



## **Rhode Island Film & Television Office**

June 11, 2012

Mr. Todd Wallack  
The Boston Globe

Re: 38 Studios LLC

Dear Todd:

I am responding to the email sent to me concerning the applications for tax credits filed by 38 Studios, LLC ("38 Studios"). You asked for documents relating to 38 Studios request for tax credits.

For the purposes of this response I am treating your request as requesting the applications and information filed with this office by 38 Studios, LLC for the Motion Picture Production Tax Credits found in RIGL Chapter 44-31.2, and under the Rules and Regulations for the Certification of Motion Picture Production Company Tax Credits promulgated by the Rhode Island Film and Television Office in conjunction with the Rhode Island Division of Taxation, Department of Revenue.

This office received several applications for the Motion Picture Production Tax Credits from representatives of 38 Studios. None of the applications filed by Studios 38 ever-received final approval and this office has suspended any further review of the final applications filed by 38 Studios in light of its bankruptcy filing in Delaware.

Prior to the bankruptcy filing, this office was still reviewing the applications and had not received sufficient responses or the necessary information from 38 Studios to continue or complete the applications review.

As stated, we received multiple applications from 38 Studios. They include the following:

STEVEN FEINBERG  
EXECUTIVE DIRECTOR  
RHODE ISLAND FILM & TELEVISION OFFICE  
ONE CAPITOL HILL • PROVIDENCE, RI 02908 • PHONE: 401-222-3456 FAX: 401-222-3018

Todd Wallack  
June 11, 2012  
Page 2

1. Initial Application dated December 14, 2011, seeking \$2.3 Million in 2011 Tax Credits for the period October to December 2011, received December 22, 2011;

2. Initial Application dated January 19, 2012, seeking \$5 Million in 2012 Tax Credits for the period January 2012 to April 2012.

3. Initial Application dated January 19, 2012, seeking \$7 Million in 2012 Tax Credits for the period May 2012 to December 2012.

4. Final Application dated March 21, 2012, seeking \$2,195,718.00 in 2011 Tax Credits for the period October 2011 to December 2011.

5. Initial Application dated May 10, 2012, seeking \$6.5 Million in Tax Credits for the period January 2011 to September 2011, received May 17, 2012;

6. Final Application dated May 17, 2012, seeking \$6.5 in 2011 Tax Credits for the period January 2011 to September 2011, received May 17, 2012.

Your request falls within the provisions of Chapter 38-2 of the Rhode Island General Laws entitled "Access to Public Records". That Act provides that, unless an exemption applies, all documents maintained by a public body are considered public records. As you may know there are numerous exemptions found in Rhode Island General Law Section 38-2-2(5). The records that are exempt from public release are described in that statute. Among the exemptions that apply to your request are the following:

(B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.

(S) Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.

In addition, the Rules and Regulations for the certification of Motion Picture Production Company tax credits published by the Rhode Island Film and Television Office do provide for confidentiality of certain application information in section in Rule 6.D entitled "Confidentiality of Application Information". That rule states as follows:

**Rule 6D. Confidentiality of Application Information.**

Application information submitted to the Division of Taxation is confidential by statute. Application information submitted to the Film Office may be subject to scrutiny under the Access to Public Records Act, Chapter 38-2 of the Rhode Island General Laws, as amended, unless it comes within one of the exemptions set forth in RIGL §38-2-2. If the Applicant believes that certain information being submitted as part of its applications should not be available for public inspection, such information shall be marked or labeled "CONFIDENTIAL" or "PROPRIETARY" in capital letters. The Applicant shall also submit a statement briefly setting forth the grounds why the information should be treated as confidential and how long it should be maintained as confidential. The Film Office shall not disclose the materials to the public unless ordered to do so by a court of competent jurisdiction.

Initial applications for tax credits detail considerable information for motion picture companies or, in this case, a video game company. In the context of an initial application, information regarding budgets, start and completion dates, and the number of photography days is in my opinion competitive and commercial information that should remain confidential. Addendum and supporting material attached to the initial applications that are marked "confidential" contain information that should not be publicly disclosed.

With respect to the final applications that have been submitted, 38 Studios attached to those applications, pages and addendum that had previously been submitted under their initial applications.

They have stamped the applications that were submitted confidential along with the supporting material that accompanies each application. None of the final applications have been approved for the issuance of motion picture production tax credits. Three of the initial applications had received initial certification from this office that was subsequently revoked.

The applications and supporting material were not prepared or created by a governmental agency but rather had been submitted by a private company. In that no motion picture production tax credits have been issued in response to these multiple applications, the documents are considered private records for which no final public action has been taken.

Until an application for tax credits has been finally approved, the applications and documentation could be amended, revised or withdrawn by 38 Studios. I deem the applications and supporting material as private records submitted to this office and the Division of Taxation for review. Because no action has been taken in response to these documents I believe they are the work products of 38 Studios. As such, these documents are exempt from disclosure under the act.

Mr. Todd Wallack  
June 11, 2012  
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Much of the documentation submitted to this office contains financial and proprietary information for 38 Studios. If this office for any private company, including 38 Studios, released such financial and proprietary information, it could be detrimental to an applicant. As stated in Rhode Island General Law Section 38-2-2 (5)(K), trade secrets and commercial or financial information obtained from a person, firm or corporation which is of a privileged or confidential nature is exempt from public disclosure. This office has always treated the financial and proprietary information of tax credit applicants as confidential.

Production companies that submit financial documents in support of their tax credit applications do so in the belief that this office will treat this information confidentially. If this office were to release such applications prior to the issuance of tax credits, it would serve as a disincentive to motion picture production companies from coming to our State. In short, the position not to release tax credit applications has larger implications than just the 38 Studios matter.

