

## MODIFICATION AND WAIVER

This Modification and Waiver of certain provisions of the Project Monitoring Agreement by and between 38 Studios, LLC (the "Obligor") and the Rhode Island Economic Development Corporation (the "EDC") dated as of November 2, 2010 (the "PMA") is entered into and executed on this 16 day of August, 2011.

WHEREAS, 38 Studios, LLC is the Obligor under that certain Loan and Trust Agreement dated as of November 1, 2010 (the "Trust Agreement"), by and among the Obligor, the Rhode Island Economic Development Corporation (the "EDC") and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") entered into in connection with the issuance of \$75,000,000 Job Creation Guaranty Program Taxable Revenue Bonds (38 Studios, LLC Project), Series 2010 (the "Bonds") for the benefit of the Obligor.

WHEREAS, in connection with the transaction, the Obligor entered into an IBM Customer Agreement dated as of September 15, 2010 (the "Agreement") with International Business Machines ("IBM"). Among other things, the Agreement, through the Statement of Work incorporated therein, requires IBM to provide ongoing project monitoring for Project Copernicus. As part of its obligation to provide project monitoring, IBM has agreed to provide to the Obligor and EDC with copies of reports, memoranda, documents, correspondence, conclusions, records and any other written manifestations of the work product produced by IBM pursuant to the Agreement (the "IBM Work Product").

WHEREAS, the PMA includes an acknowledgement by EDC that the IBM Work Product contains confidential and proprietary information of the Obligor relating to the Copernicus Project, the public disclosure of which may cause irreparable and significant harm to the Obligor and the commercial prospects of the Copernicus game.

WHEREAS, the Obligor has requested that EDC agree to accept briefings from IBM on the IBM Work Product in lieu of delivery of the IBM Work Product because of the substantial privileged and confidential information contained therein, which includes trade secrets and commercial and financial information of a privileged and/or confidential nature.

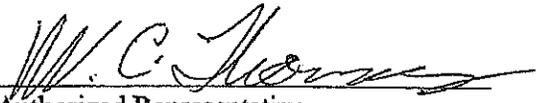
NOW THEREFORE, in order to preserve the intent of the Agreement and the PMA with regard to the confidential and proprietary nature of the IBM Work Product, and in order to provide EDC with the opportunity to engage in dialogue with IBM concerning these matters, the parties agree as follows:

1. The Obligor hereby agrees to hold quarterly review meetings at which the IBM Work Product will be discussed and presented to the EDC, such meetings to be held in lieu of the delivery of the IBM Work Product to the EDC.
2. The PMA is hereby deemed to be amended to provide, and EDC hereby agrees, that the aforesaid quarterly meetings will be satisfactory means for the delivery of the IBM Work Product to EDC; and Obligor agrees that EDC will be entitled to delivery of such written IBM Work Product as EDC determines it is necessary to receive.;

3. In all events, the EDC shall be entitled to view the IBM Work Product upon the request of the EDC with reasonable advance notice.

IN WITNESS WHEREOF, the parties have executed this Modification and Waiver as of the date and year first above written.

38 STUDIOS LLC

By:   
Authorized Representative

RHODE ISLAND ECONOMIC  
DEVELOPMENT CORPORATION

By:   
Executive Director

1435480\_1/3735-30