

From: Lamarre, Mark[Mark.Lamarre@cf.furb.com]
Sent: Monday, May 24, 2010 09:53:10 AM
To: Topp, Aaron(aaron.topp1@cf.furb.com); Kedia, Abhishek(abhishek.kedia@furb.com); Li, Jenny(jenny.li@furb.com)
CC: Lamarre, David R.(david.lamarre@wellsfargo.com)
BCC: abhishek.kedia@furb.com; jenny.li@furb.com
Subject: 38 - Signed EL

Attachments: SKM353-Scan10052017440.pdf

Mark C. Lamarre
Managing Director and Vice Chairman
Investment Banking & Capital Markets
Wells Fargo Securities, LLC
301 South College Street, 5th floor
Charlotte, NC 28202
(704) 715-8680
mark.lamarre@wellsfargo.com

From: Rick Wester [mailto:rickwester@38studios.com]
Sent: Thursday, May 20, 2010 6:49 PM
To: Lamarre, Mark; Tom Zaccagnino
Cc: Bill Thomas
Subject: Signed EL

Mark,

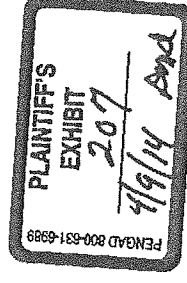
Here's the signed engagement letter.

Rick

Rick Wester
Chief Financial Officer
38 Studios, LLC

978.310.5198 T
978.310.5152 F

From: KM353@38studios.com [mailto:KM353@38studios.com]
Sent: Thursday, May 20, 2010 6:45 PM
To: Rick Wester
Subject: Message from KM353-Scanner



WFS_0079578



Wells Fargo Securities, LLC
301 South College Street
Charlotte, NC 28288-8905

May 20, 2010

WELLS FARGO SECURITIES, LLC

STRICTLY CONFIDENTIAL

38 Studios, LLC
5 Clock Tower Place
Suite 140
Maynard, MA 01754

Attention: Mr. Rick Wester
Chief Financial Officer

Ladies and Gentlemen:

This letter (the "Agreement") constitutes the agreement between 38 Studios, LLC (the "Company") and Wells Fargo Securities, LLC ("Wells Fargo Securities") that Wells Fargo Securities will serve as the placement agent for the Company in connection with the proposed offer and private placement (the "Transaction") by the Company of preferred stock, common stock or other equity or equity-linked interests of the Company or any subsidiary thereof (the "Securities").

The terms of this Agreement are as follows:

- A. **Services.** At the Company's request, Wells Fargo Securities shall provide the following specific services (the "Services"):
1. To the extent we deem appropriate and feasible, familiarize ourselves with the business, properties, and operations of the Company;
 2. Assist the Company in the preparation of a confidential private placement memorandum, including any exhibits or amendments thereto, which memorandum shall be reviewed for accuracy and completeness, and approved in writing, by the Company;

Together we'll go far



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3. Assist in identifying and screening prospective investors and preparing a list of such investors which shall be reviewed with and approved by the Company;
4. Solicit offers from "accredited investors" as defined in Rule 501 promulgated pursuant to the Securities Act of 1933, as amended (the "Act"), to purchase Securities;
5. Assist in structuring the terms of the Securities and negotiating such terms with potential investors; and
6. Assist in making presentations regarding any proposed Transaction to the Board of Directors of the Company.

Wells Fargo Securities is hereby authorized, as placement agent of the Company, to solicit offers to purchase the Securities from "accredited investors" as defined in Rule 501 promulgated pursuant to the Act. Notwithstanding anything set forth herein to the contrary, Wells Fargo Securities shall be obligated only to perform the Services on a "best efforts" basis and makes no commitment, express or implied, to purchase or place the Securities.

B. **Fees and Expenses.** In connection with the Services described above, the Company shall pay to Wells Fargo Securities the following compensation:

1. **Transaction Related Fees**

- (a) **Market Entrance Fee.** A nonrefundable cash fee of \$50,000 (the "Market Entrance Fee"), earned on the date of first distribution to a potential investor of the confidential private placement memorandum or similar offering materials for the Transaction.
- (b) **Transaction Fee.** A nonrefundable cash fee payable at, and as a condition to, closing of a Transaction (the "Transaction Fee") equal to 5.0% of the aggregate gross proceeds raised from the sale of such Securities. There shall be no Transaction Fee payable to Wells Fargo Securities on any proceeds raised from any current member of the Company's Board of Directors.

