

From: Stolzman, Rob </O=APS/OU=PROVIDENCE/CN=RECIPIENTS/CN=ROB STOLZMAN>
Sent: Thursday, April 1, 2010 7:20 PM
To: Michael Corso <mcorso@kingstoncap.com>
Cc: Stokes, Keith <kstokes@riedc.com>; Saul, Michael <msaul@riedc.com>; Hashway, Fred <fhashway@riedc.com>
Subject: RIEDC/38 Studios
Attach: image001.png; 38 Studios RIEDC Letter 3_31 Clean Draft.DOC; 38 Studios RIEDC Letter 3_31 Marked Draft.DOC; Budget Article for RIEDC - Kushner - 4_1_10.DOC

Hi Michael. As we discussed, I am attaching DRAFTS of the Kushner and revised drafts of the letter of intent (tweaked to reflect some nuances we discussed at Maynard on Monday). The Kushner has not yet been reviewed by the Governor, so please advise 38 Studios of such and that it is subject to review and comment by him and the general assembly (yada, yada, yada...normal lawyer stuff about me not necessarily having a consensus yet on language).


I'll be in Maynard tomorrow with Mike Saul and Fred Hashway with Rick and Tom.

Thanks,

Rob

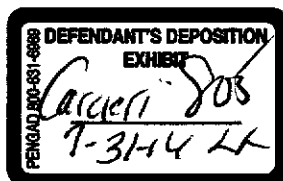
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 <http://www.apslaw.com/logo.png>

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APS002386

RIEDC Letterhead

April __, 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 the Rhode Island Economic Development Corporation ("RIEDC") will provide credit enhancement 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 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 either guarantee the repayment annual debt service of up to \$75M of the company's borrowing or issue \$75M of revenue bonds, the proceeds of either of which would provide the necessary financing to complete production on Copernicus and begin relocating 38 Studios to Rhode Island. We anticipate that these guaranteed loans would be made by, or 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

APS002387

Mr. Schilling and Ms. MacLean
April __, 2010
Page 2

product and contractual commitments for product publishing and distribution, but as yet is "pre revenue", we recognize the market for these bonds or loans would be limited without credit enhancement. Accordingly, we would immediately request the Rhode Island General Assembly, which currently is in session, to authorize the RIEDC to guarantee the annual debt service of the loans or, in the case of the bonds, 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). The guarantee or the bond documents 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

APS002388

distributions to members shall be limited to a coverage ratio formula to be agreed upon by the RIEDC and the company prior to closing.

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
April __, 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.

Of course, the RIEDC also would offer any other assistance it could to 38 Studios to facilitate your smooth transition to Rhode Island. A more complete listing of services provided by the RIEDC 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.

APS002390

Mr. Schilling and Ms. MacLean

April __, 2010

Page 5

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

Agreed and accepted as of the date first above written:

38 Studios LLC

By: _____

Its: _____

529694.7

APS002391

RIEDC Letterhead

April __, 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

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APS002392

Mr. Schilling and Ms. MacLean

April __, 2010

Page 2

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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

APS002393

distributions to members shall be limited to a coverage ratio formula to be agreed upon by the RIEDC and the company prior to closing.

Mr. Schilling and Ms. MacLean
April __, 2010
Page 3

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;
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- (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:

APS002394

Mr. Schilling and Ms. MacLean
April __, 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.

Mr. Schilling and Ms. MacLean
April __, 2010
Page 5

Of course, the RIEDC also would offer any other assistance it could to 38 Studios to facilitate your smooth transition to Rhode Island. A more complete listing of services provided by the RIEDC is available at the RIEDC's website: www.riedc.com.

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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

APS002395

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
April __, 2010
Page 6

Agreed and accepted as of the date first above written:

38 Studios LLC

By: _____

APS002396

Its: _____

529694.6

DRAFT

APS002397

ARTICLE ____

RELATING TO DEBT MANAGEMENT ACT JOINT RESOLUTION(S)

SECTION ____ *RIEDC JOB CREATION GUARANTY PROGRAM*

1 WHEREAS, the Rhode Island Economic Development Corporation was created by the
2 general assembly pursuant to chapter 64 of title 42 of the general laws in order to, among other
3 things, promote the retention and expansion of businesses and the creation of jobs in Rhode
4 Island; and

5 WHEREAS, one of the methods utilized by the Rhode Island Economic Development
6 Corporation to help promote and expand businesses in Rhode Island is the use of its quasi public
7 corporation powers to issue bonds and debt and guarantees of debt; and

8 WHEREAS, Rhode Island continues to suffer from continuing high unemployment and
9 other ill effects from the most recent national recession; and

10 WHEREAS, one of Rhode Island's economic development's strategies of continuing to
11 optimize its knowledge economy assets such, as the sciences, technology, digital media,
12 innovative manufacturing and other technologies, requires adequate access to capital; and

13 WHEREAS, Rhode Island companies in growth phases are limited in their ability to
14 obtain reasonable credit without access to credit enhancement; and

15 WHEREAS, the Rhode Island Economic Development Corporation desires to create a
16 loan guarantee and bond program pursuant to which it will be able to guarantee loan repayments
17 either directly or through the issuance of its bonds in order to induce lending to companies
18 growing their employment in Rhode Island; and