However, there are several letters or communications that have been received by the Rhode Island Film and TV Office or disseminated from this office that I deem to be a public document. These documents include the following

1. An Acknowledgement dated December 22, 2011, by Steven Feinberg, Executive Director of the Rhode Island Film and Television Office in a letter from Rick Webster of 38 Studios, LLC;
2. A letter dated December 28, 2011 addressed to Steven Feinberg, Executive Director of the Rhode Island Film and Television Office from Rick Webster, Chief Financial Office of 38 Studios, LLC;
3. A letter dated December 29, 2011 addressed from Steven Feinberg, Executive Director of the Rhode Island Film and Television Office to William Thomas, COO of 38 Studios, LLC (State Certification Number 2011-0006);
4. A letter dated January 26, 2012 from Steven Feinberg, Executive Director of the Rhode Island Film and Television Office to William Thomas, COO of 38 Studios, LLC (State Certification Number 2012-0003);
5. A letter dated January 26, 2012 from Steven Feinberg, Executive Director of the Rhode Island Film and Television Office to William Thomas, COO of 38 Studios, LLC (State Certification Number 2012-0004);
6. A letter dated May 10, 2012 from Steven Feinberg, Executive Director of the Rhode Island Film and Television Office to Richard Webster, CFO of 38 Studios, LLC (Revocation Letter);

Mr. Todd Wallack  
June 11, 2012  
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7. A letter dated May 22, 2012 from Steven Feinberg, Executive Director to William Thomas, COO of 38 Studios, LLC.

8. An email dated April 26, 2012 from Steven Feinberg, Executive Director of the Rhode Island Film and Television Office to Keith Stokes, Executive Director of the Rhode Island Economic Development Corporation ("RIEDC") enclosing the December 28, 2011 letter from Rick Wester of 38 Studios referenced above.

9. An email dated May 7, 2012 from Steven Feinberg, Executive Director of the Rhode Island Film and Television Office to Keith Stokes, Executive Director of the Rhode Island Economic Development Corporation ("RIEDC") referencing the April 26, 2012 email.

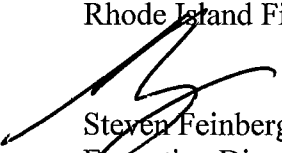
10. A letter dated May 25, 2012 addressed to Steven Feinberg, Executive Director of the Rhode Island Film and Television Office from William Thomas, President & COO of 38 Studios, LLC;

11. A second letter dated May 25, 2012 addressed to Steven Feinberg, Executive Director of the Rhode Island Film and Television Office from William Thomas, President & COO of 38 Studios, LLC;

With respect to the documents that I have deemed to be exempt from disclosure under the Access to Records Act, you have the right to appeal the denial as set forth in Rhode Island General Law Section 38-2-8. You may petition the Chief Administrative Officer of this office for a review of these determinations. For the purposes of any such appeal, the Chief Administrative Officer is Randall Rosenbaum who is Executive Director for the Arts. His mailing address is One Capitol Hill, Providence, Rhode Island 02908.

Sincerely,

Rhode Island Film & Television Office



Steven Feinberg  
Executive Director

cc: Randall Rosenbaum  
Richard Licht  
Peter Dennehy, Esq.  
Claire Richards, Esq.



From: Rick Wester  
To: Steven Feinberg, Executive Director  
One Capitol Hill, 3rd Floor  
Providence, RI 02908

Dear Mr. Feinberg,

Thank you for taking the time to meet and answer our specific questions about 38 Studios' 2011 and 2012 applications for the Rhode Island Film & TV Motion Picture Production Tax Credit. The purpose of this letter is to acknowledge that we met on Wednesday December 21, 2011 to review and approve the Company's 2011 and 2012 budgets and distribution plan.

As discussed the purpose of the onsite meeting was because we did not include the budgets and distribution plan in the applications due to their confidentiality, which if made public would cause irreparable harm to the Company. At the meeting, the budgets and plan were deemed appropriate by you on behalf of the State of Rhode Island Film and TV Office and no additional information on such items is needed for purposes of accepting our initial applications.

— SAG

Assuming the contents of this letter are accurate and acceptable to you, please indicate your acceptance on behalf of the State by signing in the space provided below.

Thank you for your attention to this matter.

Best,

Accepted and agreed to this  
of December, 2011

day 22nd

By The Rhode Island Film And TV Office

By:

Steven Feinberg  
Executive Director

12/22/2011





December 28, 2011

Mr. Steven Feinberg  
Executive Director, Film & TV Office  
Rhode Island State Council On the Arts  
One Capitol Hill, 3rd Floor  
Providence, RI 02908

Dear Steve:

I am writing to confirm that under the loan and trust agreement dated November 1, 2010 between 38 Studios, LLC and the Rhode Island Economic Development Corporation (the "Agreement") that 38 Studios, LLC (the "Company") is eligible to apply for Rhode Island Motion Picture Production Tax Credits.

Specifically, Section 6.02A(u) of the Agreement, which governs the Company's use of Motion Picture Production Tax Credits, permits the use of the tax credit program once the Company has met certain conditions. Please accept this letter as official confirmation that the Company has met the required conditions outlined in Section 6.02A(u) of the Agreement and is now eligible to apply for Motion Picture Production Tax Credits.

Should you have any questions please feel free to contact me at (401) 243-8363.

Sincerely,

Rick Wester  
Chief Financial Officer



## Rhode Island Film & Television Office

December 29, 2011

Mr. William Thomas, COO  
38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903

Re: Initial Certification of Video Game – KINGDOMS OF AMALUR: COPERNICUS 2011 (the "Production")  
State Certification Number: 2011-0006

Dear Mr. Thomas:

Effective as of the date of this letter, we formally serve notice and formally grant "Initial Certification" for the Production under Public Laws Chapters 06-019 and 06-020, the Act Relating to Film and Television Tax Credit and hereby confirm that the Production and the Production Company (as defined below) qualify for the Motion Picture Production Company Tax Credit.