2. **Alternative Financing Fees**

- (a) **Consulting Fee.** A nonrefundable cash fee of \$25,000 (the "RIEDC Consulting Fee"), earned on the day after the first meeting among the Rhode Island Economic Development Council, or any of its affiliates (collectively, "RIEDC"), Wells Fargo Securities and the Company relating to an Alternative Financing (as defined below).
- (b) **Structuring Fee.** A nonrefundable cash fee of \$75,000 (the "Alternative Financing Options Structuring Fee"), earned upon the decision by the Company, at its sole discretion, to actively pursue an Alternative Financing.
- (c) **Alternative Financing Option Closing Fee.** A nonrefundable cash fee of \$300,000 (the "Alternative Financing Option Closing Fee"), payable upon the closing by the Company of an Alternative Financing Transaction.

(d)

Additional Engagement. In addition to the fees payable hereunder, the Company shall use its best efforts, should it decide to pursue an Alternative Financing Transaction, to engage Wells Fargo Securities as sole-, lead-, and book-running agent or underwriter, if so requested by Wells Fargo Securities. Any additional role to be served by Wells Fargo Securities would be governed by a separate engagement letter and/or underwriting agreement satisfactory to Wells Fargo Securities, when and if entered into.

Alternative Financing Transaction for the purposes of this section, means any financing transaction other than a Transaction, including, but not limited to the issuance of municipal bonds on behalf of the Company, consummated prior to September 30, 2010, pursuant to which the Company receives proceeds in excess of \$2 million.

3. **Expenses.** In addition to any fees payable to Wells Fargo Securities hereunder and regardless of whether a Transaction is consummated, the Company hereby agrees, from time to time upon request and upon expiration or termination of this Agreement, to promptly reimburse Wells Fargo Securities for all reasonable travel and other out-of-pocket expenses incurred in connection with Wells Fargo Securities' engagement hereunder including the fees and expenses of Wells Fargo Securities' counsel, which expenses (including the fees and expenses of Wells Fargo Securities' counsel) shall not exceed \$50,000 without the prior consent of the Company (which consent shall not be unreasonably withheld) and provided that such limitation shall in no way affect or limit the obligations of the Company with respect to indemnification as set forth on ANNEX A attached hereto.
4. **Future Transactions.** If, prior to October 31, 2010, the Company or any of its subsidiaries disposes of or acquires any assets or businesses or enters into any combination transactions for which it will utilize an advisor, Wells Fargo Securities shall have the right to act as the Company's exclusive financial advisor for all such dispositions or acquisitions or combination transactions. Any decision by Wells Fargo Securities or its affiliates to act as financial advisor in connection with any such disposition or acquisition, would be contained in separate agreements, which agreements would be on market standard terms and contain, among other things, provisions for customary fees for transactions of similar size and nature and indemnification of Wells Fargo Securities.
- C. **Coordination.** In order to facilitate the coordination of the parties' efforts with respect to a Transaction, during the period of Wells Fargo Securities' engagement hereunder, neither the Company nor its management or any other representative of the Company will initiate or solicit any discussions looking toward or contemplating any Transaction except through, or in coordination with, Wells Fargo Securities. Each of the Company and Wells Fargo Securities will inform and consult with the other on a regular basis regarding any inquiries or proposals received from potential parties to a Transaction.

D. **Term and Termination of Engagement.** Except as set forth below, the initial term of Wells Fargo Securities' engagement will begin on the date hereof and end on the earlier of the consummation of a Transaction or 12 months from the date hereof. Wells Fargo Securities' engagement may be terminated before the end of the initial term by either party hereto at any time, with or without cause, upon ten days' prior written notice to the other party. Notwithstanding any such expiration or termination, the provisions in this Agreement regarding Fees and Expenses, Future Transactions, Term and Termination of Engagement, Use of Information, Confidentiality, Indemnity, Limitation of Wells Fargo Securities' Engagement to the Company, Limitation of Wells Fargo Securities' Liability to the Company, Governing

