

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

550886

Rhode Island Economic
Development Corporation
Plaintiff

vs.

38 Studios, LLC et al
Defendants

Administratively Consolidated
P.B. No. 12-4095
P.B. No. 12-4096
P.B. No. 12-4097
P.B. No. 12-4098

2012 NOV 28 AM 10:47

NOTICE

1. **Please Take Notice** that the First Interim Report of the Temporary and Permanent Receiver has been set down for Hearing at **9:30 a.m. on the 7th day of December, 2012**, before the Providence County Superior Court, on the Business Calendar, sitting in COURTROOM 17, 4th FLOOR, The Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island.

2. From the commencement of the proceeding to the date of the Receiver's Interim Report, there have been cumulative receipts of \$86,983.05 and cumulative disbursements of \$62,697.57, leaving cash on hand of \$24,286.48, exclusive of net auction sale proceeds of approximately \$436,452.76.

3. The Receiver has filed with the Court an itemized Statement of the Receiver's services rendered for the period of August 9, 2012 to November 26, 2012 in the amount of \$76,119.50, plus expenses incurred of \$6,509.47, for a total of \$82,628.97. At said Hearing, the Receiver will ask the Court to approve such fees and expenses.

4. Copies of the Receiver's Interim Report and Itemized Statement of the Receiver's fees and expenses are on file with the Clerk's Office of said Court. For further information, please contact Richard J. Land, Receiver, at (401) 453-6400.

5. This Notice is being sent by the Receiver by forwarding a copy of this Omnibus Assignment Form and a copy of the Interim Report to all parties listed on Schedule A, annexed to the Affidavit of Notice filed with the Interim Report, via regular mail, postage prepaid.

NOTICE: **CREDITORS AND OTHER INTERESTED PARTIES ARE WELCOME TO ATTEND THE HEARING, BUT ARE NOT REQUIRED TO DO SO.**

STATE OF RHODE ISLAND AND



PROVIDENCE PLANTATIONS

**SUPERIOR COURT
OMNIBUS CALENDAR ASSIGNMENT FORM**

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| <input checked="" type="checkbox"/> Providence/Bristol County <input type="checkbox"/> Kent County <input type="checkbox"/> Washington County <input type="checkbox"/> Newport County | | |
| Rhode Island Economic Development Corporation | | CASE NUMBER |
| 38 Studios, LLC, et al. | | P.B. 12-4095 |
| VS. | | |
| REQUESTED CALENDAR ASSIGNMENT | | |
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| FORMAL SPECIAL CAUSE CALENDAR | | |
| <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> AGA AGENCY APPEAL <input type="checkbox"/> AOD ASSESSMENT OF DAMAGES <input type="checkbox"/> CNA CONFIRM ARBITRATION <input type="checkbox"/> DEJ DECLARATORY JUDGMENT <input type="checkbox"/> EOJ ENTRY OF JUDGMENT <input type="checkbox"/> FFR FIRST AND FINAL REPORT <input type="checkbox"/> FRR FORECLOSURE OF RIGHT OF REDEMPTION <input type="checkbox"/> FRS FRIENDLY SUIT <input type="checkbox"/> OPC ORAL PROOF OF CLAIM <input type="checkbox"/> MMN MANDATORY INJUNCTION <input type="checkbox"/> MEL MECHANIC'S LIEN <input type="checkbox"/> MAT MOTION TO ATTACH <input type="checkbox"/> PRT PARTITION PROCEEDINGS <input type="checkbox"/> PAT PETITION TO APPOINT TEMPORARY RECEIVER <input checked="" type="checkbox"/> OTH OTHER FORMAL SPECIAL CAUSE MATTER: First Interim Report </div> <div style="width: 48%;"> <div style="font-size: 2em; margin-bottom: 10px;">Business</div> <input type="checkbox"/> PEN PETITION TO ENFORCE <input type="checkbox"/> PIN PETITION FOR INSTRUCTIONS <input type="checkbox"/> PRC PETITION TO RECLAIM <input type="checkbox"/> PES PETITION TO SELL <input type="checkbox"/> PPI PRELIMINARY INJUNCTION <input type="checkbox"/> PCL PROOF OF CLAIM <input type="checkbox"/> RCP RECEIVERSHIP PROCEEDINGS <input type="checkbox"/> SPP SUPPLEMENTARY PROCEEDINGS <input type="checkbox"/> TPR TEMPORARY RESTRAINING ORDER <input type="checkbox"/> TIP TITLE PROCEEDINGS <input type="checkbox"/> TSP TRUSTEE PROCEEDINGS <input type="checkbox"/> VAR VACATE ARBITRATION <input type="checkbox"/> WOM WRIT OF MANDAMUS <input type="checkbox"/> WOR WRIT OF REPLEVIN </div> </div> | | |
| DISPOSITIVE MOTION CALENDAR | | |
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| HEARING DATE: 12-7-12 FSC/MOTION CLERK: <i>J. Rinaldi</i> DATE: 11-19-12 | | |
| SPECIAL MASTER CALENDAR | | |
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| BASED ON METHOD OF ASSIGNMENT STATE ANY RELEVANT INFORMATION BELOW | | |
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| ATTORNEYS SIGNATURES | | DATE DATE/TIME STAMP |
| PRINT NAME Richard J. Land, Receiver | | SUPERIOR COURT |

