as otherwise provided in the applicable Liquidating Trust Agreement. In addition, the Liquidating Trustee shall pay from the Liquidating Trust all fees and expenses of the professionals of the Debtors and Creditors' Committee that have been allowed by the Bankruptcy Court in connection with the preparation of such professionals' final fee applications.

12.07 *Severability.* If, prior to Confirmation of this Plan, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors (in consultation with the Creditors' Committee), shall have

the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.08 *Governing Law.* Except to the extent the Bankruptcy Code, the Bankruptcy Rules, or other federal laws apply, or as otherwise expressly provided in this Plan, the rights and obligations arising under this Plan shall be governed by the laws of the State of Delaware without giving effect to principles of conflicts of law.

12.09 *Controversy Concerning Impairment.* If a controversy arises as to whether any Claims or Interests of any Class of Claims or Interests are impaired under this Plan, the Bankruptcy Court, after notice and a hearing, shall determine such controversy before the Confirmation Date.

12.10 *Dissolution of the Creditors' Committee.* On the Effective Date, the Creditors' Committee shall be dissolved and its members released and discharged of and from all further authority, duties, responsibilities and obligations relating to, arising from, and in connection with the Chapter 11 Cases. Authority to prosecute pending Causes of Action transferred previously to and/or commenced by the Creditors' Committee pursuant to a prior order automatically shall be assigned to the Liquidating Trustee without further order.

12.11 *Indenture Trustee as Claim Holder.* Consistent with Bankruptcy Rule 3003(c), the Debtors shall recognize Proofs of Claim filed by the Indenture Trustee in respect of the Claims of Noteholders. Accordingly, any Claim related solely to amounts payable on and under the Notes and the respective Indentures, including in particular, the amounts of principal and interest due and payable on the Notes, proof of which is filed by the registered or beneficial holder of a Claim, shall be disallowed as duplicative of the proof of claim filed by the Indenture Trustee, without need for any further action or Bankruptcy Court order. Notwithstanding the foregoing, Noteholders and their properly designated proxies will be the only parties entitled to vote for or against this Plan on account on their Claims. Distributions to Noteholders will be made in accordance with Section 8.07 of this Plan.

12.12 *Books and Records.* On and after the Effective Date, the Liquidating Trustee shall maintain reasonable access to the Debtors' books and records, to the extent required to administer and effectuate this Plan (including, without limitation, to prosecute the Causes of Action and objections to Disputed Claims).

12.13 *Application of Section 1146(c) of the Bankruptcy Code.* Pursuant to Section 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or securities under this Plan, the creation of any mortgage, deed of trust, or other security interest, the making or

assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with this Plan, shall not be subject to any stamp, real estate transfer, sales, use, mortgage recording or similar tax, and each recording or other agent of any governmental office shall record any such documents of issuance, transfer, or exchange without any further direction or order from the Bankruptcy Court.

12.14 *Applicability of Section 1125 of the Bankruptcy Code.* The protection afforded by Section 1125(e) of the Bankruptcy Code with regard to solicitation of acceptances or rejections of this Plan shall apply to the fullest extent provided by law, and the entry of the Confirmation Order shall constitute the determination by the Bankruptcy Court that the Debtors, and each of their respective officers, directors, partners, employees, members, agents, attorneys, accountants or other professionals, shall have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code pursuant to Section 1125(e) of the Bankruptcy Code.

12.15 *Conflicts.* To the extent the express provisions of this Plan, the Liquidating Trust Agreement, the Disclosure Statement, or any document executed in connection therewith, the Confirmation Order or any documents executed in connection with the Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing) conflicts with or is in any way inconsistent with the terms of the Confirmation Order, the terms and provisions of the Confirmation Order shall govern.

12.16 *Entire Agreement.* This Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into this Plan.

12.17 *Closing of Chapter 11 Cases.* The Liquidating Trustees shall promptly, upon the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by the Bankruptcy Rules and any applicable orders of the Bankruptcy Court to close the Chapter 11 Cases.

12.18 *Notices.* Any notice required or permitted to be provided under this Plan shall be in writing and served by either (i) certified mail, return receipt requested, postage prepaid, (ii) hand delivery, or (iii) reputable overnight delivery service, freight prepaid, to be addressed as follows (subject to modification as to the identity of any addressee below upon notice given to the Liquidating Trustee and other identified addressees): (i) if to the Liquidating Trustee, (_____), (ii) if to the Debtors, c/o Midway Games Inc., 806 West Washington Blvd, Suite 203, Chicago IL 60607, Attn: Mr. Mathew Booty, telephone (773-771-3327), facsimile (312-624-8772), and Attn.: Ryan O'Desky, telephone (773-961-2032), facsimile (312-624-8772) with copies to, Michael D. DeBaecke, Esquire, Blank Rome, LLP, 1201 N. Market Street, Suite 800, Wilmington, DE 19801, telephone (302-425-6412), facsimile (302-425-6464) and Marc E. Richards, Esquire, Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, New York, 10174, telephone (212-885-5231), facsimile (212-885-5001); (iii) if to the Creditors' Committee, David B. Zolkin, Esquire, Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30th Floor, Los Angeles, CA 90017, telephone (213-892-4410), facsimile (213-892-4710) and (iv) if to the Indenture Trustee, Wells Fargo Bank, N.A., 45 Broadway, 12th Floor, New York, New York 10006, Attn: James R. Lewis, Vice President, telephone (212-515-5258),

facsimile (212-866-524-4681), with copies to, David E. Retter, Esquire, Kelley, Drye & Warren, LLP, 101 Park Ave., New York, New York telephone (212-808-7800), facsimile (212-808-7897).

