

From: mcorso@kingstoncap.com
To: [Jen MacLean](#)
Subject: Agreement
Date: Tuesday, May 11, 2010 11:52:06 PM
Attachments: [Corso Engagement 5.2.doc](#)

Jen:

I hope that you are well. I just wanted to follow up on our discussions about my agreement with 38. Attached is a draft of an engagement letter for your review. Everything was put in the form of all warrants and we can discuss this further. In any event, please review and contact me with any questions.

Thanks.
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



**Orb Development, LLC
155 Chestnut Street
Providence, RI 02903
*Confidential***

May 4, 2010

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

Re: 38 Studios

Dear Jen:

This Letter Agreement ("Agreement") is to confirm our discussions and the engagement of Orb Development, LLC, a Rhode Island limited liability company ("Consultant") as a consultant to 38 Studios, LLC ("Customer").

1. Consulting Services: Consultant will provide to Customer the consulting services described on Schedule A and other consulting services requested by Customer and agreed to by Consultant (the "Consulting Services").
2. Confidential Information: In order to perform the Consulting Services, Consultant will need to become familiar with the Customer's business. Customer agrees to provide Consultant such contracts, documents, financial information and other materials regarding the Customer as may be necessary in order for Consultant to perform the services required by this Agreement.

It is understood by the parties that in providing Consulting Services under this Agreement, Consultant will rely on public information and the information provided by Customer as described above.

Unless required by law, each party agrees not to disclose the existence, the terms, conditions or subject matter of this Agreement to third parties without the prior written consent of the other party.

3. Fees: Customer will pay consulting fees to Consultant or its nominee as described in Schedule A.
4. Expenses: Customer will not reimburse Consultant for travel and out-of-pocket expenses incurred in connection with providing Consulting Services.

5. Independent Contractor: In the performance of all work, duties and obligations under this Agreement, Consultant is at all times acting and performing as an independent contractor. No relationship of employer and employee, partners or joint venturers, or principal and agent, is created by this Agreement. None of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between the parties hereto other than that of independent entities contracting with each other hereunder solely for the purposes of effecting the provisions of this Agreement. Neither the parties hereto, nor any of their respective associates, employees, or agents shall be construed to be the partner, the agent, the employer or the representative of the other. Consultant shall have no authority to bind Customer in any contract or other obligation. Consultant shall not be entitled to any employee benefits. Consultant will perform Consulting Services as an independent contractor.
6. Indemnification: Customer agrees to defend, indemnify and hold Consultant harmless against any losses, claims, damages and liabilities (and all actions in respect thereof) caused by, related in any way to, or arising out of the provision of the Consulting Services; provided that (a) Consultant shall have promptly provided Customer with any written notice of any claim or threatened claim and reasonable cooperation, information and assistance and (b) Customer shall have control and authority with respect to the defense, settlement or compromise thereof. This provision is in addition to any obligation which Customer might otherwise have to Consultant.
7. Term and Termination of Engagement: Consultant's engagement under this Agreement shall be for a term of twenty-four months from the date of this Agreement. This Agreement may be terminated by Customer or Consultant at any time, with or without cause, upon prior written notice to the other party. The termination or expiration of this Agreement shall not affect Customer's obligations under Section 6, Section 3 or Schedule A (with regard to fees), which provisions shall survive indefinitely after the termination of this Agreement.
8. Other: The benefits of this Agreement shall inure to the respective successors and assigns of the parties hereto, and the obligations and liabilities assumed by the parties hereto shall be binding upon their respective successors and assigns.

Customer acknowledges and agrees that Consultant is not an investment banker and is not registered or licensed as a broker/dealer and that the engagement of Consultant under this Agreement is not intended to replace or supplant in any manner broker/dealer or investment banking services that might be necessary or appropriate in connection with any transaction undertaken by Customer. Consultant will not perform valuations, make fairness assessments or render fairness opinions with respect to any proposed transaction.

Customer expressly acknowledges that all advice (written or oral) given by Consultant to Customer in connection with Consultant's engagement is intended solely for the benefit and use of Customer and Customer agrees that no such advice shall be reproduced, disseminated, quoted or referred to at any time, in any manner or for any purpose, nor shall any public references to Consultant be made by Customer, without the prior written consent of Consultant. Customer expressly acknowledges that Consultant has been retained solely as a consultant to Customer and not as a consultant, advisor to or agent of any other person, and that Customer's engagement of Consultant is not intended to confer rights upon any persons not a party hereto (e.g., including stockholders, employees or creditors of Customer).

This Agreement shall be governed by the laws of the State of Rhode Island governing contracts made and to be performed in such State.

This Agreement supersedes all prior agreements, written or oral, between Customer and Consultant relating to the subject matter hereof. This Agreement may not be amended except by agreement in writing signed by Customer and Consultant.

Please confirm that the foregoing is in accordance with your understandings.

Very truly yours,

Orb Development, LLC

By: _____
Name: Michael Corso
Title: Managing Member

Accepted and Agreed as of the date
written above:

38 STUDIOS, LLC

By: _____
Name: Jennifer Maclean
Title: CEO

SCHEDULE A

Consulting Services:

Consultant has over the past 12 months and will hereafter continue to advise Customer with regard to Customer's general business affairs, including without limitation, possible relocation from Customer's current location in Massachusetts, evaluate the possibility to remain in Massachusetts and its possible financial assistance, evaluate potential financial and other assistance from other state, local, municipal and quasi-public agencies, departments, commissions and authorities. Examples of specific services include:

Review existing state, local, municipal and quasi-public programs that might provide relocation or business assistance

Assist in evaluating proposals for assistance

Speak to and communicate and meet with possible lenders

Review and advise Customer regarding possible site locations and real estate development strategy

Provide general information regarding possible locations and the relevant geography, politics, personalities and general workings of those environs.

The above do not replace customary investment banking, broker/dealer, attorney, accountant, lobbyist or bank advisors.

Consulting Fees:

Customer will pay to Consultant the following fees, in the manner set forth below:

Customer will issue to Consultant two warrants, each to acquire Class A units of Customer. The warrants will be in substantially the forms attached to this Agreement as Exhibits A-1 and A-2.

{Note: Warrants to be on substantially same terms as existing warrants, but with following business terms:

Warrant #1

1. Warrant #1 will be for 5,797,102 Units priced at \$.69.
2. Warrant #1 will be issued an exercisable upon execution hereof.

Consulting Agreement

2. Warrant #1 will have a term of 10 years.
3. Warrant #1 is based on a fully diluted value of \$62MM pre-money valuation.
4. Warrant #1 will include a put right in favor of Consultant pursuant to which Consultant may require that the Company purchase the warrant at a purchase price of \$4,000,000 (if the put were for all Units covered by the Warrant). Such put right will expire 12 months from the trigger event.

Warrant #2

1. Warrant #2 will be for a number of Units that equals 5% of the Customer's fully diluted equity based upon a fully diluted \$62MM pre-money valuation.
2. Warrant #2 will be exercisable upon execution hereof.
3. Warrant #2 will have a term of 10 years.

Document comparison by Workshare Professional on Thursday, April 08, 2010 11:48:54 AM

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Document 2 ID	interwovenSite://SGDMS/SG/1435954/2
Description	#1435954v2<SG> - Corso Engagement letter with 38 Studios LLC
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Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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