DISTRIBUTION – COURT, PLAINTIFF'S ATTORNEY, DEFENDANT'S ATTORNEY, CALENDAR CLERK

SR-11

Superior-4 (revised July 2012)

HENRY S. KINCH JR., CLERK

2012 NOV 19 P 2:20

Hearing: December 7, 2012 at 9:30 a.m.

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

| | | |
|-------------------------|---|-------------------------------|
| Rhode Island Economic | : | |
| Development Corporation | : | |
| <i>Plaintiff</i> | : | Administratively Consolidated |
| | : | P.B. No. 12-4095 |
| vs. | : | P.B. No. 12-4096 |
| | : | P.B. No. 12-4097 |
| 38 Studios, LLC et al | : | P.B. No. 12-4098 |
| <i>Defendants</i> | : | |

RECEIVER'S FIRST INTERIM REPORT

To the Honorable Superior Court for the Counties of Providence and Bristol, respectfully represents Richard J. Land, Esq. ("Receiver"), as follows:

1. On August 9, 2012, your Receiver was appointed the Temporary Receiver of 38 Studios, LLC, 38 Studios Baltimore, LLC, Mercury Project, LLC and Precision Jobs, LLC (collectively referred to as "38 Studios"), thereafter duly qualified and subsequently acted as such Temporary Receiver under surety bond ordered by this Court in the amount of \$50,000.

2. Subsequent to his appointment as Temporary Receiver, your Receiver took possession of 38 Studios' tangible assets located at 1954 Greenspring Drive, Timonium, Maryland ("Baltimore Facility") and One Empire Plaza, Providence, Rhode Island ("Providence Facility"). In addition to such tangible personal assets, your Receiver took possession of 38 Studios' intangible assets consisting of (a) patents, copyrights, and trademarks, (b) licenses, (c) software, and (d) both finished and unfinished multiplayer video games (collectively referred to as "Intellectual Property").

3. Your Receiver arranged for insurance over 38 Studios' tangible assets, for security over 38 Studios' assets and for protection of 38 Studios' financial books and records.

4. Your Receiver communicated with numerous creditors and other parties in interest relative to 38 Studios' assets and occupation of the Baltimore Facility and Providence Facility.

5. Your Receiver, in accordance with the Order of this Court, forwarded notice to taxing authorities, landlords and creditors with liens as to the initiation of the within proceeding and gave notice to said parties of the Hearing on Appointment of a Permanent Receiver.

6. On September 12, 2012, your Receiver was appointed Permanent Receiver of 38 Studios, thereafter duly qualified and subsequently acted as such Permanent Receiver under surety bond ordered by this Court in the amount of \$50,000.

7. Due to the sensitive and complex nature of 38 Studios' Intellectual Property and related computer equipment, your Receiver petitioned this Court to engage two information technology professionals to assist the Receiver in preserving and protecting the Intellectual Property and computer equipment, which Petition was approved by this Court on September 28, 2012.

8. On or about September 28, 2012, upon your Receiver's Motion, this Court administratively consolidated the Receivership proceedings of the multiple 38 Studios entities for the convenience of the parties in interest and the Court.

9. In connection with 38 Studios' occupancy of the Baltimore Facility and the Providence Facility, your Receiver engaged in extensive negotiations over the terms and conditions of the Receiver's use of said facilities pending the sale and/or relocation of 38 Studios' assets. Due to the large scope of physical assets and the sensitive nature of the 38 Studios' intellectual property, computer equipment upon which it operates and is stored, and 38 Studios' physical records, it was imperative that the Receiver maintain data for 38 Studios'

multiplayer video games in place, and safeguard vital documents and other intellectual property.