Dated: March 26, 2010
Wilmington, Delaware

MIDWAY GAMES INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY AMUSEMENT GAMES, LLC

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY HOME ENTERTAINMENT INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

SURREAL SOFTWARE INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY GAMES WEST INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY STUDIOS – AUSTIN INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY INTERACTIVE INC.

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY HOME STUDIOS INC

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY SALES COMPANY, LLC

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

MIDWAY STUDIOS-LOS ANGELES INC

By: /s/ Matthew Booty
Name: Matthew Booty
Title: President

Exhibit A

Class 3 Recovery Sensitivities Tables

Recovery Sensitivities – Class 3A Claim Sensitivities

The tables below reflect the potential range of recovery values on a percentile basis for the holders of Class 3A and 3B Claims. Recovery at both levels varies pro rata based on changes to the NDV and 3A Claims.

Net Distribution Value	Class 3A Recovery															
	\$100.0	\$110.0	\$120.0	\$130.0	\$150.0	\$154.8	\$160.0	\$170.0	\$180.0	\$190.0	\$200.0	\$210.0	\$220.0	\$230.0	\$240.0	\$250.0
\$ 27.0	17.3%	16.3%	15.4%	14.5%	13.1%	12.8%	12.5%	12.0%	11.5%	11.0%	10.6%	10.2%	9.8%	9.4%	9.0%	8.6%
\$ 28.0	18.0%	16.9%	15.9%	15.1%	13.6%	13.3%	13.0%	12.4%	11.9%	11.4%	11.0%	10.6%	10.2%	9.8%	9.4%	9.0%
\$ 29.0	18.6%	17.5%	16.5%	15.6%	14.1%	13.8%	13.4%	12.9%	12.3%	11.8%	11.3%	10.9%	10.5%	10.1%	9.7%	9.3%
\$ 30.0	19.3%	18.1%	17.1%	16.2%	14.6%	14.3%	13.9%	13.3%	12.7%	12.2%	11.7%	11.3%	10.9%	10.5%	10.1%	9.7%
\$ 31.0	19.9%	18.7%	17.7%	16.7%	15.1%	14.7%	14.4%	13.7%	13.2%	12.6%	12.1%	11.7%	11.3%	10.9%	10.5%	10.1%
\$ 32.0	20.6%	19.3%	18.2%	17.2%	15.6%	15.2%	14.8%	14.2%	13.6%	13.0%	12.5%	12.1%	11.7%	11.3%	10.9%	10.5%
\$ 33.0	21.2%	19.9%	18.8%	17.8%	16.0%	15.7%	15.3%	14.6%	14.0%	13.4%	12.9%	12.5%	12.1%	11.7%	11.3%	10.9%
\$ 34.0	21.8%	20.5%	19.4%	18.3%	16.5%	16.2%	15.8%	15.1%	14.4%	13.8%	13.3%	12.9%	12.5%	12.1%	11.7%	11.3%
\$ 34.7	22.3%	20.9%	19.7%	18.7%	16.9%	16.5%	16.1%	15.4%	14.7%	14.1%	13.6%	13.2%	12.8%	12.4%	12.0%	11.6%
\$ 35.0	22.5%	21.1%	19.9%	18.9%	17.0%	16.6%	16.2%	15.5%	14.9%	14.2%	13.7%	13.3%	12.9%	12.5%	12.1%	11.7%
\$ 36.0	23.1%	21.7%	20.5%	19.4%	17.5%	17.1%	16.7%	16.0%	15.3%	14.7%	14.1%	13.6%	13.2%	12.8%	12.4%	12.0%
\$ 37.0	23.8%	22.3%	21.1%	19.9%	18.0%	17.6%	17.2%	16.4%	15.7%	15.1%	14.5%	14.0%	13.6%	13.2%	12.8%	12.4%
\$ 38.0	24.4%	22.9%	21.6%	20.5%	18.5%	18.1%	17.6%	16.8%	16.1%	15.5%	14.9%	14.4%	14.0%	13.6%	13.2%	12.8%
\$ 39.0	25.1%	23.5%	22.2%	21.0%	19.0%	18.5%	18.1%	17.3%	16.6%	15.9%	15.3%	14.8%	14.4%	14.0%	13.6%	13.2%