Certification of this project is based on the following representations:

1. A production company has been formed or will be formed in the state of Rhode Island to produce the Production ("Production Company").
2. Total base investment (i.e.; actual investment made and expended by the Production Company in Rhode Island as qualified production-related costs) with respect to the Production is estimated to be \$9,200,000. Rhode Island credits are estimated to be \$2,300,000. Credits issued will be limited to this amount.
3. All expenditures for the Production will be run through the Production Company, which will have a Rhode Island bank account. All expenditures for pre-production, production and post-production will be managed, administered and paid by the Production Company.
4. The Production Company shall be entitled to a tax credit of 25% of the "qualified state certified production costs" incurred and paid in the State of Rhode Island.
5. The primary locations are within the State of Rhode Island.
6. A viable distribution plan has been provided.

Sincerely,

Rhode Island Film & Television Office

By:

Name: Steven Feinberg, Executive Director

STEVEN FEINBERG  
EXECUTIVE DIRECTOR  
RHODE ISLAND FILM & TELEVISION OFFICE  
ONE CAPITOL HILL • PROVIDENCE, RI 02908 • PHONE: 401-222-3456 FAX: 401-222-3018





## Rhode Island Film & Television Office

January 26, 2012

Mr. William Thomas, COO  
38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903

Re: Initial Certification of Video Game – KINGDOMS OF AMALUR: COPERNICUS 2012 (the "Production")  
State Certification Number: 2012-0003

Dear Mr. Thomas:

Effective as of the date of this letter, we formally serve notice and formally grant "Initial Certification" for the Production under Public Laws Chapters 06-019 and 06-020, the Act Relating to Film and Television Tax Credit and hereby confirm that the Production and the Production Company (as defined below) qualify for the Motion Picture Production Company Tax Credit.

Certification of this project is based on the following representations:

1. A production company has been formed or will be formed in the state of Rhode Island to produce the Production ("Production Company").
2. Total base investment (i.e.; actual investment made and expended by the Production Company in Rhode Island as qualified production-related costs) with respect to the Production is estimated to be \$20,000,000. Rhode Island credits are estimated to be \$5,000,000. Credits issued will be limited to this amount.
3. All expenditures for the Production will be run through the Production Company, which will have a Rhode Island bank account. All expenditures for pre-production, production and post-production will be managed, administered and paid by the Production Company.
4. The Production Company shall be entitled to a tax credit of 25% of the "qualified state certified production costs" incurred and paid in the State of Rhode Island.
5. The primary locations are within the State of Rhode Island.
6. A viable distribution plan has been provided.

Sincerely,

Rhode Island Film & Television Office

By:

Name: Steven Feinberg, Executive Director

STEVEN FEINBERG  
EXECUTIVE DIRECTOR  
RHODE ISLAND FILM & TELEVISION OFFICE  
ONE CAPITOL HILL • PROVIDENCE, RI 02908 • PHONE: 401-222-3456 FAX: 401-222-3018



## Rhode Island Film & Television Office

January 26, 2012

Mr. William Thomas, COO  
38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903

Re: Initial Certification of Video Game – KINGDOMS OF AMALUR: COPERNICUS SUPPLEMENTAL 2012  
(the "Production")  
State Certification Number: 2012-0004

Dear Mr. Thomas:


Effective as of the date of this letter, we formally serve notice and formally grant "Initial Certification" for the Production under Public Laws Chapters 06-019 and 06-020, the Act Relating to Film and Television Tax Credit and hereby confirm that the Production and the Production Company (as defined below) qualify for the Motion Picture Production Company Tax Credit.

Certification of this project is based on the following representations:

1. A production company has been formed or will be formed in the state of Rhode Island to produce the Production ("Production Company").
2. Total base investment (i.e.; actual investment made and expended by the Production Company in Rhode Island as qualified production-related costs) with respect to the Production is estimated to be \$28,000,000. Rhode Island credits are estimated to be \$7,000,000. Credits issued will be limited to this amount.
3. All expenditures for the Production will be run through the Production Company, which will have a Rhode Island bank account. All expenditures for pre-production, production and post-production will be managed, administered and paid by the Production Company.
4. The Production Company shall be entitled to a tax credit of 25% of the "qualified state certified production costs" incurred and paid in the State of Rhode Island.
5. The primary locations are within the State of Rhode Island.
6. A viable distribution plan has been provided.

Sincerely,

Rhode Island Film & Television Office

By:   
Name: Steven Feinberg, Executive Director

STEVEN FEINBERG  
EXECUTIVE DIRECTOR  
RHODE ISLAND FILM & TELEVISION OFFICE  
ONE CAPITOL HILL • PROVIDENCE, RI 02908 • PHONE: 401-222-3456 FAX: 401-222-3018

## Steven Feinberg - 38 Studios sign off

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**From:** Steven Feinberg  
**To:** kstokes@riedc.com  
**Date:** 4/26/2012 4:27 PM  
**Subject:** 38 Studios sign off  
**Attachments:** 20120426161642286.pdf

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Keith,

I hope this finds you well. As you may know, 38 Studios is requesting use of the tax credit incentive. Before I can issue the final credit certificate, I just want confirmation from you, at the EDC, that, under your previous agreement for the loan guarantee, 38 Studios is now eligible to access the tax credit program.

According to 38 Studios, and my understanding, 38 could not access the tax credit program based on the funds that were guaranteed by the state. However, they are stating that they are not using funds which were guaranteed by the state. These are new, additional funds.

As I have not been privy to your classified document, I just want written confirmation from the EDC that this information is accurate, and that the EDC agrees that 38 Studios has met their required conditions and can now access this program.

Please review their letter. If you are in agreement, please sign off and I will proceed.