With respect to the Providence Facility, after extended negotiations and a conference call with the Court, the Court entered an Order dated October 19, 2012 (“Providence Facility Order”) pursuant to which the Receiver was permitted to continue using the Providence Facility for the purposes of, including but not limited to, taking inventory and reviewing the assets and Intellectual Property, preparing the same for sale, and removing assets and data. In addition to the Receiver’s continued use of the Providence Facility, the Providence Facility Order set forth procedures to be implemented when conducting an auction sale and removing assets from the Providence Facility. As of the date of this Interim Report, the Receiver continues to use the Providence Facility pursuant to the Providence Facility Order.

With respect to the Baltimore Facility, the Receiver negotiated with Merrit/Bavar-TD2, LLC to continue to use said space pending an auction sale and subsequent removal of server equipment and any unsold assets. The Receiver also negotiated for the continued use of a small space at the Baltimore Facility for a limited time at a rate of \$1,800 per month. As of the date of this Interim Report, the Receiver continues to use the small Baltimore space for storage and anticipates that all of the assets remaining in Baltimore will be relocated to Rhode Island within two (2) weeks hereof.

10. Your Receiver engaged SJ Corio Co. (“SJ Corio”) to assist the Receiver in selling 38 Studios’ assets located at the Baltimore Facility and the Providence Facility. Because 38 Studios had considerable tangible assets located at each facility, substantial concerted effort was necessary to prepare and present the assets for auctions in Baltimore and Providence. The Receiver, SJ Corio and other professionals spent many hours cleaning, moving and preparing desktop computers, office furniture, audio equipment, collectibles, and various other tangible

assets in Baltimore and Providence.

One of the most critical tasks in relation to the computer and networking equipment located at the Baltimore and Providence Facilities was the identification of specific computers and or servers necessary to preserve vital data and maintain the operability of 38 Studios' video games. Your Receiver and his agents spent significant time indentifying and categorizing which, among more than 400 computer workstations, networked servers and other electronic devices, were necessary to preserve 38 Studios' intellectual property. In addition, with the cooperation of counsel to the Chapter 7 Bankruptcy Trustee and special counsel to the Rhode Island Economic Development Corporation, your Receiver arranged for the preservation and retention of 38 Studios' vital business records on several computers and servers and in print form. Your Receiver believes that the intellectual property represents the greatest potential for any meaningful recovery from the sale of 38 Studios' assets.

The Court should be aware that the Providence Facility spanned 6 floors and was large enough to accommodate approximately 400 employee workstations. Aside from the volume of computer workstations and the cumbersome office furniture, each workstation required time-intensive technical attention. All of the computers, including those leased from NFS Leasing, Inc. ("NFS"), needed to be completely erased to avoid unintentional dissemination of sensitive information, then restored to the original manufacturer settings before being sold in any auction.¹ It took the Receiver, SJ Corio and its agents, and several other professionals a considerable amount of time to remove sensitive data from the workstations, reformat the hard-drives and restore the workstations to original settings. Office furniture, including tables, desks, chairs, couches, cabinets and shelves, plentiful enough to accommodate 400 employees was cleaned,

¹ As 38 Studios was in the business of developing sophisticated multi-player video games, 38 Studios altered the original manufacturer settings of the workstations to suit its heightened computing needs.

moved and organized.

In addition to preparing the tangible assets for auction, the Receiver and his agents took precautions to protect the physical premises of both the Baltimore and Providence Facilities from potential damage from the hundreds of potential buyers, interested parties and members of the media were attending the auctions. The Receiver has not been informed of any issues by either the landlord of the Baltimore Facility or the landlord of the Providence Facility arising from the auctions.

11. On or about October 16, 2012, SJ Corio conducted a public auction of 38 Studios' tangible property at the Baltimore Facility ("Baltimore Auction"), which resulted in gross sales of \$179,421.90. After costs and expenses of the auction, including advertising, set-up and other auction related costs, the Receiver anticipates that the within receivership estate will receive approximately \$121,979.06 in net proceeds.