Net Distribution Value	Class 3B Recovery															
	\$100.0	\$110.0	\$120.0	\$130.0	\$150.0	\$154.8	\$160.0	\$170.0	\$180.0	\$190.0	\$200.0	\$210.0	\$220.0	\$230.0	\$240.0	\$250.0
\$ 27.0	26.3%	24.7%	23.3%	22.1%	19.9%	19.5%	19.0%	18.2%	17.4%	16.7%	16.0%	15.4%	14.8%	14.2%	13.6%	13.0%
\$ 28.0	27.3%	25.7%	24.2%	22.9%	20.7%	20.2%	19.7%	18.8%	18.0%	17.3%	16.6%	16.0%	15.4%	14.8%	14.2%	13.6%
\$ 29.0	28.3%	26.6%	25.1%	23.7%	21.4%	20.9%	20.4%	19.5%	18.7%	17.9%	17.2%	16.6%	16.0%	15.4%	14.8%	14.2%
\$ 30.0	29.3%	27.5%	25.9%	24.5%	22.1%	21.6%	21.1%	20.2%	19.3%	18.5%	17.8%	17.2%	16.6%	16.0%	15.4%	14.8%
\$ 31.0	30.2%	28.4%	26.8%	25.3%	22.9%	22.4%	21.8%	20.9%	20.0%	19.2%	18.4%	17.8%	17.2%	16.6%	16.0%	15.4%
\$ 32.0	31.2%	29.3%	27.7%	26.2%	23.6%	23.1%	22.5%	21.5%	20.6%	19.8%	19.0%	18.4%	17.8%	17.2%	16.6%	16.0%
\$ 33.0	32.2%	30.2%	28.5%	27.0%	24.4%	23.8%	23.2%	22.2%	21.3%	20.4%	19.6%	19.0%	18.4%	17.8%	17.2%	16.6%
\$ 34.0	33.2%	31.2%	29.4%	27.8%	25.1%	24.5%	23.9%	22.9%	21.9%	21.0%	20.2%	19.6%	19.0%	18.4%	17.8%	17.2%
\$ 34.7	33.8%	31.8%	30.0%	28.3%	25.6%	25.0%	24.4%	23.3%	22.3%	21.4%	20.6%	20.0%	19.4%	18.8%	18.2%	17.6%
\$ 35.0	34.1%	32.1%	30.2%	28.6%	25.8%	25.2%	24.6%	23.5%	22.5%	21.6%	20.8%	20.2%	19.6%	19.0%	18.4%	17.8%
\$ 36.0	35.1%	33.0%	31.1%	29.4%	26.6%	26.0%	25.3%	24.2%	23.2%	22.2%	21.4%	20.8%	20.2%	19.6%	19.0%	18.4%
\$ 37.0	36.1%	33.9%	32.0%	29.4%	27.3%	26.7%	26.0%	24.9%	23.8%	22.9%	22.0%	21.4%	20.8%	20.2%	19.6%	19.0%
\$ 38.0	37.1%	34.8%	32.8%	31.1%	28.0%	27.4%	26.7%	25.6%	24.5%	23.5%	22.6%	22.0%	21.4%	20.8%	20.2%	19.6%
\$ 39.0	38.0%	35.7%	33.7%	31.9%	28.8%	28.1%	27.4%	26.2%	25.1%	24.1%	23.2%	22.6%	22.0%	21.4%	20.8%	20.2%

Recovery Sensitivities – Class 3A Claim Sensitivities

The tables below reflect the potential range of recovery values on a percentile basis for the holders of Class 3A and 3B Claims. Recovery at both levels varies pro rata based on changes to the NDV and 3A Claims.

Net Distribution Value	Class 3A Recovery																
	\$1000.0	\$1100.0	\$1200.0	\$1300.0	\$1500.0	\$1548.0	\$1600.0	\$1700.0	\$1800.0	\$1900.0	\$2000.0	\$2100.0	\$2200.0	\$2300.0	\$2400.0	\$2500.0	\$2600.0
\$ 27.0	17.3	17.9	18.4	18.9	19.7	19.9	20.0	20.3	20.6	20.9	21.1	21.7	21.9	22.4	22.9	23.5	24.3
\$ 28.0	18.0	18.6	19.1	19.6	20.4	20.6	20.8	21.1	21.4	21.7	21.9	22.4	22.7	23.2	23.7	24.3	25.0
\$ 29.0	18.6	19.3	19.8	20.3	21.2	21.3	21.5	21.8	22.2	22.4	22.7	23.2	23.5	23.9	24.3	24.8	25.5
\$ 30.0	19.3	19.9	20.5	21.0	21.9	22.1	22.3	22.6	22.9	23.2	23.5	23.9	24.3	24.7	25.0	25.5	26.0
\$ 31.0	19.9	20.6	21.2	21.7	22.6	22.8	23.0	23.4	23.7	24.0	24.3	24.7	25.0	25.4	25.8	26.3	27.0
\$ 32.0	20.6	21.3	21.9	22.4	23.3	23.5	23.7	24.1	24.4	24.8	25.0	25.4	25.8	26.2	26.6	27.1	27.8
\$ 33.0	21.2	21.9	22.5	23.1	24.1	24.3	24.5	24.9	25.2	25.5	25.8	26.3	26.6	27.0	27.4	27.9	28.5
\$ 34.0	21.8	22.6	23.2	23.8	24.8	25.0	25.2	25.6	26.0	26.3	26.6	27.1	27.4	27.8	28.2	28.7	29.3
\$ 34.7	22.3	23.0	23.7	24.3	25.3	25.5	25.7	26.1	26.5	26.8	27.1	27.5	27.8	28.2	28.6	29.1	29.7
\$ 35.0	22.5	23.2	23.9	24.5	25.5	25.7	26.0	26.4	26.7	27.1	27.4	27.8	28.2	28.6	29.1	29.7	30.3
\$ 36.0	23.1	23.9	24.6	25.2	26.3	26.5	26.7	27.1	27.5	27.8	28.2	28.6	29.0	29.4	29.9	30.4	31.0
\$ 37.0	23.8	24.6	25.3	25.9	27.0	27.2	27.5	27.9	28.3	28.6	29.0	29.4	29.8	30.2	30.6	31.1	31.7
\$ 38.0	24.4	25.2	26.0	26.6	27.7	28.0	28.2	28.6	29.0	29.4	29.8	30.2	30.6	31.0	31.4	31.9	32.5
\$ 39.0	25.1	25.9	26.6	27.3	28.4	28.7	28.9	29.4	29.8	30.2	30.6	31.0	31.4	31.8	32.2	32.7	33.3