Thank you.  
Steven

Steven Feinberg  
Executive Director  
Rhode Island Film & Television Office  
One Capitol Hill  
3rd Floor  
Providence, RI 02908  
PH: 401-222-3456 (222-FILM)  
FAX: 401-222-3018  
EMAIL: steven.feinberg@arts.ri.gov  
WEBSITE: www.film.ri.gov

Please note my new email address:  
steven.feinberg@arts.ri.gov

Steven Feinberg  
Executive Director  
Rhode Island Film & Television Office  
One Capitol Hill  
3rd Floor  
Providence, RI 02908  
PH: 401-222-3456 (222-FILM)  
FAX: 401-222-3018  
EMAIL: [steven.feinberg@arts.ri.gov](mailto:steven.feinberg@arts.ri.gov)  
WEBSITE: [www.film.ri.gov](http://www.film.ri.gov)

Please note my new email address:  
[steven.feinberg@arts.ri.gov](mailto:steven.feinberg@arts.ri.gov)

**38 Studios**

One Empire Plaza

Providence, RI 02903

T: 401.243.8300

F: 401.243.8301



December 28, 2011

Mr. Steven Feinberg  
Executive Director, Film & TV Office  
Rhode Island State Council On the Arts  
One Capitol Hill, 3rd Floor  
Providence, RI 02908

Dear Steve:

I am writing to confirm that under the loan and trust agreement dated November 1, 2010 between 38 Studios, LLC and the Rhode Island Economic Development Corporation (the "Agreement") that 38 Studios, LLC (the "Company") is eligible to apply for Rhode Island Motion Picture Production Tax Credits.

Specifically, Section 6.02A(u) of the Agreement, which governs the Company's use of Motion Picture Production Tax Credits, permits the use of the tax credit program once the Company has met certain conditions. Please accept this letter as official confirmation that the Company has met the required conditions outlined in Section 6.02A(u) of the Agreement and is now eligible to apply for Motion Picture Production Tax Credits.

Should you have any questions please feel free to contact me at (401) 243-8363.

Sincerely,

Rick Wester  
Chief Financial Officer



## Steven Feinberg - Fwd: 38 Studios sign off

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**From:** Steven Feinberg  
**To:** kstokes@riedc.com  
**Date:** 5/7/2012 1:37 PM  
**Subject:** Fwd: 38 Studios sign off  
**CC:** David Sullivan; Randall Rosenbaum  
**Attachments:** 20120426161642286.pdf

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Hi Keith,

I just wanted to follow up on my previous email. Please review the attached documents and let me know where you currently stand with this situation.

Thank you for your attention.

Sincerely,  
Steven

Steven Feinberg  
Executive Director  
Rhode Island Film & Television Office  
One Capitol Hill  
3rd Floor  
Providence, RI 02908  
PH: 401-222-3456 (222-FILM)  
FAX: 401-222-3018  
EMAIL: steven.feinberg@arts.ri.gov  
WEBSITE: www.film.ri.gov

Please note my new email address:

steven.feinberg@arts.ri.gov>>> Steven Feinberg 4/26/2012 4:27 PM >>>

Keith,

I hope this finds you well. As you may know, 38 Studios is requesting use of the tax credit incentive. Before I can issue the final credit certificate, I just want confirmation from you, at the EDC, that, under your previous agreement for the loan guarantee, 38 Studios is now eligible to access the tax credit program.

According to 38 Studios, and my understanding, 38 could not access the tax credit program based on the funds that were guaranteed by the state. However, they are stating that they are not using funds which were guaranteed by the state. These are new, additional funds.

As I have not been privy to your classified document, I just want written confirmation from the EDC that this information is accurate, and that the EDC agrees that 38 Studios has met their required conditions and can now access this program.

Please review their letter. If you are in agreement, please sign off and I will proceed.

Thank you.  
Steven

## Steven Feinberg - REVOCATION OF 38 STUDIOS MOTION PICTURE CERTIFICATIONS

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**From:** Steven Feinberg  
**To:** Tom Zaccagnino; rwester@38studios.com  
**Date:** 5/10/2012 6:37 PM  
**Subject:** REVOCATION OF 38 STUDIOS MOTION PICTURE CERTIFICATIONS  
**CC:** David Sullivan; Randall Rosenbaum; Richard Licht; claire.richards@gov...  
**Attachments:** 38 Studios Revocation with Enclosures.pdf

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Dear Mr. Wester and Mr. Zaccagnino,

Please find a letter attached, regarding the Motion Picture Tax Incentive Program, which is also being sent via hard copy certified mail.

Sincerely,

Steven Feinberg

Steven Feinberg  
Executive Director  
Rhode Island Film & Television Office  
One Capitol Hill  
3rd Floor  
Providence, RI 02908  
PH: 401-222-3456 (222-FILM)  
FAX: 401-222-3018  
EMAIL: steven.feinberg@arts.ri.gov  
WEBSITE: www.film.ri.gov

Please note my new email address:  
steven.feinberg@arts.ri.gov



## Rhode Island Film & Television Office

May 10, 2012

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Richard Wester, CFO  
38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903

RE: Revocation of Initial Certifications

Dear Mr. Wester,

Please be informed that the Rhode Island Film & Television Office has revoked the initial certifications for KINGDOMS OF AMALUR: COPERNICUS 2011 (2011-0006), KINGDOMS OF AMALUR: COPERNICUS 2012 (2012-0003) and KINGDOMS OF AMALUR: COPERNICUS SUPPLEMENTAL 2012 (2012-0004) and removed you from the queue.