Law, Arbitration of Disputes, and Miscellaneous shall survive and remain in full force and effect and be binding on any successors of the Company provided, however, that the Future Transactions provisions shall not survive if Wells Fargo Securities voluntarily terminates this Agreement. In addition, Wells Fargo Securities shall be entitled to the full amount of the Transaction Fee in the event an agreement is entered into with respect to a Transaction at any time within six months from the date of any such expiration or termination with any potential investor named on a list (the "List"), to be mutually and jointly compiled by Wells Fargo Securities and the Company in good faith. It is expected that the List will include, among others, investors: (i) identified orally or in writing as a potential party to a Transaction by Wells Fargo Securities during Wells Fargo Securities' engagement hereunder, (ii) with whom the Company had any discussions regarding a potential Transaction during Wells Fargo Securities' engagement hereunder, whether or not such discussions were initiated by Wells Fargo Securities, or (iii) who proposed or to whom the Company proposed a Transaction during Wells Fargo Securities' engagement hereunder. The Company and Wells Fargo Securities agree to work collaboratively and expeditiously after the expiration or termination of the engagement to compile the List.

E. Use of Information. The Company will furnish (and will use reasonable efforts to cause other potential parties to a Transaction to furnish) Wells Fargo Securities such information as Wells Fargo Securities reasonably requests in connection with the performance of its services hereunder. The Company understands, acknowledges and agrees that, in performing its services hereunder, Wells Fargo Securities will use and rely entirely upon such information as well as publicly available information regarding the Company and other potential parties to a Transaction and that Wells Fargo Securities does not assume responsibility for independent verification of the accuracy or completeness of any information, whether publicly available or otherwise furnished to it, concerning the Company or any potential party to a Transaction, including, without limitation, any financial information, forecasts or projections considered by Wells Fargo Securities in connection with the provision of its services. Accordingly, Wells Fargo Securities shall be entitled to assume and rely upon the accuracy and completeness of all such information and shall not be required to conduct a physical inspection of any of the properties or assets or to prepare or obtain any independent evaluation or appraisal of any of the assets or liabilities of the Company or any potential party to a Transaction or to make any determination as to the solvency of any party. With respect to any financial forecasts or projections made available to Wells Fargo Securities by the Company or any potential party to a Transaction and used by Wells Fargo Securities in its analyses, Wells Fargo Securities shall be entitled to assume that such forecasts or projections have been reasonably prepared and reflect the best currently available estimates and judgments of the management of the Company or any potential party to a Transaction, as the case may be, as to the matters covered thereby. If any information provided to Wells Fargo Securities by the Company or any information contained in the disclosure documents used in the marketing of the Securities becomes inaccurate, incomplete or misleading in any material respect during Wells Fargo Securities' engagement hereunder, the Company shall so advise Wells Fargo Securities.

F. Confidentiality. In the event of the consummation or public disclosure of any Transaction, Wells Fargo Securities shall have the right to disclose its participation in such Transaction, including, without limitation, the placement at its cost of "tombstone" advertisements in financial and other newspapers and journals.

Except as required by law, or pursuant to order of a court of competent jurisdiction, no written or oral analysis or advice provided by Wells Fargo Securities pursuant to this Agreement shall be disclosed, in whole or in part, to any third party other than to and among the Company's management, members, advisors and agents, or circulated or referred to publicly, without the prior written consent of Wells Fargo Securities. The fact of Wells Fargo Securities' engagement hereunder may be disclosed to prospective parties to a Transaction, but the Company may not publicly announce or advertise Wells Fargo Securities' engagement without the prior written consent of Wells Fargo Securities.

Wells Fargo Securities agrees to keep confidential during the term, and for 12 months after the expiration or any termination, of this Agreement, all material nonpublic information provided to it by the Company, except that with respect to Confidential Information that constitutes intellectual property or trade secrets of 38 Studios, the duration of Wells' confidentiality obligations hereunder shall extend until the date that is three years from the date hereof, and except as required by law, pursuant to an order of a court of competent jurisdiction or the request of a regulatory authority having jurisdiction over Wells Fargo Securities or its affiliates, or as contemplated by the terms of this Agreement. Notwithstanding any provision herein to the contrary, Wells Fargo Securities may disclose nonpublic information to its affiliates, agents and advisors whenever Wells Fargo Securities determines that such disclosure is necessary to provide the services contemplated hereunder; provided, however, that Wells Fargo Securities shall be responsible for any unauthorized use or disclosure by its affiliates, agents and advisors.