12. 38 Studios leased certain assets and equipment from NFS under a Master Lease Agreement dated April 20, 2010 (as amended) and Equipment Lease Agreement dated December 10, 2010 (as amended) including servers and networking equipment, desktop computers and office furniture. The Receiver and NFS conferred regarding the auction to be held at the Providence Facility ("Providence Auction") and NFS agreed to have a majority of its leased assets included for sale in the Providence Auction in order to create a higher level of public interest. The Receiver believes that this cooperative selling effort significantly benefited the Receivership Estate as there were approximately 1,100 bidders pushing selling prices for the assets to amounts higher than expected.

13. On or about October 23, 2012, SJ Corio conducted a public auction of 38 Studios' tangible property at the Providence Facility, which resulted in gross sales in the amount of

\$402,908.90.² After costs and expenses of the auction, including advertising, set-up and other auction related costs, the Receiver anticipates that the within estate will obtain approximately \$314,473.70 in net proceeds.

14. On or about November 7, 2011, NFS filed its Motion for Order to Condition the Debtor's Use of Property or Vacating the Stay Imposed by the Court and for Allowance of Claim and Payment of Administrative Rent ("NFS Motion") seeking, *inter alia*, recovery of its unsold leased assets from 38 Studios and treatment of its claim against 38 Studios as an administrative expense. The Receiver filed an Objection to the NFS Motion on or about November 15, 2012. On or about November 27, 2012, the Court entered a Consent Order pursuant to which (a) NFS withdrew its request that this Court allow any portion of the claim arising pre-petition, (b) NFS waived any claim for administrative expenses arising prior to October 23, 2012 in the instant proceeding and waived any claim for post-petition administrative expenses in the Delaware Bankruptcy proceedings, (c) the parties agreed that certain lease payments, commencing October 23, 2012, would be treated as an allowed administrative claim, and (d) each party reserved their rights to seek Court review of the administrative claim issue in the event any portion of NFS's agreed upon claim is unpaid.

15. In connection with the Receiver's liquidation of 38 Studios' assets, the Receiver continues to diligently pursue multiple sales and marketing strategies to maximize the liquidation proceeds for the benefit of all creditors. The Receiver anticipates conducting an additional auction to sell tangible assets not sold in the Baltimore Auction and Providence Auction. Your Receiver communicated with several parties interested in the gaming assets of 38 Studios, and continues to respond to purchaser inquiries. In addition, your Receiver has been in contact with investment bankers and other similar professionals, who are experienced in marketing and

² The Providence Auction resulted in gross sales of NFS assets in the amount of \$235,966.10.

selling intellectual property such as 38 Studios' finished and unfinished multi-player games. Your Receiver's communications with such professionals are on-going and the Receiver anticipates developing a sales plan for 38 Studios' intellectual property.

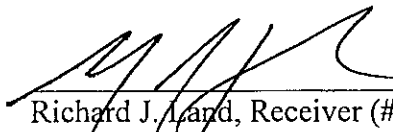
16. The preservation of 38 Studios' Intellectual Property remains a paramount objective and your Receiver continues to work with the necessary parties to ensure that the Intellectual Property is protected. Your Receiver continues to regularly communicate with parties in interest and is in the process of vacating the Baltimore Facility and the Providence Facility. In that regard, your Receiver has arranged to relocate server equipment from both facilities to a secure data storage facility in Providence from which the Receiver anticipates he will be able to demonstrate 38 Studios' Intellectual Property to prospective purchasers.

In addition, the Receiver has investigated potential claims against former 38 Studios employees and their current employer in an effort to determine whether intellectual property of 38 Studios has been wrongfully converted. Your Receiver continues to pursue this investigation.

17. During the course of administration of the within proceeding, your Receiver has had total receipts, exclusive of auction proceeds, in the amount of \$86,983.05 and made total disbursements of \$62,696.57, leaving cash on hand in the amount of \$24,286.48, all as set forth in Schedule A annexed hereto.

WHEREFORE, your Receiver prays that (a) all of his acts, doings, and disbursements as Temporary and Permanent Receiver up to and through the date of hereof, be approved, confirmed and ratified, (b) your Receiver be awarded an interim allowance for his services and expenses as Temporary and Permanent Receiver herein, rendered during the period of July 27, 2012 through November 27, 2012, as set forth in the Receiver's Statement, a copy of which has

been filed with the Court, and (c) this Court grant any other such further relief as the Court deems appropriate.



Richard J. Land, Receiver (#5592)
Chace Rutterberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
Tel.: (401) 453-6400
Email: rland@crflp.com
Dated: 11/27/12