

Stolzman, Rob

From: Stolzman, Rob
Sent: Sunday, March 28, 2010 9:54 PM
To: 'mcorso@kingstoncap.com'
Cc: Stokes,Keith; msaul@riedc.com; Hashway,Fred
Subject: RE: REIDC/38 Studios
Attachments: 38 Studios RIEDC Letter 3_28 Clean Draft.DOC; 38 Studios RIEDC Letter 3_28 Marked Draft.DOC

Hi Michael. Mike Saul confirmed for me that the RIEDC agrees with you on the investment fund. Accordingly, I attach an updated marked and clean draft reflecting the changes discussed in our most recent emails below (the formatting headers are not reflected on the marked draft – a reflection of my Microsoft Outlook 7 word processing skills, or lack thereof).

I think we are in agreement on the document.

Open matters include:

- a. Full execution of the NDA.
- b. Is Gordon coming to Maynard tomorrow morning?
- c. Were you able to review the draft of this letter with him this weekend?
- d. From Keith Stokes's earlier email, were you able to begin seeing if Curt is available to meet with Senate Pres. Paiva-Weed tomorrow night (assuming Curt is not attending a Passover Seder)

Michael, thanks so much for facilitating this opportunity for Rhode Island. I look forward to seeing you tomorrow in Maynard. I think Mike Saul and I are the only two attending from the RIEDC (Mike, I'll meet you at your office at 8:30 to depart for Maynard for 10:00).

Yours,

Rob

Robert I. Stolzman, Esq.
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903

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Visit our website at www.apslaw.com

ADLER POLLOCK & SHEEHAN P.C.

To comply with IRS regulations, we advise that any discussion of Federal tax issues in this e-mail is not intended or written to be used, and cannot be used, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

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From: mcorso@kingstoncap.com [mailto:mcorso@kingstoncap.com]
Sent: Saturday, March 27, 2010 8:58 PM



To: Stolzman, Rob
Cc: Stokes, Keith; msaul@riedc.com; Hashway, Fred
Subject: RE: REIDC/38 Studios

Rob:

I don't think we need to get into acquisition language and I thought that in our discussions we were not going to get into the details of the fund. With regards to managing the fund, and Michael can speak to this point, it was the intent that RIEDC just to have a seat at the table. It would still be managed by 38 for start ups.

Michael

Michael D. Corso
Kingston Capital Group, LLC
155 Chestnut Street
Providence, RI 02903
tel 401-454-0800
fax 401-537-9154
cell 401-226-4081

----- Original Message -----

Subject: RE: REIDC/38 Studios
From: "Stolzman, Rob" <RStolzman@apslaw.com>
Date: Sat, March 27, 2010 2:32 pm
To: "Michael" <mcorso@kingstoncap.com>
Cc: "Stokes, Keith" <kstokes@riedc.com>, <msaul@riedc.com>, "Hashway, Fred" <fhashway@riedc.com>

Hi Mike. The RIEDC recognizes that it will not have a lien on the SPE held IP currently pledged to support the "completion bond" until the console game is published by EA, at which point the EA lien will be released and the RIEDC will have a lien on that IP as well as the other assets. I can tweak your language to address that, and, of course, the details of that concept will be worked out and agreed upon in the actual loan documents. This LOI is intended to lay out only the essential concepts of the deal, not the exact language.

Along those lines, at the last meeting at your office we discussed the concept of the investment fund intended to be a joint fund for jointly managed programs (one of which could be assistance in funding additional industry acquisitions by 38 Studios should that mean moving or creating substantial new jobs in RI). The jointly managed and held fund, and the parenthetical acquisition concepts appear lost in your language.

Additionally, it occurs to me that this document should have a signature line of acceptance for 38 Studios so that the legislation may be submitted for the moral ob.

So, if ok with the RIEDC and 38 Studios, I'll amend the document and circulate tomorrow (Sunday) to reflect the above matters.