According to the Rules and Regulations of the Motion Picture Tax Incentive Program and the enclosed letters from the EDC, 38 Studios no longer qualifies. Please see the specific language below:

*Rule 5. DEFINITIONS, S. "Motion Picture Production Company"; .... a "Motion Picture production company shall not mean or include: (a) any company owned, affiliated, or controlled, in whole or in part by any company or person which is in default (i) on taxes owed to the state; or (ii) on a loan made by the state; or (iii) a loan guaranteed by the state; or..." and*

*Rule 7. D. Film Office Decisions, Reliance on Application: .... "If, at any time, it comes to the attention of the Film Office that information is/was misstated, misrepresented or omitted or is materially inconsistent with representations made in an application, the Film Office may deny the requested certification or revoke a certification previously given."*

In regards to the "queuing process"

*Rule 7.1. Priority and Allocation of Credits: (3) (d) If a production (1) falls out of "good standing status"... "the production will lose its place in the queue, and shall be moved to the end of the queue." (3) (f) "Upon loss of place in the queue, the estimated tax credit, which had originally been assigned to the production shall be released and made available to other productions in sequence in the queue;"*

Once you establish that you are no longer in default, which needs to be confirmed in writing by the EDC, then you will establish yourself as a qualified Production Company by definition, and will be placed at the end of the queue in accordance with the Rules and Regulations referenced above. We look forward to navigating you through the Incentive Program at that time.

Please note that I will be away from the office until Monday, May 21<sup>st</sup> with limited access to VM and email. If you have any questions or concerns, I will be happy to address them at that time.

Best regards,

  
Steven Feinberg  
Executive Director

SF:clc  
Enclosures

cc: Randall Rosenbaum, RISCA  
David Sullivan, Division of Taxation  
Claire Richards, Governor's Office  
Tom Zaccagnino, 38 Studios

**STEVEN FEINBERG**  
**EXECUTIVE DIRECTOR**

**RHODE ISLAND FILM & TELEVISION OFFICE**

**ONE CAPITOL HILL • PROVIDENCE, RI 02908 • PHONE: 401-222-3456 FAX: 401-222-3018**





State of Rhode Island and Providence Plantations  
315 Iron Horse Way, Suite 101  
Providence, RI 02908  
401-278-9100

May 4, 2012

Keith W. Stokes  
Executive Director

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

38 Studios, LLC  
5 Clock Tower Place  
Maynard, MA 01751  
Attn: Chief Financial Officer

38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903  
Attn: Mr. Richard Wester

Re: Notice of Default

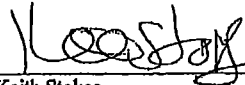
Ladies and Gentlemen:

Reference is made to the Loan and Trust Agreement by and among the Rhode Island Economic Development Corporation (the "Corporation"), 38 Studios, LLC (the "Obligor") and The Bank of New York Mellon Trust Company, N.A., as Trustee (the "Trustee") dated as of November 1, 2010 (the "Agreement"). Any term not otherwise defined herein shall have the meanings ascribed to such term in the Agreement.

Pursuant to Section 2.06A(b)(ii) of the Agreement, on May 1, 2012 the Obligor was required to pay the Annual Guaranty Fee to the Corporation, and as of the date hereof the Obligor has failed to make such payment. The Obligor's failure to make such payment to the Corporation constitutes a default under Section 7.13(a)(ii) of the Agreement. If the Obligor fails to cure the default within thirty (30) days of this notice, such default shall constitute an Obligor Default, and the Corporation may, in its sole discretion, declare such Obligor Default as an Event of Default under Section 7.01 of the Agreement.

The Corporation hereby reserves all of its rights and remedies, at law or in equity, with respect to any default, Obligor Default or Event of Default under the Agreement and any other document or agreement entered into in connection with the Agreement. This notice also does not constitute a waiver of any other default, if any, by the Obligor of any payment, covenant, agreement or condition set forth in the Agreement.

RHODE ISLAND ECONOMIC  
DEVELOPMENT CORPORATION

By:   
Keith Stokes  
Executive Director

BPG:jlg  
cc: Mr. Thomas Zaccagnino  
David M. Gilden, Esq.  
Antonio Afonso, Esq.



State of Rhode Island and Providence Plantations  
315 Iron Horse Way, Suite 101  
Providence, RI 02908  
401-278-9100

May 8, 2012

Keith W. Stokes  
Executive Director

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

38 Studios, LLC  
5 Clock Tower Place  
Maynard, MA 01751  
Attn: Chief Financial Officer

38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903  
Attn: Mr. Richard Wester

Re: Motion Picture Production Tax Credits

Ladies and Gentlemen:

Reference is made to the Notice of Default letter (the "Default Letter") dated May 4, 2012 from the Rhode Island Economic Development Corporation (the "Corporation") to 38 Studios, LLC (the "Obligor").

Reference is also made to the Loan and Trust Agreement by and among the Corporation, the Obligor and The Bank of New York Mellon Trust Company, N.A., as Trustee (the "Trustee") dated as of November 1, 2010 (the "Agreement"). Any term not otherwise defined herein shall have the meanings ascribed to such term in the Agreement.

Please note that, until such time as the Obligor pays the Annual Guaranty Fee to the Corporation, thus curing the default, the default remains in existence and consequently, pursuant to Section 6.02(A)(u) of the Agreement, the Obligor shall not, "apply for, take actions to obtain or otherwise avail itself of any tax credit whether through a Subsidiary or an Affiliate". This restriction applies to the Motion Picture Production Tax Credit as well as any other state tax credit and any other state funded program for which the Obligor might otherwise be eligible to apply, if any.

The Corporation hereby continues to reserve all of its rights and remedies, at law or in equity, with respect to any default, Obligor Default or Event of Default under the Agreement and any other document or agreement entered into in connection with the Agreement.

RHODE ISLAND ECONOMIC  
DEVELOPMENT CORPORATION

By: 

Keith Stokes  
Executive Director

BPG:jlg

cc: Mr. Thomas Zaccagnino  
David M. Gilden, Esq.  
Antonio Afonso, Esq.