C. Securities Matters. The Company acknowledges that the Securities will be offered in a private placement, will not be registered under the Act, and may not be sold or transferred by investors without registration under the Act and other applicable securities laws (e.g., state "blue sky" laws) or pursuant to an exemption from such registration. For purposes of this Agreement, the terms "offer" and "sale" have the meanings specified in Section 2(a)(3) of the Act. The Company represents, warrants and covenants that:

1. The Company has not taken and will not take any action that would cause the offer or sale of the Securities to be required to be registered under the Act, whether through a theory of integration with another offering or otherwise. The Company further acknowledges that the indicative terms of the Securities are subject to negotiation and documentation.
2. Neither the Company nor any person acting on its behalf will, directly or indirectly (except through Wells Fargo Securities or with notice to Wells Fargo Securities), offer or sell, attempt to offer or sell, or otherwise solicit any offer to buy, any of the Securities.
3. Neither the Company nor any other person acting on its behalf will, directly or indirectly, offer or sell any securities of the same or similar class as the Securities, or take any other action, so as to cause the offer and sale of the Securities to fail to be entitled to the exemption afforded by Rule 506 of Regulation D under the Act.
4. Neither the Company nor any other person acting on its behalf will offer or sell the Securities by any form of general solicitation or general advertising.
5. Neither the Company nor any other person acting on its behalf will, during the term of this Agreement, offer or sell the Securities to any person who is not an "accredited investor" as defined in Rule 501 under the Act.
6. The Company will be solely responsible for the contents of any disclosure documents used in the offering of the Securities, and such documents will not, as of the date of any offer or sale of the Securities, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.
7. The Company will promptly take such action as Wells Fargo Securities may reasonably request to qualify for exemption (but not register) the Securities for

offering and sale as a private placement under the securities laws of such states as Wells Fargo Securities may reasonably request and to comply with such laws so as to permit such offers and sales.

H. **Indemnity.** Wells Fargo Securities and the Company agree to the provisions with respect to indemnification by the Company of Wells Fargo Securities and certain other parties as set forth on Annex A attached hereto.

I. **Limitation of Wells Fargo Securities' Engagement to the Company.** The Company acknowledges that Wells Fargo Securities has been retained only by the Company, that Wells Fargo Securities is providing services hereunder as an independent contractor (and not in any fiduciary or agency capacity) and that the Company's engagement of Wells Fargo Securities is not deemed to be on behalf of, and is not intended to confer rights upon, any shareholder, owner or partner of the Company or any other person not a party hereto as against Wells Fargo Securities or any of its affiliates, or any of its or their respective officers, directors, controlling persons (within the meaning of Section 15 of the Act or Section 20 of the Securities Exchange Act of 1934), employees or agents. Unless otherwise expressly agreed in writing by Wells Fargo Securities, no one other than the Company is authorized to rely upon this engagement or any other statements or conduct of Wells Fargo Securities, and no one other than the Company is intended to be a beneficiary of this Agreement. The Company acknowledges that any recommendation or advice, written or oral, given by Wells Fargo Securities to the Company in connection with Wells Fargo Securities' engagement is intended solely for the use of the Company's management and directors in considering a possible Transaction, and any such recommendation or advice is not on behalf of, and shall not confer any rights or remedies upon, any other person or be used or relied upon for any other purpose.

J. **Limitation of Wells Fargo Securities' Liability to the Company.** Wells Fargo Securities and the Company further agree that neither Wells Fargo Securities nor any of its affiliates or any of its their respective officers, directors, controlling persons (within the meaning of Section 15 of the Act or Section 20 of the Securities Exchange Act of 1934), employees or agents shall have any liability to the Company, its security holders or creditors, or any person asserting claims on behalf of or in the right of the Company (whether direct or indirect, in contract, tort, for an act of negligence or otherwise) for any losses, fees, damages, liabilities, costs, expenses or equitable relief arising out of or relating to this Agreement or the Services to be rendered hereunder, except for losses, fees, damages, liabilities, costs or expenses that arise out of or are based on any action of or failure to act by Wells Fargo Securities and that are finally determined (by a court of competent jurisdiction and after exhausting all appeals or in an arbitration conducted in accordance with this Agreement) to have resulted primarily from the bad faith, gross negligence or willful misconduct of Wells Fargo Securities.

K. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

L. **Arbitration of Disputes.** Any claim or controversy arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in New York, New York.

M. **Miscellaneous.** This Agreement shall not be modified or amended except in writing signed by Wells Fargo Securities and the Company. This Agreement shall not be assigned by the Company without the prior written consent of Wells Fargo Securities; provided, however, that in the event of a Transaction in which the Company is not the surviving corporation or entity, the Company's remaining

obligations, if any, under this Agreement shall remain in full force and effect and become obligations of the surviving corporation or entity. Wells Fargo Securities may not assign this Agreement, or delegate or subcontract any of its rights or obligations hereunder to any third party, in whole or in part, without the Company's prior written consent. This Agreement shall inure to the benefit of and be binding upon the Company, Wells Fargo Securities and their respective successors and permitted assigns. Notwithstanding any provision in this Agreement to the contrary, in no event shall either party be liable for any lost profits or consequential, special, indirect, exemplary, or punitive damages, even if it shall have been advised of the possibility of such damages. This Agreement constitutes the entire agreement of Wells Fargo Securities and the Company with respect to the subject matter hereof and supersedes all prior agreements. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, such determination will not affect such provision in any other respect, and the remainder of the Agreement shall remain in full force and effect. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Please note that Wells Fargo Securities is an affiliate of Wells Fargo & Company, which through its subsidiaries and affiliates provides full-service securities trading and brokerage services and other investment banking and financial advisory services. In the ordinary course of its trading and brokerage activities, one of Wells Fargo Securities' affiliates may at any time hold long or short positions, and may trade or otherwise effect transactions, for its own account or for the account of customers, in the securities or options or other derivatives relating to the securities of the Company and other entities that may be involved in a Transaction. Wells Fargo Securities recognizes its responsibility for compliance with federal laws in connection with such activity. Nothing contained herein shall limit or preclude Wells Fargo Securities or any of its affiliates (i) from carrying on any business with, from providing banking or other financial services to, or from participating in any capacity, including as an equity investor, in any party whatsoever, including without limitation, any competitor, supplier or customer of the Company, or any other party that may have interests different than or adverse to the Company or (ii) from carrying on its business as currently conducted or as such business may be conducted in the future. The foregoing shall not limit or change the obligations of confidentiality and nondisclosure contained herein. Wells Fargo Securities is an investment bank and does not provide tax, accounting or legal advice.

N. USA Patriot Act Notice. Important information about entering into a business relationship with Wells Fargo Securities. To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person or corporation who opens an account or enters into a business relationship.

Provided, however, that for a period of 24 months following the expiration or termination of this Agreement, Wells Fargo Securities shall not represent any person or entity that attempts to acquire all or substantially all of the Company.

[Remainder of page intentionally left blank]

38 Studios, LLC
April 29, 2010
Page 8

In acknowledgment that the foregoing correctly sets forth the understanding reached by Wells Fargo Securities and the Company, please sign in the space provided below, whereupon this letter shall constitute a binding Agreement as of the date indicated above.