Net Distribution Value	Class 3B Recovery																
	\$1000.0	\$1100.0	\$1200.0	\$1300.0	\$1500.0	\$1548.0	\$1600.0	\$1700.0	\$1800.0	\$1900.0	\$2000.0	\$2100.0	\$2200.0	\$2300.0	\$2400.0	\$2500.0	\$2600.0
\$ 27.0	9.7	9.1	8.6	8.1	7.3	7.1	7.0	6.7	6.4	6.1	5.9	6.1	6.3	6.5	6.7	6.9	7.1
\$ 28.0	10.0	9.4	8.9	8.4	7.6	7.4	7.2	6.9	6.6	6.3	6.1	6.3	6.5	6.7	6.9	7.1	7.3
\$ 29.0	10.4	9.7	9.2	8.7	7.8	7.7	7.5	7.2	6.8	6.5	6.3	6.5	6.7	6.9	7.1	7.3	7.5
\$ 30.0	10.7	10.1	9.5	9.0	8.1	7.9	7.7	7.4	7.1	6.8	6.5	6.7	6.9	7.1	7.3	7.5	7.7
\$ 31.0	11.1	10.4	9.8	9.3	8.4	8.2	8.0	7.6	7.3	7.0	6.7	6.9	7.1	7.3	7.5	7.7	7.9
\$ 32.0	11.4	10.7	10.1	9.6	8.7	8.5	8.3	7.9	7.6	7.2	7.0	7.2	7.4	7.6	7.8	8.0	8.2
\$ 33.0	11.8	11.1	10.5	9.9	8.9	8.7	8.5	8.1	7.8	7.5	7.2	7.4	7.6	7.8	8.0	8.2	8.4
\$ 34.0	12.2	11.4	10.8	10.2	9.2	9.0	8.8	8.4	8.0	7.7	7.4	7.6	7.8	8.0	8.2	8.4	8.6
\$ 34.7	12.4	11.6	11.0	10.4	9.4	9.2	9.0	8.5	8.2	7.9	7.6	7.8	8.0	8.2	8.4	8.6	8.8
\$ 35.0	12.5	11.8	11.1	10.5	9.5	9.3	9.0	8.6	8.3	7.9	7.6	7.8	8.0	8.2	8.4	8.6	8.8
\$ 36.0	12.9	12.1	11.4	10.8	9.7	9.5	9.3	8.9	8.5	8.2	7.8	8.0	8.2	8.4	8.6	8.8	9.0
\$ 37.0	13.2	12.4	11.7	11.1	10.0	9.8	9.5	9.1	8.7	8.4	8.1	8.3	8.5	8.7	8.9	9.1	9.3
\$ 38.0	13.6	12.8	12.0	11.4	10.3	10.0	9.8	9.4	9.0	8.6	8.3	8.5	8.7	8.9	9.1	9.3	9.5
\$ 39.0	13.9	13.1	12.4	11.7	10.6	10.3	10.1	9.6	9.2	8.8	8.5	8.7	8.9	9.1	9.3	9.5	9.7

Recovery Sensitivities — Class 3B Claim Sensitivities

The tables below reflect the potential range of recovery values on a percentile basis for the holders of Class 3A and 3B Claims. Recovery at both levels varies pro rata based on changes to the NDV and 3B Claims.

	Class 3A Recovery														
	Class 3B Claims														
	\$26.0	\$28.0	\$30.0	\$32.0	\$34.0	\$36.7	\$38.0	\$40.0	\$42.0	\$44.0	\$46.0	\$48.0	\$50.0	\$52.0	\$54.0
\$ 27.0	13.9%	13.7%	13.5%	13.3%	13.1%	12.8%	12.7%	12.5%	12.4%	12.2%	12.0%	11.9%	11.7%	11.6%	11.5%
\$ 28.0	14.4%	14.2%	14.0%	13.8%	13.6%	13.3%	13.2%	13.0%	12.8%	12.6%	12.5%	12.4%	12.2%	12.1%	12.0%
\$ 29.0	14.9%	14.7%	14.5%	14.3%	14.0%	13.8%	13.6%	13.5%	13.3%	13.1%	12.9%	12.8%	12.6%	12.5%	12.4%
\$ 30.0	15.4%	15.2%	15.0%	14.8%	14.5%	14.3%	14.1%	13.9%	13.7%	13.5%	13.4%	13.2%	13.1%	12.9%	12.8%
\$ 31.0	16.0%	15.7%	15.5%	15.2%	15.0%	14.7%	14.6%	14.4%	14.2%	14.0%	13.8%	13.7%	13.5%	13.4%	13.2%
\$ 32.0	16.5%	16.2%	16.0%	15.7%	15.5%	15.2%	15.1%	14.8%	14.6%	14.4%	14.2%	14.1%	13.9%	13.8%	13.6%
\$ 33.0	17.0%	16.7%	16.5%	16.2%	16.0%	15.7%	15.5%	15.3%	15.1%	14.9%	14.7%	14.6%	14.4%	14.2%	14.1%
\$ 34.0	17.5%	17.2%	17.0%	16.7%	16.5%	16.2%	16.0%	15.8%	15.6%	15.3%	15.1%	15.0%	14.8%	14.7%	14.5%
\$ 34.7	17.8%	17.6%	17.3%	17.0%	16.8%	16.5%	16.3%	16.1%	15.9%	15.6%	15.4%	15.3%	15.1%	15.0%	14.8%
\$ 35.0	18.0%	17.7%	17.5%	17.2%	17.0%	16.6%	16.5%	16.2%	16.0%	15.8%	15.6%	15.5%	15.3%	15.1%	15.0%
\$ 36.0	18.5%	18.2%	18.0%	17.7%	17.4%	17.1%	16.9%	16.7%	16.5%	16.2%	16.0%	15.9%	15.7%	15.5%	15.4%
\$ 37.0	19.0%	18.8%	18.5%	18.2%	17.9%	17.6%	17.4%	17.2%	16.9%	16.7%	16.5%	16.4%	16.2%	16.0%	15.9%
\$ 38.0	19.6%	19.3%	19.0%	18.7%	18.4%	18.1%	17.9%	17.6%	17.4%	17.1%	16.9%	16.8%	16.6%	16.4%	16.3%
\$ 39.0	20.1%	19.8%	19.5%	19.2%	18.9%	18.5%	18.4%	18.1%	17.9%	17.6%	17.4%	17.3%	17.1%	16.9%	16.8%