## Rhode Island Film & Television Office

May 22, 2012

Mr. William C. Thomas, COO  
38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903 by telecopy 401.243.8301

Re Initial Application dated December 14, 2011  
Final Application dated March 21, 2012  
Initial Application dated May 10, 2012  
Final Application dated May 10, 2012

Dear Mr. Thomas:

In accordance with the initial certification provided by this office dated December 29, 2011, and in accordance with R.I.G.L. 44-31.2-7, this office requires the following additional information to review your application(s)

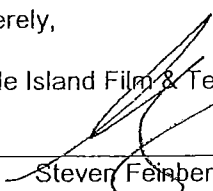
1. Please identify the Motion Picture Production Company that is domiciled in Rhode Island as required by R.I.G.L. 44-31.2-2(3) and as required by the initial certification.
2. Please identify which Rhode Island Production Activities were completed as required by R.I.G.L. 44-31.2-6(b).
3. As required by Rule 6.A. of this Office, please identify which expenditures for the production were made by the Rhode Island-domiciled Production Company after the date of your initial application, and an accountant's certification with respect to same.
4. We will require verification under oath that any company that owns, is affiliated with or controls the Motion Picture Production Company is not in default on a loan made by the state or a loan guaranteed by the state.

This office reserves the right to request additional information after the foregoing is provided to us, as a complete application is necessary prior to this office making a determination pertaining to the final certification of tax credit.

Your initial application dated May 10, 2012 and related final application of the same date, cannot be considered as, for other reasons, it purports to relate a start date of January 2011 through September 2011, which is prior to the date of this initial application as well as in part prior to your locating in Rhode Island. This final application is also not in the required form which is available on-line and omits required information.

Sincerely,

Rhode Island Film & Television Office

By   
Steven Feinberg, Executive Director

STEVEN FEINBERG  
EXECUTIVE DIRECTOR

RHODE ISLAND FILM & TELEVISION OFFICE  
ONE CAPITOL HILL • PROVIDENCE, RI 02908 • PHONE: 401-222-3456 FAX: 401-222-3018



May 25, 2012

Mr. Steven Feinberg  
Rhode Island Film & Television office  
One Capitol Hill, Providence, RI 02908

Re: 38 Studios Initial and final Applications

Dear Mr. Feinberg:

On behalf of 38 Studios ("Company"), this letter serves as a response to your letter dated May 22, 2012. The following are our initial comments in corresponding order to your letter:

1. Attached please find the three initial certification letters delivered to the Company from your office. Pursuant to RI Gen. Law 44-31.2-6, the purpose of the initial certification is to determine whether the requisite criteria and qualifications by the applicant are met. Included in each application was all the Company's formation documents. By your own admission, by issuing the initial certifications the State has taken the position that a foreign limited liability company registered to do business in Rhode Island and producing a motion picture in RI, meets the definition of domiciled in Rhode Island. As of today, the Company's status has not changed since the initial certification letters and it is still domiciled in Rhode Island. Further, during the May 3, 2012 estimating hearing, you represented that the company was an active state motion picture production eligible to earn film tax credits.
2. As discussed and acknowledged by you, triple A titles have a number of stages of completion. You understood and used the analogy of a television series. By December 31, 2011, the Company had completed the pre alpha phase, which is a completion stage. The staged completion is also evidenced by the two 2012 applications that were accepted and certified by your company.
3. In an effort to provide full transparency, the Company had requested and held a number of meetings with the film office and taxation to make everyone aware of our upcoming applications and work collaboratively so that all parties fully understood the Company's eligibility and qualified costs. Taxation and film were not only of the opinion that the Company was eligible, but that the Company could also include costs both prior to and after the initial application date. Further, it has been a precedent of the film office and taxation with other movie productions, that all such costs can be certified regardless of the application date. I am attaching a letter dated April 20, 2012 from the Department of Revenue stating the allowed qualified cost, demonstrating that costs prior to and after the initial application were accepted by taxation. This was further evidenced through a phone conversation by the taxation to our CFO on last Friday whereby it was represented to the Company that the above mentioned 2011 cost certification was approved and awaiting your signature and that the other 2011 cost certification review would be completed this week.
4. To the best of the Company's knowledge there is no event of default. Please see the attached letter addressing such issue. Please confirm that this has been completed by and required of every production company since inception of the program.

With regards to your closing comments, using a film analogy, many costs are incurred in a production prior to principal photography and prior to everyone being physical present. It has



been the practice of the film office and taxation to allow such costs to qualify. In the current situation, the costs incurred prior to physically moving into the building is analogous to location duties, set design, and other forms of preproduction in a movie production.

As it relates to your comment for the need for a new final application form and all the issues raised by your office in your correspondence, your email to Keith Stokes dated April 26, 2012 states that you are seeking EDC's confirmation that the company is eligible under its agreement with EDC to utilize the program so you could issue the final certificate for that particular application. There were also verbal communications that EDC was the only issue holding up your issuance of the tax credits. This email not only evidences that we met all the conditions of your office and properly qualified all our costs, but that the final application form was acceptable and a different form was not necessary or requested. It is clear by all the letters, emails, and correspondence provided that the Company had met all the requisite conditions and that it properly qualified its costs.

Finally and most important, there was a fully negotiated deal and agreement on behalf of the State of Rhode Island by RIEDC executive director and its general counsel to issue all the 2011 tax credits upon payment of the annual guaranty fee. This is further supported by an email from David Gilden dated May 16, 2012, informing the company that the State was getting a person to sign the tax certificates and further references issuance upon receipt of the funds.