Very truly yours,
WELLS FARGO SECURITIES, LLC

By: _____
Name: Mark C. Lamarre
Title: Managing Director and Vice Chairman

Accepted and agreed:
38 Studios, LLC

By:  _____
Name: Rick Wester
Title: Chief Financial Officer

Attachment

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ANNEX A

In connection with Wells Fargo Securities' engagement to advise and to assist the Company pursuant to the Agreement, dated May 18, 2010, to which this Annex A is attached, the Company agrees to indemnify and to hold harmless Wells Fargo Securities and each of its affiliates, and their respective officers, directors, controlling persons (within the meaning of Section 15 of the Securities Act of 1933 or Section 20 of the Securities Exchange Act of 1934), employees, affiliates, agents, counsel and other advisors hereinafter collectively referred to as an "Indemnified Party"), to the full extent allowed by law or equity, from and against any and all judgments, losses, claims (whether or not valid), damages, costs, fees, expenses or liabilities, joint or several, to which an Indemnified Party may become subject, related to or arising out of (i) Wells Fargo Securities' engagement or performance under the Agreement, the Securities, the Transaction or the Services to be rendered by Wells Fargo Securities under the Agreement, (ii) any untrue statement or any alleged untrue statement of material fact contained in the private placement memorandum or any other disclosure document used by the Company in connection with a Transaction (collectively, "Disclosure Materials"), (iii) any omission or alleged omission to state in any Disclosure Material a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or (iv) any actual or threatened claim, litigation, investigation, proceeding or action in any court or before any regulatory, administrative or other body relating to any of the foregoing (hereinafter collectively referred to as a "Claim"), and shall, upon request, reimburse an Indemnified Party for all reasonable legal and other reasonable costs, fees and expenses as they are incurred in connection with investigating, preparing or defending a Claim, whether or not such Indemnified Party is ever made party to any legal proceedings or such Claim arose before or after the date of the Agreement; provided, however, that, except with respect to Claims of the type described in clauses (ii) and (iii), no such indemnification shall be required to be paid to an Indemnified Party with respect to a Claim that is finally determined by a court of competent jurisdiction (after exhaustion of all appeals) or in an arbitration conducted in accordance with this Agreement to have resulted primarily from the gross negligence, bad faith or willful misconduct of such Indemnified Party.

If the foregoing indemnity is unavailable or insufficient for any reason (other than by reason of the terms hereof) to hold any Indemnified Party harmless, then the Company shall contribute to any amounts paid or payable by an Indemnified Party in such proportion as appropriately reflects the relative benefits received by such Indemnified Party and the Company in connection with the matters to which the Claim relates. If an allocation solely on the basis of benefits is judicially determined to be impermissible, then the Company shall contribute in such proportion as appropriately reflects the relative benefits and relative fault of the Company and such Indemnified Party, as well as any other equitable considerations. In no event shall the Company contribute less than the amount necessary to ensure that the aggregate liability of Wells Fargo Securities and any other Indemnified Party for contribution pursuant to this paragraph in connection with all Claims does not exceed the amount of fees actually received by Wells Fargo Securities under the Agreement. For purposes hereof, relative benefits to the Company and Wells Fargo Securities of the Transaction shall be deemed to be in the same proportion that the total value received or contemplated to be received by the Company and/or its security holders in connection with the Transaction bears to the fees paid to Wells Fargo Securities under the Agreement in respect of such Transaction, and other relative fault of each Indemnified Party and the Company shall be determined by reference to, among other things, whether the actions and omissions to act were by such Indemnified Party or the Company and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such action or omission.

All amounts due to an Indemnified Party hereunder shall be payable by the Company promptly upon request by such Indemnified Party. In addition, the Company agrees to pay all out-of-pocket costs and expenses, including attorneys' fees and expenses, incurred by any Indemnified Party to enforce the terms of this Annex A.

The Company agrees not to enter into any waiver, release or settlement of any Claim (whether or not Wells Fargo Securities or any other Indemnified Party is a formal party to such Claim) in respect of which indemnification may be sought hereunder without the prior written consent of Wells Fargo Securities (which consent will not be unreasonably withheld), unless such waiver, release or settlement includes an unconditional release of Wells Fargo Securities and each Indemnified Party from all liability arising out of such Claim. Wells Fargo Securities may enter into any waiver, release or settlement of any Claim (whether or not Wells Fargo Securities or any other Indemnified Party is a formal party to such Claim) in respect of which indemnification may be sought hereunder without the prior written consent of the Company if the Company shall have not paid in full all fees and expenses then due and payable to Wells Fargo Securities and each Indemnified Party under the Agreement (including this Annex A) unless the Company has given notice to Wells Fargo that it has a reasonable basis to contest the payment of such fees.

The provisions of this Annex A shall be in addition to any liability which the Company may otherwise have to Wells Fargo Securities; shall not be limited, by any rights that Wells Fargo Securities or any other Indemnified Party may otherwise have; shall remain in full force and effect regardless of the expiration or any termination of Wells Fargo Securities' engagement; and shall inure to the benefit of and be binding upon any successors or assigns of Wells Fargo Securities and the Company.