1 WHEREAS, the Rhode Island Economic Development Corporation seeks to have
2 authority pursuant to chapter 18 of title 35 of the general laws to guarantee debts or otherwise
3 issue its bonds for this purpose not to exceed \$125,000,000 in the aggregate of unpaid principal
4 and interest, thereby limiting the contingent long-term cost of such program to the state to such
5 maximum amount; and

6 WHEREAS, the Rhode Island Economic Development Corporation requests the approval
7 of the general assembly prior to undertaking such program; now, therefore, be it:

8 RESOLVED, that the Rhode Island Economic Development Corporation (the
9 "corporation") is hereby empowered and authorized pursuant to chapter 18, title 35 of the general
10 laws, and notwithstanding any provisions of chapter 64, title 42 of the general laws to the
11 contrary, to create the corporation's Job Creation Guaranty Program (the "program") and
12 guarantee annual debt service or issue bonds up to an aggregate guaranty or bond obligations of
13 the corporation with respect to the program not to exceed \$125,000,000 in the aggregate;

14 RESOLVED, that guaranties or bonds issued by the corporation shall be approved by its
15 board of directors, or a committee of the board as so designated by the board, and shall be
16 executed by its executive director or any authorized officer of the corporation as authorized in a
17 resolution approved by the board of directors of the corporation from time to time in a form the
18 corporation may prescribe. The board of directors of the corporation in authorizing any such
19 guaranty or bond obligations shall consider and be guided by the following objectives:

20 (a) Priority will be given to projects that promptly create permanent, full-time jobs with
21 annual wages in excess of 150% of the then current minimum wage earned annually with
22 industry comparable benefits.

23

1 (b) Any guaranty or bond obligations hereby authorized should leverage capital
2 formation to facilitate business development with new and existing companies that create or
3 retain jobs.

4 (c) Priority shall be given to guarantees that align with the State's economic
5 development strategy to expand high-wage jobs in knowledge industry growth clusters or with
6 respect to assets related thereto.

7 (d) Guarantees or loan obligations from the program's borrower will be collateralized by
8 any and all available assets of the borrower and guarantors, where applicable, including
9 subordinate collateral positions, cross collateralization with other lenders and collateralized
10 guarantees as appropriate.

11 (e) Insurances, including hazard and key person life, may be required where appropriate.

12 (f) The corporation may utilize such data and retain experts as necessary to assess and
13 validate associated guaranty risk, and the corporation may charge borrower reasonable fees for
14 the corporation's guaranty and reimbursement of expenses;

15 RESOLVED, that in order assure any payments due on guarantees or bond obligations
16 issued by the corporation in connection with the program pursuant to this authorization are made,
17 to assure the continued operation and solvency of the corporation for the carrying out of its
18 corporate purposes, and except as otherwise set forth in these authorizing resolutions in
19 accordance with the provisions of chapter 64, title 42 of the general laws (i) the corporation shall
20 create a reserve fund from which shall be charged any and all expenses of the corporation with
21 respect to guarantee or bond obligations of the corporation pursuant to these resolutions resulting
22 from a program borrower's default; and (ii) the corporation shall credit to the reserve fund no
23 less than fifty percent (50%) of all program receipts of the corporation including guaranty fees,

1 premiums and any other receipts or recoveries from collections received pursuant to the
2 corporation's rights to recover payments as a guarantor; and (iii) to the extent the corporation's
3 obligations as a guarantor or pursuant to its program bond obligations are not satisfied by
4 amounts in its guaranty reserve fund, the executive director of the corporation shall annually, on
5 or before December 1st, make and deliver to the governor a certificate stating the minimum
6 amount, if any, required for the corporation to make payments due on such guarantees. During
7 each January session of the general assembly, the governor shall submit to the general assembly,
8 as part of the governor's budget, the total of such sums, if any, required to pay any and all
9 obligations of the corporation under such guarantees or bond obligations pursuant to the terms of
10 this authorization. All sums appropriated by the general assembly for that purpose, and paid to
11 the corporation, if any, shall be utilized by the corporation to make payments due on such
12 guarantees or bond obligations. Any recoveries by the corporation of guaranteed payments are
13 to be returned to the guaranty reserve fund and utilized to reduce any obligation of the state
14 pursuant to any guarantees entered into by the corporation;

15 RESOLVED, On or before January 1 of each year, the corporation shall issue a report on
16 all guarantees issued by the corporation pursuant to this authorization. The report shall include
17 at a minimum: a list of each guarantee issued; a description of the borrower on behalf of which
18 the guarantee was issued; the lender or lenders that made the loan, and the amount of such loan,
19 to such borrower; the amount of principal and interest on each such loan outstanding as of the
20 date of such report; a summary of the collateral securing the repayment of such loan for which
21 the guarantee was issued; and a summary of the economic impacts made by such borrower as a
22 result of the guaranteed loan, including but not limited to the number, type and wages of jobs
23 created by such borrower, any impacts on the industry in which the borrower operates and an

- 1 estimate of income taxes for the state of Rhode Island generated by the employees of such
- 2 borrower and the borrower itself.
- 3