

**From:** [Michael Corso](#)  
**To:** [Tom Zaccagnino](#)  
**Subject:** FW: RIEDC/38 Studios  
**Date:** Wednesday, April 07, 2010 11:27:08 AM  
**Attachments:** [image.png](#)  
[38 Studios RIEDC Letter 4.7 Clean Draft.DOC](#)  
[38 Studios RIEDC Letter 4.7 Marked Draft.DOC](#)

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----- Forwarded Message

**From:** "Stolzman, Rob" <[RStolzman@apslaw.com](mailto:RStolzman@apslaw.com)>  
**Date:** Wed, 7 Apr 2010 11:04:41 -0400  
**To:** Michael Corso <[mcorso@kingstoncap.com](mailto:mcorso@kingstoncap.com)>  
**Cc:** "Stokes, Keith" <[kstokes@riedc.com](mailto:kstokes@riedc.com)>, <[msaul@riedc.com](mailto:msaul@riedc.com)>, "Hashway, Fred" <[fhashway@riedc.com](mailto:fhashway@riedc.com)>  
**Conversation:** RIEDC/38 Studios  
**Subject:** RIEDC/38 Studios

Hi all. I am attaching a "tweaked" letter of intent between 38 Studios and the RIEDC, marked and clean, to reflect what Fred and I discussed with Michael, Tom and Curt last night. Basically, we've narrowed the facility from either a guarantee or bond to the bond option, clarified that the company will continue to develop product and perhaps even grow in Maynard before relocating to RI, adjusted the time frames to 12, 24 and 36 months for job creation (reflecting that if the bonds close in June, the company would have had only six months to select, refit and relocate into a facility, which may not be feasible) and providing a mechanism by which the parties can adjust the time frames should site location and development present mutually beneficial opportunities to the state and the company.

Take a look at the attached and let me know if you have any additional comments.

Rob

Robert I. Stolzman, Esq.  
ADLER POLLOCK & SHEEHAN P.C.  
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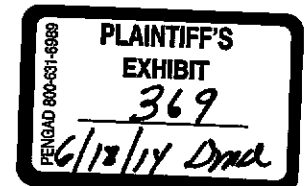
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RIEDC Letterhead

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 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 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

Mr. Schilling and Ms. MacLean

April \_\_, 2010

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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 utilize our statutory authority to issue bonds with a capital reserve mechanism by which the General Assembly must 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 moral obligation mechanism is reflected in the RIEDC's enabling legislation and the resolutions of the legislature authorizing the RIEDC to enter into these types of obligations. That legislation and the related authorizing resolutions require the Governor to submit to the legislature by December 1 of every year a budget request for the legislature to appropriate in the following fiscal year's budget any shortfall on debt service that otherwise is not adequately reserved by the RIEDC. 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 current business development, then relocation to and expansion in Rhode Island.

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

Term: 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.

Mr. Schilling and Ms. MacLean

April \_\_, 2010

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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.

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 immediately commence planning and development in order to 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 within twelve (12) months of the closing of the issuance of the bonds (the "closing");
- (f) 38 Studios will add an additional 175 jobs in Rhode Island within twenty-four (24) months of the closing;
- (g) 38 Studios will add an additional 150 jobs in Rhode Island within thirty-six (36) months of the closing;
- (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 (notwithstanding the job requirement timing mechanisms set forth in sections (e), (f) and (g) above, the parties recognize that site selection and development options for the company may be such that adjustments to those requirements may be beneficial to both the company and Rhode Island, and the parties agree to adjust such dates as the parties hereto may agree for the mutual benefit of the company and Rhode Island); 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.

Mr. Schilling and Ms. MacLean

April \_\_, 2010

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

- (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 acceptable industry validation of the company's financial projections; the review of the company's projections by a qualified investment bank; review of current contracts and obligations with gaming industry partners such as EA; and any other related or requested documents or information from the company; and
- (c) 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](http://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.

Mr. Schilling and Ms. MacLean

April \_\_, 2010

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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: \_\_\_\_\_

529694.9

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

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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



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April \_\_, 2010

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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 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 utilize our statutory authority to issue bonds with a capital reserve mechanism by which the General Assembly may must 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 moral obligation mechanism is reflected in the RIEDC's enabling legislation and the resolutions of the legislature authorizing the RIEDC to enter into these types of obligations. That legislation and the related authorizing resolutions require the Governor to submit to the legislature by December 1 of every year a budget request for the legislature to appropriate in the following fiscal year's budget any shortfall on debt service that otherwise is not adequately reserved by the RIEDC. 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.

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Purpose: For all associated business expenses related to operations, product development and deployment by 38 Studios in conjunction with its current business development, then relocation to 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.

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April \_\_, 2010

Page 3

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

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- (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 immediately commence planning and development in order to 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 within twelve (12) months of the closing of the issuance of the bonds (the "closing");
- (f) 38 Studios will add an additional 175 jobs in Rhode Island by December 31, 2011 within twenty-four (24) months of the closing;
- (g) 38 Studios will add an additional 150 jobs in Rhode Island by within thirty-six (36) months of the closing 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 (notwithstanding the job requirement timing mechanisms set forth in sections (e), (f) and (g) above, the parties recognize that site selection and development options for the company may be such that adjustments to those requirements may be beneficial to both the company and Rhode Island, and the parties agree to adjust such dates as the parties hereto may agree for the mutual benefit of the company and Rhode Island); 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 acceptable industry validation of the company's financial projections; the review of the company's projections by a qualified investment bank.; review of current contracts and obligations with gaming industry partners such as EA; and any other related or requested documents or information of from the company; and
- (c) ~~The prerequisite approvals by the General Assembly and RIEDC Board of Directors for those actions requiring such approvals; and~~
- (d)(c) 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](http://www.riedc.com).

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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: \_\_\_\_\_

529694.8

DRAFT