1 fee of \$300,000 payable upon the closing by the
2 company of an alternative financing transaction.
3 A. Yes.
4 Q. Okay. So --
5 A. We structured it that way to avoid paying a
6 typical exit fee, which you pay no matter what.
7 We don't want to raise equity, okay, well, fine,
8 you know, we put time into this, we owe it.
9 Q. Now, if there was no closing they wouldn't get the
10 \$300,000 fee, would they?
11 MR. VALENTE: Objection.
12 Q. That's what it says.
13 A. That's what it says, yes.
14 Q. Okay. So the only way they get the \$300,000 fee
15 is if there's a closing with the RIEDC; is that
16 true?
17 MR. VALENTE: Objection.
18 A. It doesn't specifically mention RIEDC. It
19 mentions a municipal bond. But, yeah, they
20 would -- you know, instead of paying a termination
21 fee, exit fee, we would pay on success, yes.
22 Q. The alternative financing fees start off with a
23 nonrefundable cash fee of \$25,000, the RIEDC
24 consulting fee; yes?
25 A. Yes.

1 Q. So if there was a closing of an RIEDC bond, there
2 would be \$300,000 payable pursuant to that.
3 That's what you understood when you signed it,
4 right?
5 MR. VALENTE: Objection.
6 A. You know, at this time I don't know if we knew
7 there was going to be a bond. I mean --
8 Q. No, no, no. You didn't know if there was going to
9 be but you hoped there was going to be. You were
10 talking about having them consulting with the
11 RIEDC. That was in connection with a possible
12 bond, wasn't it?
13 A. I mean, I think at this point they were still
14 talking about, you know, a loan that they would
15 guarantee. I'm not sure at this point.
16 Q. Does it go on to talk about municipal bonds?
17 A. It does mention bonds, yes.
18 Q. Okay. So in your mind there were negotiations
19 going on between 38 Studios and the RIEDC; yes or
20 no? Had you not --
21 A. At this point in time, yes, 'cause we had the
22 meetings.
23 Q. And you had already sent financial projections to
24 the EDC, had you not?
25 A. Correct.

1 Q. And then there's a -- and that's called -- well,
2 that says it's relating to an alternative
3 financing as defined below; yes? Do you see that?
4 A. I'm sorry, I don't. Could you point me in the
5 right direction? Is it (b)?
6 Q. Paragraph (a).
7 A. (a).
8 Q. "Consulting Fee."
9 A. Yeah.
10 Q. "A nonrefundable cash fee of \$25,000"; yes?
11 A. Yes.
12 Q. "The 'RIEDC Consulting Fee.'"
13 A. It does say that, yes.
14 Q. And then it says it's "relating to an Alternative
15 Financing (as defined below)": yes?
16 A. Correct.
17 Q. Okay. In regard to the RIEDC as defined below:
18 yes?
19 A. Yes.
20 Q. Okay. And then when you go to "Alternative
21 Financing Option Closing Fee," it says "\$300,000
22 payable upon the closing by the Company" -- that's
23 38 Studios -- "of an Alternative Financing
24 Transaction"; yes?
25 A. It does say that, yes.

1 Q. And the financial projections showed a \$75 million
2 loan that you hoped to get.
3 A. Correct.
4 Q. Yes?
5 A. Yes.
6 Q. And you sent that in early April.
7 A. We had, yes.
8 Q. Yes. Okay. So now we're in April 29th, --
9 MR. SHEEHAN: May 20th.
10 MR. WISTOW: Okay. Oops. Date of the
11 signature?
12 Q. Oh, I'm sorry, May 20th. May 20th, you sign a
13 contract with Wells Fargo; true?
14 A. True.
15 Q. And isn't it clear that you understood that if
16 there's a closing of the bonds with RIEDC, that
17 they would get a \$300,000 fee, Wells Fargo? Isn't
18 that clear?
19 MR. VALENTE: Objection.
20 MR. CONNOLLY: Objection.
21 Q. Can you answer that?
22 MR. SHEEHAN: You know, you're pointing
23 him to --
24 MR. CONNOLLY: I'm pointing to the
25 paragraphs that Mr. Wistow is asking about.