	Class 3B Recovery														
	Class 3B Claims														
	\$26.0	\$28.0	\$30.0	\$32.0	\$34.0	\$36.7	\$38.0	\$40.0	\$42.0	\$44.0	\$46.0	\$48.0	\$50.0	\$52.0	\$54.0
\$ 27.0	21.1%	20.8%	20.5%	20.1%	19.9%	19.5%	19.3%	19.0%	18.7%	18.5%	18.2%	18.1%	17.9%	17.7%	17.6%
\$ 28.0	21.9%	21.5%	21.2%	20.9%	20.6%	20.2%	20.0%	19.7%	19.4%	19.2%	18.9%	18.8%	18.6%	18.4%	18.3%
\$ 29.0	22.7%	22.3%	22.0%	21.6%	21.3%	20.9%	20.7%	20.4%	20.1%	19.9%	19.6%	19.5%	19.3%	19.1%	19.0%
\$ 30.0	23.4%	23.1%	22.7%	22.4%	22.1%	21.6%	21.4%	21.1%	20.8%	20.5%	20.3%	20.2%	20.0%	19.8%	19.7%
\$ 31.0	24.2%	23.8%	23.5%	23.1%	22.8%	22.4%	22.1%	21.8%	21.5%	21.2%	20.9%	20.8%	20.6%	20.4%	20.3%
\$ 32.0	25.0%	24.6%	24.2%	23.9%	23.5%	23.1%	22.9%	22.5%	22.2%	21.9%	21.6%	21.5%	21.3%	21.1%	21.0%
\$ 33.0	25.8%	25.4%	25.0%	24.6%	24.3%	23.8%	23.6%	23.2%	22.9%	22.6%	22.3%	22.2%	22.0%	21.8%	21.7%
\$ 34.0	26.6%	26.2%	25.8%	25.4%	25.0%	24.5%	24.3%	23.9%	23.6%	23.3%	23.0%	22.9%	22.7%	22.5%	22.4%
\$ 34.7	27.1%	26.7%	26.3%	25.9%	25.5%	25.0%	24.8%	24.4%	24.1%	23.7%	23.4%	23.3%	23.1%	22.9%	22.8%
\$ 35.0	27.3%	26.9%	26.5%	26.1%	25.7%	25.2%	25.0%	24.6%	24.3%	24.0%	23.6%	23.5%	23.3%	23.1%	23.0%
\$ 36.0	28.1%	27.7%	27.3%	26.9%	26.5%	26.0%	25.7%	25.3%	25.0%	24.7%	24.3%	24.2%	24.0%	23.8%	23.7%
\$ 37.0	28.9%	28.5%	28.0%	27.6%	27.2%	26.7%	26.4%	26.1%	25.7%	25.3%	25.0%	24.9%	24.7%	24.5%	24.4%
\$ 38.0	29.7%	29.2%	28.8%	28.4%	27.9%	27.4%	27.1%	26.8%	26.4%	26.0%	25.7%	25.6%	25.4%	25.2%	25.1%
\$ 39.0	30.5%	30.0%	29.5%	29.1%	28.7%	28.1%	27.9%	27.5%	27.1%	26.7%	26.3%	26.2%	26.0%	25.8%	25.7%

Recovery Sensitivities – Class 3B Claim Sensitivities

The tables below reflect the potential range of recovery values on a percentile basis for the holders of Class 3A and 3B Claims. Recovery at both levels varies pro rata based on changes to the NDV and 3B Claims.