After May 17, the Company has been unable to reach your office or the office of taxation. Days had passed with no communication from your office or taxation. We went from a position of working together in good faith to a position where all communication was shut off. The Company has acted in good faith and has had full disclosure with your office and taxation since we began discussing on the film tax credits. The intentional delay in issuing the credits has caused severe damages to the Company, its employees and the State of Rhode Island. To prevent further harm, we are urging you to please issue the 2011 tax credits as agreed.

I hope this answers your questions. We are available 24/7 to resolve this matter.

Very truly yours,

38 Studios, LLC

By:

William Thomas, President & COO

cc: Randall Rosenbaum, Executive Director, RISCA  
David M. Sullivan, Tax Administrator, Division of Taxation  
Claire J.V. Richards, Legal Counsel, Governor's Office





## Rhode Island Film & Television Office

December 29, 2011

Mr. William Thomas, COO  
38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903

Re: Initial Certification of Video Game – KINGDOMS OF AMALUR COPERNICUS 2011 (the Production")  
State Certification Number 2011-0006

Dear Mr. Thomas

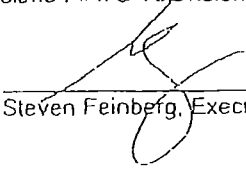
Effective as of the date of this letter, we formally serve notice and formally grant "Initial Certification" for the Production under Public Laws Chapters 06-019 and 06-020, the Act Relating to Film and Television Tax Credit and hereby confirm that the Production and the Production Company (as defined below) qualify for the Motion Picture Production Company Tax Credit

Certification of this project is based on the following representations

1. A production company has been formed or will be formed in the state of Rhode Island to produce the Production ("Production Company").
2. Total base investment (i.e., actual investment made and expended by the Production Company in Rhode Island as qualified production-related costs) with respect to the Production is estimated to be \$9,200,000. Rhode Island credits are estimated to be \$2,300,000. Credits issued will be limited to this amount.
3. All expenditures for the Production will be run through the Production Company, which will have a Rhode Island bank account. All expenditures for pre-production, production and post-production will be managed, administered and paid by the Production Company.
4. The Production Company shall be entitled to a tax credit of 25% of the "qualified state certified production costs" incurred and paid in the State of Rhode Island.
5. The primary locations are within the State of Rhode Island.
6. A viable distribution plan has been provided.

Sincerely,

Rhode Island Film & Television Office

By:   
Name: Steven Feinberg, Executive Director

STEVEN FEINBERG  
EXECUTIVE DIRECTOR  
RHODE ISLAND FILM & TELEVISION OFFICE  
ONE EMPIRE PLAZA - PROVIDENCE, RHODE ISLAND 02903 - PHONE 401-222-5450 FAX 401-222-5010



## Rhode Island Film & Television Office

January 26, 2012

Mr. William Thomas, COO  
38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903

Re: Initial Certification of Video Game – KINGDOMS OF AMALUR: COPERNICUS 2012 (the "Production")  
State Certification Number: 2012-0003

Dear Mr. Thomas:

Effective as of the date of this letter, we formally serve notice and formally grant "Initial Certification" for the Production under Public Laws Chapters 06-019 and 06-020, the Act Relating to Film and Television Tax Credit and hereby confirm that the Production and the Production Company (as defined below) qualify for the Motion Picture Production Company Tax Credit.

Certification of this project is based on the following representations:

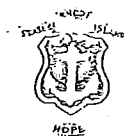
1. A production company has been formed or will be formed in the state of Rhode Island to produce the Production ("Production Company").
2. Total base investment (i.e.; actual investment made and expended by the Production Company in Rhode Island as qualified production-related costs) with respect to the Production is estimated to be \$20,000,000. Rhode Island credits are estimated to be \$5,000,000. Credits issued will be limited to this amount.
3. All expenditures for the Production will be run through the Production Company, which will have a Rhode Island bank account. All expenditures for pre-production, production and post-production will be managed, administered and paid by the Production Company.
4. The Production Company shall be entitled to a tax credit of 25% of the "qualified state certified production costs" incurred and paid in the State of Rhode Island.
5. The primary locations are within the State of Rhode Island.
6. A viable distribution plan has been provided.

Sincerely,

Rhode Island Film & Television Office

By:   
Name: Steven Feinberg, Executive Director

STEVEN FEINBERG  
EXECUTIVE DIRECTOR  
RHODE ISLAND FILM & TELEVISION OFFICE  
ONE CAPITOL HILL • PROVIDENCE, RI 02908 • PHONE: 401-222-3456 FAX: 401-222-3018



## Rhode Island Film & Television Office

January 26, 2012

Mr. William Thomas, COO  
38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903

Re: Initial Certification of Video Game – KINGDOMS OF AMALUR: COPERNICUS SUPPLEMENTAL 2012  
(the "Production")  
State Certification Number: 2012-0004

Dear Mr. Thomas:

Effective as of the date of this letter, we formally serve notice and formally grant "Initial Certification" for the Production under Public Laws Chapters 06-019 and 06-020, the Act Relating to Film and Television Tax Credit and hereby confirm that the Production and the Production Company (as defined below) qualify for the Motion Picture Production Company Tax Credit.

Certification of this project is based on the following representations:

1. A production company has been formed or will be formed in the state of Rhode Island to produce the Production ("Production Company").
2. Total base investment (i.e.; actual investment made and expended by the Production Company in Rhode Island as qualified production-related costs) with respect to the Production is estimated to be \$28,000,000. Rhode Island credits are estimated to be \$7,000,000. Credits issued will be limited to this amount.
3. All expenditures for the Production will be run through the Production Company, which will have a Rhode Island bank account. All expenditures for pre-production, production and post-production will be managed, administered and paid by the Production Company.
4. The Production Company shall be entitled to a tax credit of 25% of the "qualified state certified production costs" incurred and paid in the State of Rhode Island.
5. The primary locations are within the State of Rhode Island.
6. A viable distribution plan has been provided.