Thanks,

Rob

-----Original Message-----

From: Michael [<mailto:mcorso@kingstoncap.com>]
Sent: Saturday, March 27, 2010 9:47 AM
To: Stolzman, Rob
Cc: Stokes, Keith; <msaul@riedc.com>; Hashway, Fred
Subject: Re: REIDC/38 Studios

Rob:

Thanks for the term sheet. Just a few comments. We modified the definition of collateral and the fund establishment section, both of which are below. Also we would like to be able to take advantage of the tax exempt bonds under the recovery zone bond program assuming we qualify. Let me know what you think.

Michael

Collateral: collateral assignment of all assets of the borrower now owned and hereafter acquired including but not limited to intellectual property, applicable licenses, contracts, receivables and work product. We recognize that a portion of the borrower's assets are held in a wholly owned subsidiary, the ownership interest of which will be pledged to the RIEDC, and that such assets are otherwise pledged in connection with the publishing agreement with Electronic Arts and unavailable to act as collateral for this credit facility.

(a) A percentage of the funds available from (b) above shall be used by 38 Studios to establish an investment fund that will provide seed capital and the like to companies involved in the video game and digital media industry in Rhode Island. These investments will be in conjunction with an overall program to be developed and operated jointly between 38 Studios and the RIEDC. RIEDC will have a designee on the investment committee of the fund;

On Mar 26, 2010, at 4:41 PM, "Stolzman, Rob" <RStolzman@apslaw.com> wrote:

Hi Mike. Thank you for getting comments to me on the draft letter of intent. I attach hereto a marked and clean copy of the draft reflecting your comments and what we discussed yesterday. RIEDC staff has not yet reviewed these drafts, so there may be a tweak or two, but it appears as if the parties are very close. I assume you are working on this this weekend with various parties. I am available all weekend if that is helpful to you. My cell no. is 401 263 7244. We look forward to seeing you on Monday.

Yours,

Rob

Robert I. Stolzman, Esq.
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903
E-Mail rstolzman@apslaw.com
Phone 401.274.7200
Fax 401.751.0604
Visit our website at www.apslaw.com
<image001.png>

To comply with IRS regulations, we advise that any discussion of Federal tax issues in this e-mail is not intended or written to be used, and cannot be used, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

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<38 Studios RIEDC Letter 3_26 Clean Draft.DOC>

<38 Studios RIEDC Letter 3_26 Marked Draft.DOC>

RIEDC Letterhead

March __, 2010

Mr. Curt Schilling, Chairman
38 Studios
5 Clock Tower Place, Suite 140
Maynard, MA 01754

Ms. Jen MacLean, CEO
38 Studios
5 Clock Tower Place, Suite 140
Maynard, MA 01754

Re: 38 Studios/Rhode Island

Dear Mr. Schilling and Ms. MacLean:

We are pleased to present this outline of terms pursuant to which Rhode Island will commence undertaking actions to provide economic development incentives to 38 Studios LLC (hereafter "38 Studios" or the "company") and 38 Studios will commence locating and expanding its businesses in Rhode Island.

We very much appreciate the value your company brings to the video gaming and interactive digital media industry, and we think that Rhode Island can be the perfect home for you. We also appreciate your company's culture, background and industry acumen. Your assessment of your industry opportunities, your assembly of talent at all levels of your company, your investments to date, your human resources needs and your desire to grow are aligned perfectly with Rhode Island's knowledge economy and design resources.

The Rhode Island Economic Development Corporation ("RIEDC"), as the State's economic development agency, offers you the following tools to consider in relocating your businesses to Rhode Island:

Product Development Financing

We understand your capital needs to bring your project Copernicus to MMO completion to be \$75,000,000. Based on our understanding to date of your financial projections, the RIEDC would issue \$75M of revenue bonds, the proceeds of which would provide the necessary financing to complete production on Copernicus and begin relocating 38 Studios to Rhode Island. We anticipate that these bonds would be purchased by or through a lender or lenders familiar with your industry. As your company is in the unusual position of having pipeline

APS017424

Mr. Schilling and Ms. MacLean
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product and contractual commitments for product publishing and distribution, but as yet is "pre revenue", we recognize the market for these bonds would be limited without credit enhancement. Accordingly, we would submit this bond issue for approval to the Rhode Island General Assembly, which currently is in session, for approval by it for the RIEDC to use an available capital reserve mechanism by which the General Assembly may consider on an annual basis funding any shortfall of any loan payments necessary to pay the bondholders, thereby creating for this issue what is commonly called a "moral obligation" guaranty for the bondholder(s). This financing would reflect the following terms and conditions and be subject to the following general parameters all of which will be more fully articulated in traditional loan documentation:

Borrower: 38 Studios.