Net Distribution Value	Class 3A Recovery																					
	\$26.0	\$28.0	\$30.0	\$32.0	\$34.0	\$36.7	\$38.0	\$40.0	\$42.0	\$44.0	\$46.0	\$26.0	\$28.0	\$30.0	\$32.0	\$34.0	\$36.7	\$38.0	\$40.0	\$42.0	\$44.0	\$46.0
\$ 27.0	21.5	21.2	20.9	20.6	20.3	19.9	19.7	19.4	19.1	18.9	18.6	21.5	21.2	20.9	20.6	20.3	19.9	19.7	19.4	19.1	18.9	18.6
\$ 28.0	22.3	22.0	21.6	21.3	21.0	20.6	20.4	20.1	19.8	19.6	19.3	22.3	22.0	21.6	21.3	21.0	20.6	20.4	20.1	19.8	19.6	19.3
\$ 29.0	23.1	22.8	22.4	22.1	21.8	21.3	21.1	20.8	20.5	20.3	20.0	23.1	22.8	22.4	22.1	21.8	21.3	21.1	20.8	20.5	20.3	20.0
\$ 30.0	23.9	23.5	23.2	22.8	22.5	22.1	21.9	21.6	21.3	21.0	20.7	23.9	23.5	23.2	22.8	22.5	22.1	21.9	21.6	21.3	21.0	20.7
\$ 31.0	24.7	24.3	24.0	23.6	23.3	22.8	22.6	22.3	22.0	21.7	21.4	24.7	24.3	24.0	23.6	23.3	22.8	22.6	22.3	22.0	21.7	21.4
\$ 32.0	25.5	25.1	24.7	24.4	24.0	23.5	23.3	23.0	22.7	22.4	22.1	25.5	25.1	24.7	24.4	24.0	23.5	23.3	23.0	22.7	22.4	22.1
\$ 33.0	26.3	25.9	25.5	25.1	24.8	24.3	24.0	23.7	23.4	23.1	22.7	26.3	25.9	25.5	25.1	24.8	24.3	24.0	23.7	23.4	23.1	22.7
\$ 34.0	27.1	26.7	26.3	25.9	25.5	25.0	24.8	24.4	24.1	23.8	23.4	27.1	26.7	26.3	25.9	25.5	25.0	24.8	24.4	24.1	23.8	23.4
\$ 34.7	27.6	27.2	26.8	26.4	26.0	25.5	25.3	24.9	24.6	24.2	23.9	27.6	27.2	26.8	26.4	26.0	25.5	25.3	24.9	24.6	24.2	23.9
\$ 35.0	27.9	27.5	27.0	26.6	26.3	25.7	25.5	25.1	24.8	24.5	24.1	27.9	27.5	27.0	26.6	26.3	25.7	25.5	25.1	24.8	24.5	24.1
\$ 36.0	28.7	28.2	27.8	27.4	27.0	26.5	26.2	25.9	25.5	25.2	24.8	28.7	28.2	27.8	27.4	27.0	26.5	26.2	25.9	25.5	25.2	24.8
\$ 37.0	29.5	29.0	28.6	28.2	27.8	27.2	27.0	26.6	26.2	25.9	25.5	29.5	29.0	28.6	28.2	27.8	27.2	27.0	26.6	26.2	25.9	25.5
\$ 38.0	30.3	29.8	29.4	28.9	28.5	28.0	27.7	27.3	26.9	26.5	26.2	30.3	29.8	29.4	28.9	28.5	28.0	27.7	27.3	26.9	26.5	26.2
\$ 39.0	31.1	30.6	30.1	29.7	29.3	28.7	28.4	28.0	27.6	27.2	26.9	31.1	30.6	30.1	29.7	29.3	28.7	28.4	28.0	27.6	27.2	26.9

Net Distribution Value	Class 3B Recovery																					
	\$26.0	\$28.0	\$30.0	\$32.0	\$34.0	\$36.7	\$38.0	\$40.0	\$42.0	\$44.0	\$46.0	\$26.0	\$28.0	\$30.0	\$32.0	\$34.0	\$36.7	\$38.0	\$40.0	\$42.0	\$44.0	\$46.0
\$ 27.0	5.5	5.8	6.1	6.4	6.7	7.1	7.3	7.6	7.9	8.1	8.4	5.5	5.8	6.1	6.4	6.7	7.1	7.3	7.6	7.9	8.1	8.4
\$ 28.0	5.7	6.0	6.4	6.7	7.0	7.4	7.6	7.9	8.2	8.4	8.7	5.7	6.0	6.4	6.7	7.0	7.4	7.6	7.9	8.2	8.4	8.7
\$ 29.0	5.9	6.2	6.6	6.9	7.2	7.7	7.9	8.2	8.5	8.7	9.0	5.9	6.2	6.6	6.9	7.2	7.7	7.9	8.2	8.5	8.7	9.0
\$ 30.0	6.1	6.5	6.8	7.2	7.5	7.9	8.1	8.4	8.7	9.0	9.3	6.1	6.5	6.8	7.2	7.5	7.9	8.1	8.4	8.7	9.0	9.3
\$ 31.0	6.3	6.7	7.0	7.4	7.7	8.2	8.4	8.7	9.0	9.3	9.6	6.3	6.7	7.0	7.4	7.7	8.2	8.4	8.7	9.0	9.3	9.6
\$ 32.0	6.5	6.9	7.3	7.6	7.9	8.0	8.5	8.7	9.0	9.6	9.9	6.5	6.9	7.3	7.6	7.9	8.0	8.5	8.7	9.0	9.6	9.9
\$ 33.0	6.7	7.1	7.5	7.9	8.2	8.7	8.7	9.0	9.3	9.6	10.3	6.7	7.1	7.5	7.9	8.2	8.7	8.7	9.0	9.3	9.6	10.3
\$ 34.0	6.9	7.3	7.7	8.1	8.5	9.0	9.0	9.2	9.6	10.2	10.6	6.9	7.3	7.7	8.1	8.5	9.0	9.0	9.2	9.6	10.2	10.6
\$ 34.7	7.0	7.5	7.9	8.3	8.7	9.2	9.4	9.5	10.1	10.4	10.8	7.0	7.5	7.9	8.3	8.7	9.2	9.4	9.5	10.1	10.4	10.8
\$ 35.0	7.1	7.5	8.0	8.4	8.7	9.3	9.5	9.9	10.2	10.5	10.9	7.1	7.5	8.0	8.4	8.7	9.3	9.5	9.9	10.2	10.5	10.9
\$ 36.0	7.3	7.8	8.2	8.6	8.6	9.5	9.8	10.1	10.5	10.8	11.2	7.3	7.8	8.2	8.6	8.6	9.5	9.8	10.1	10.5	10.8	11.2
\$ 37.0	7.5	8.0	8.4	8.8	9.2	9.8	10.0	10.4	10.8	11.1	11.5	7.5	8.0	8.4	8.8	9.2	9.8	10.0	10.4	10.8	11.1	11.5
\$ 38.0	7.7	8.2	8.6	9.1	9.5	10.0	10.3	10.7	11.1	11.5	11.8	7.7	8.2	8.6	9.1	9.5	10.0	10.3	10.7	11.1	11.5	11.8
\$ 39.0	7.9	8.4	8.9	9.3	9.7	10.3	10.6	11.0	11.4	11.8	12.1	7.9	8.4	8.9	9.3	9.7	10.3	10.6	11.0	11.4	11.8	12.1