Loan Amount: \$75,000,000

Purpose: For all associated business expenses related to operations, product development and deployment by 38 Studios in conjunction with its business development and expansion in Rhode Island.

Rate: Market for bond issues of this type as negotiated with bond purchaser.

Term: Negotiable, likely 10 years with a portion of capitalized interest in early year(s) with early recapture as discussed below.

Collateral: collateral assignment of all assets of company now owned and hereafter acquired including but not limited to intellectual property, licenses, licensing fees, distribution and publishing contracts, receivables and work product. We recognize that a portion of the company's assets are held in a wholly owned subsidiary, the ownership interest of which will be pledged to the RIEDC, and that such assets are otherwise currently pledged in connection with the publishing agreement with Electronic Arts and currently are unavailable as collateral for this credit facility, but such assets will be pledged as collateral for this credit facility upon completion and publication of the company's console phase of the project when such assets are no longer collateralizing the aforesaid publishing agreement.

State Guaranty Fee: Initial fee of one half percent (1/2%) payable at closing at closing (\$375,000) and one and one half percent (1.5%) (\$1,125,000) of loan amount annually payable on the loan closing anniversary.

Equity and Dividend Covenants: During the term of the loan, Mr. Schilling shall maintain no less than an amount equal to \$15,000,000 of equity in the company, and equity or earnings distributions to members shall be limited to a coverage ratio formula to be agreed upon by the RIEDC and the company prior to closing.

APS017425

Mr. Schilling and Ms. MacLean
March __, 2010
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Specific Conditions and Covenants:

- (a) The debt would not be assignable or assumable without lender consent;
- (b) Recapture or early payment would be made from excess earnings should EBITDA exceed a base formula to be agreed upon by the parties prior to closing;
- (c) A percentage of the funds available from (b) above shall be used by 38 Studios to establish an investment fund to provide seed capital and other investment vehicles to facilitate the development of the video game and digital media industry in Rhode Island in conjunction with a program to be developed jointly between 38 Studios and the RIEDC, the RIEDC being entitled to having a designee on the investment committee of such fund;
- (d) 38 Studios will locate its corporate headquarters and its principal place of business in Rhode Island;
- (e) 38 Studios will provide 125 full time jobs with an average annual wage of approximately \$75,000 ("jobs") in Rhode Island by December 31, 2010;
- (f) 38 Studios will add an additional 175 jobs in Rhode Island by December 31, 2011;
- (g) 38 Studios will add an additional 150 jobs in Rhode Island by December 31, 2012;
- (h) Should 38 Studios fail to meet any jobs requirements, it shall pay to the RIEDC an amount equal to \$7,500 per year for each job not so added until such shortfall is cured; and
- (i) 38 Studios will provide 2010 and annually thereafter during the term of the loan audited financial statements that include a certification that the borrower has met the requirements of (e), (f) and (g) above and certifying the calculations required in (b) and (c) above;
- (j) 38 Studios will develop internship programs for students at Rhode Island design and educational institutions pursuant to programs and policies to be agreed upon with such institutions.

Conditions Precedent: Conditions to closing the loan will include standard documentation and legal requirements typical of transactions of this size and scope and:

Mr. Schilling and Ms. MacLean
March __, 2010
Page 4

- (a) The completion and delivery by a qualified economic development expert of an analysis of the economic development impacts of the company's location to and growth in Rhode Island, such study to be paid for by the company;
- (b) An independent financial review and analysis of the company's financial projections; current contracts and obligations with gaming industry partners such as EA; and any other related or requested documents or information of the company;
- (c) The prerequisite approvals by the General Assembly and RIEDC Board of Directors for those actions requiring such approvals; and
- (d) Placement of the bond issue with a lender or lenders and documentation reflecting the terms hereof and other standard terms and conditions typical of a transaction of this size and nature.

The company will assist the RIEDC in making industry contacts and identifying necessary sources to complete its due diligence with respect to the loan.

Rhode Island Economic Development Incentives

The RIEDC will make available to 38 Studios its traditional but aggressive incentives for the company's move to and expansion in Rhode Island including:

- (a) Economic Development Project Status: The RIEDC may designate the development of the company's offices and job expansion in Rhode Island as a project of the RIEDC, resulting in reimbursements to the company for sales tax paid in connection with the purchase of building materials, FFE and computers, and equipment for use in Rhode Island;
- (b) Job Training Grants and Credits (of amounts up to \$5,000 per year per employee) will be made available to the company;
- (c) Jobs Development Act reductions in the corporate tax rate (by up to one-quarter of one percent for every 50 jobs with a floor corporate income tax rate of 3%) will be made available to the company; and
- (d) As applicable, all other available tax incentives that are useful to the company will be available to it (such as R&D tax credits).

Mr. Schilling and Ms. MacLean
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A more complete analysis of otherwise available incentives is available at the RIEDC's website:
www.riedc.com.

New Industry Incentives

We are particularly interested in assisting 38 Studios grow and become a magnet for the growth of the video gaming and digital media industry in Rhode Island. Accordingly, we will support and advocate for the implementation of jobs producing interactive digital media tax credits that provide Rhode Islander's with a clear return on investment resulting from the credits. We also will support other creative and innovative industry development incentives jointly developed by us to accelerate and increase your successes.

We think your company and its product development concepts are exciting and aligned with our economic development strategies. We think 38 Studios will be a strong corporate citizen for Rhode Island and that you will be particularly welcome here for the foundation for your many exciting ventures and opportunities.

Should you agree and desire us to commence the process of obtaining the approvals for the issuance of the bonds and the economic development incentives, please indicate so by signing below.

Sincerely ours,

Governor Donald L. Carcieri,
Chairman of the Board

Keith W. Stokes,
Executive Director

Mr. Schilling and Ms. MacLean
March __, 2010
Page 6

Agreed and accepted as of the date first above written:

38 Studios LLC

By: _____

Its: _____

529694.5

DATA

RIEDC Letterhead

March __, 2010

Mr. Curt Schilling, Chairman
38 Studios
5 Clock Tower Place, Suite 140
Maynard, MA 01754

Ms. Jen MacLean, CEO
38 Studios
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Mr. Schilling and Ms. MacLean
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Mr. Schilling and Ms. MacLean
March __, 2010
Page 3

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- (a) The completion and delivery by a qualified economic development expert of an analysis of the economic development impacts of the company's location to and growth in Rhode Island, such study to be paid for by the company;
- (b) An independent financial review and analysis of the company's financial projections; current contracts and obligations with gaming industry partners such as EA; and any other related or requested documents or information of the company;
- (c) The prerequisite approvals by the General Assembly and RIEDC Board of Directors for those actions requiring such approvals; and
- (d) Placement of the bond issue with a lender of lenders and documentation reflecting the terms hereof and other standard terms and conditions typical of a transaction of this size and nature.

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- (c) Jobs Development Act reductions in the corporate tax rate (by up to one-quarter of one percent for every 50 jobs with a floor corporate income tax rate of 3%) will be made available to the company; and

(d) As applicable, all other available tax incentives that are useful to the company will be available to it (such as R&D tax credits).

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Mr. Schilling and Ms. MacLean
March __, 2010
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~~We look forward to the opportunity to discuss these items with you. We think your company and its product development concepts are exciting and aligned with our economic development strategies. We think 38 Studios will be a strong corporate citizen for Rhode Island and that you will be particularly welcome here for the foundation for your many exciting ventures and opportunities.~~

Should you agree and desire to commence the process of obtaining the approvals for the issuance of the bonds and the economic development incentives, please indicate so by signing below.

Sincerely ours,

Governor Donald L. Carcieri,
Chairman of the Board

Keith W. Stokes,
Executive Director

Agreed and accepted as of the date first above written:

38 Studios LLC

By: _____

Its: _____

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