Exhibit B
Liquidation Analysis

MIDWAY GAMES INC., et al.,
LIQUIDATION ANALYSIS
Prepared by FTI Consulting, Inc.

A. Introduction

Under the "best interests" of creditors test set forth in section 1129(a)(7) of the Bankruptcy Code, the Bankruptcy Court may not confirm a chapter 11 plan unless the plan provides each holder of a claim or interest who does not otherwise vote in favor of the plan with property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code. To demonstrate that the Plan satisfies the "best interests" of creditors test, FTI has prepared the following hypothetical Liquidation Analysis, which is based upon certain assumptions discussed in the Disclosure Statement and in the notes accompanying the Liquidation Analysis (the "Notes"). Capitalized terms not defined in the Notes shall have the meanings ascribed to them in the Plan and the Disclosure Statement.

The Liquidation Analysis estimates potential Cash distributions to Holders of Allowed Claims and Interests in a hypothetical chapter 7 liquidation of the Debtors' assets. Asset values discussed in the Liquidation Analysis may differ materially from values referred to in the Plan and Disclosure Statement. FTI has prepared the Liquidation Analysis with the assistance of the Debtors.

B. Scope, Intent, and Purpose of the Liquidation Analysis

The determination of the costs of, and hypothetical proceeds from, the liquidation of the Debtors' assets is an uncertain process involving the extensive use of estimates and assumptions that, although considered reasonable by the Debtors, are inherently subject to significant business, economic and competitive uncertainties and contingencies beyond the control of the Debtors, their management, and their advisors. Inevitably, some assumptions in the Liquidation Analysis would not materialize in an actual chapter 7 liquidation, and unanticipated events and circumstances could affect the ultimate results in an actual chapter 7 liquidation. The Liquidation Analysis was prepared for the sole purpose of generating a reasonable good-faith estimate of the proceeds that would be generated if the Debtors were liquidated in accordance with chapter 7 of the Bankruptcy Code. The Liquidation Analysis is not intended and should not be used for any other purpose. The underlying financial information in the Liquidation Analysis was not compiled or examined by any independent accountants. No independent appraisals were conducted in preparing the Liquidation Analysis. NEITHER FTI NOR THE DEBTORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD OR WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY.

In comparing a chapter 7 to chapter 11 proceeding both the debtors' and FTI believe the estate would bear substantial costs related to the appointment of the chapter 7 trustee and professionals to represent the trustee. Additionally, the Debtors estimated Allowed Claims based upon a review of Claims listed on the Debtors' Schedules and proofs of Claim Filed before the General Bar Date and estimates for Claims not currently asserted in the Chapter 11 Cases, but which could be asserted before the Governmental Bar Date and the Administrative Bar Date. The Debtors' estimate of Claims set forth in the Liquidation Analysis should not be relied on for any other purpose, including determining the value of any distribution to be made on account of Claims and Interests under the Plan. NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION OR ADMISSION OF THE DEBTORS. THE ACTUAL AMOUNT OF ALLOWED CLAIMS IN THE CHAPTER 11 CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH IN THE LIQUIDATION ANALYSIS.

Midway Games, Inc.
Liquidation Analysis ⁽¹⁾
As of 2/1/10

Subject to Change

\$ in millions

	Chapter 11 Liquidation Scenario	Chapter 7 Liquidation Scenario	Difference
Cash Proceeds:			
Cash Held by Debtor (1/11/10)	\$ 39.6	\$ 39.6	\$ -
Total Cash Proceeds:	39.6	39.6	-
Distributions from through Conversion Date (2/15/10) ⁽²⁾:			
Chapter 11 Professional Fees	(0.4)	(0.4)	-
Operational Cost Est. (1/4/10 to Conversion)	(0.1)	(0.1)	-
Total Distributions through Conversion Date (2/15/10):	(0.6)	(0.6)	-
Potential Proceeds / Recoveries after Conversion Date ⁽³⁾:	0.5	0.5	-
Remaining Distributable Proceeds for Chapter 7 Trustee		39.5	
Distributions after Conversion Date, Including Admin Claims:			
Chapter 11 Professional Fees ⁽⁴⁾	(3.0)	(2.7)	0.3
Operational Cost Est. (Conversion to Confirmation) ⁽⁵⁾	(0.1)	-	0.1
Chapter 7 Trustee Fees ⁽⁶⁾	-	(0.6)	(0.6)
Chapter 7 Trustee - Professional Fees & Other Costs ⁽⁷⁾	-	(0.5)	(0.5)
Litigation Trust Account ⁽⁸⁾	(2.0)	(2.0)	-
Administrative Claims	(0.4)	(0.4)	-
Total Distributions after Conversion Date:	(5.5)	(6.2)	(0.7)
Secured Claims:			
Secured Claims	(0.0)	(0.0)	-
Total Secured Claims:	(0.0)	(0.0)	-
Priority Claims:			
Priority Claims	(1.9)	(1.9)	-
Total Priority Claims:	(1.9)	(1.9)	-
Amount Available for Distribution to Unsecured Creditors	32.1	31.4	(0.7)
Recovery % by Claim Class:			
Class 1 Secured Claims	100.0%	100.0%	
Class 2 Priority Claims	100.0%	100.0%	
Class 3A General Unsecured Claims against Midway ⁽⁹⁾	15.3%	14.9%	
Class 3B General Unsecured Claims against Subsidiary Debtors	23.2%	22.7%	
Class 4 NAI Subordinated Claim against Midway	0.0%	0.0%	
Class 5 Interests	0.0%	0.0%	

Notes:

(1) Estimated recoveries are highly contingent upon satisfactory resolution of filed Claims. Neither Midway nor FTI have performed an exhaustive review of the claims at this time, and as such these recoveries are illustrative only based on high level review of materials filed with the Bankruptcy Court or provided by the Debtors. No legal review has been performed at this point. Amounts included herein, unless otherwise specified, are tentative, preliminary and subject to material change.

(2) The chapter 7 Liquidation Scenario assumes that a conversion from chapter 11 to chapter 7 occurs on 2/15/10. Distributions from 1/4/10 to Conversion Date include estimated payments made between 1/4/10 and 2/15/10.

(3) Potential Proceeds / Recoveries after Conversion Date Includes \$500,000 the estates expect to receive from recently filed tax returns.

(4) Chapter 11 Professional Fees include an estimated success fee to the Debtor's Investment Banking firm, Lazard. Lazard has not sought payment of such fee as of the date hereof. Fees in the chapter 11 scenario include 20% holdback amounts from prior months, as well as estimated February professional fees. Fees in the chapter 7 scenario include 20% Holdback amounts from prior months as well as 50% of professional fees for February.

(5) Cost of winding down the estate between the estimated Conversion Date of 2/15/10 and Confirmation Date of 4/2/10.

(6) 1.5% of distributable proceeds, however, this figure could be as high as approximately 3% of distributable proceeds (based upon the statutory cap on the compensation of a chapter 7 trustee as set forth in Section 326 of the Bankruptcy Code). If there is meaningful litigation over issues such as substantive consolidation or allocations of value, then any trustee's fees could be higher than estimated herein. The above figure also assumes that a single trustee is appointed for all of the converted cases rather than multiple trustees. If multiple trustees are appointed, the actual trustee fees are likely to be materially higher.

(7) Includes provision for professionals retained by the US Trustee, Claims Agent Fees, and other costs of liquidating the estate. These fees could be substantially higher if there is meaningful litigation over issues such as substantive consolidation or allocations of value. Such litigation could result in substantially higher professional fees. FTI believes that the professional fees associated with such a fight would range in the hundreds if thousands or, even, the millions. The above figure also assumes that a single trustee is appointed for all of the converted cases rather than multiple trustees. If multiple trustees are appointed, the actual trustee fees are likely to be materially higher.

(8) The Litigation Trust consists of cash proceeds to be set aside to pursue litigation against NAI, the Redstone Entities and certain Outside Members of Midway's Board of Directors. Proceeds in the trust will also be used to pay legal fees, document storage and other miscellaneous costs associated with the litigation proceedings. Any unused proceeds in the Liquidation Trust that are not used will eventually be distributed to holders of Class 3 Claims.

Midway Games, Inc.
Liquidation Analysis ⁽¹⁾
As of 2/1/10

Subject to Change

Notes (continued):

(9) The chapter 11 liquidation scenario assumes the modified substantive consolidation as agreed to by the members of Unsecured Creditors Committee. FTI believes that if the chapter 11 cases are converted to chapter 7 there is a reasonable likelihood of significant disputes over the propriety of substantive consolidation and the proper allocation of value among the respective estates and potential equitable subordination and recharacterization of certain claims. Therefore, for the illustrative purposes of this exercise, FTI assumes the same modified substantive consolidation in the chapter 7 liquidation scenario as that agreed to by the members of Unsecured Creditors Committee for chapter 11. If the above issues are forced to be litigated, FTI believes the aggregate cost for the estates could range in the millions of dollars, and would materially reduce creditor recoveries.