Sincerely,

Rhode Island Film & Television Office

By:

Name: Steven Feinberg, Executive Director

STEVEN FEINBERG  
EXECUTIVE DIRECTOR  
RHODE ISLAND FILM & TELEVISION OFFICE  
ONE CAPITOL HILL • PROVIDENCE, RI 02908 • PHONE: 401-222-3456 FAX: 401-222-3018





STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Revenue  
DIVISION OF TAXATION  
One Capitol Hill  
Providence, RI 02908-5800

4/20/2012

Steven Feinberg  
Executive Director  
Rhode Island Film & Television Office  
One Capitol Hill  
Providence, RI 02908

RE: "Kingdoms of Amalur: Copernicus"  
38 Studios, LLC

Dear Mr. Feinberg:

This is to inform your office that the above mentioned motion picture production company has provided the Rhode Island Division of Taxation with the following information regarding the production of "Kingdoms of Amalur: Copernicus" as required by the Rhode Island Film & TV Motion Picture Production Company Tax Credit Final Application.

- A list of Out-of-State Vendors that have sold and/or rented goods to the motion picture production company.
- A list of Loan-Out Companies, temporary agencies, employee leasing companies and/or professional employee organizations that have provided services to the motion picture production company.
- A detailed list of all personnel and cast used by the motion picture production company while in Rhode Island.

In the process of obtaining and reviewing the required information, I came across some expenses included in Kingdoms of Amalur: Copernicus' Schedule of State Certified Production Costs which are not qualified Rhode Island expenses and should be deducted from their total production cost amount.

Total Production Costs Originally Submitted:	\$8,782,870.00
Production Costs Not Qualified:	<u>\$189,578.00</u>
Total Production Costs Allowed:	\$8,593,292.00

Let me know if you have any questions.

Sincerely,

Donna Dube  
Principal Revenue Agent  
Telephone: (401) 574-8903  
Fax: (401) 574-8917  
Email: [Donna.Dube@tax.ri.gov](mailto:Donna.Dube@tax.ri.gov)

cc: David M. Sullivan, Tax Administrator  
File



RHODE ISLAND

**Economic Development Corporation**

315 Iron Horse Way, Suite 101 • Providence, Rhode Island 02908

PHONE: 401-278-9100 • FAX: 401-273-8270 • [www.riedc.com](http://www.riedc.com)

May 18, 2012

38 Studios, LLC  
5 Clock Tower Place  
Maynard, MA 01751  
Attn: Chief Financial Officer

38 Studios, LLC  
One Empire Plaza  
Providence, RI 02903  
Attn: Mr. Richard Wester

Re: Cure of Default

Ladies and Gentlemen:

Reference is made to the notice of default letter dated May 4, 2012 from the Rhode Island Economic Development Corporation (the "Corporation") to 38 Studios, LLC (the "Obligor"). The Corporation is in receipt of the Annual Guaranty Fee due on May 1, 2012, and hereby acknowledges that the default under Section 7.13(a)(ii) of the Loan and Trust Agreement by and among the Corporation, the Obligor and The Bank of New York Mellon Trust Company, N.A., as trustee, dated as of November 1, 2010 (the "Agreement"), has been cured.

The Corporation hereby reserves all of its rights and remedies, at law or in equity, with respect to any other default, Obligor Default or Event of Default under the Agreement and any other document or agreement entered into in connection with the Agreement. This notice also does not constitute a waiver or notice of cure with respect to any other default, if any, by the Obligor or any payment, covenant, agreement or condition set forth in the Agreement.

RHODE ISLAND ECONOMIC  
DEVELOPMENT CORPORATION

By: William J. Parsons  
Name:  
Its:

cc: David M. Gilden, Esq.  
Antonio Afonso, Esq.  
Mr. Thomas Zaccagnino



May 25, 2012

Rhode Island Film & Television Office  
One Capitol Hill  
Providence, RI 02908  
Attention: Steven Feinberg, Executive Director

*Re: Your Letter Dated May 10, 2012*

Dear Mr. Feinberg:

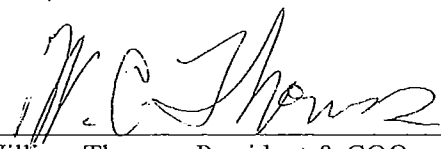
We are writing in response to your letter to 38 Studios, LLC (the "Company") dated May 10, 2012. In short, we strenuously object to the removal of the Company from the queue for the Motion Picture Tax Incentive Program and the revocation of the initial certifications relating to the Company.

Contrary to the statement in your letter, the Company still qualifies for the Motion Picture Tax Incentive Program. The Company is not in default "on a loan made by the state" or "guaranteed by the state." To the contrary, the letter from the Rhode Island Economic Development Corporation ("EDC") that you attached to your letter makes clear that the Company has failed to pay an Annual Guaranty Fee, and that the Company has thirty days from the date of EDC's notice to pay this Annual Guaranty Fee. Only if the Company fails to make such payment after the thirty-day grace period has elapsed will there be an Obligor Default (and a corresponding Event of Default to the extent the EDC declares the Obligor Default to be an Event of Default) under the Loan and Trust Agreement to which the Company and the EDC are parties. The Company satisfied its obligations with respect to the Annual Guaranty Fee, prior to expiration of the 30-day grace period, on May 18, 2012. Therefore, the Company's application to the Film & Television Office contains no misstatement, misrepresentation or omission with respect to the foregoing, and your removal of the Company from the queue was premature.

Given the foregoing, we request that the revocation referred to in your letter be voided and that the Company's position in the queue be reinstated immediately.

Very truly yours,

38 Studios, LLC

By:   
William Thomas, President & COO

cc: Randall Rosenbaum, Executive Director, RISCA  
David M. Sullivan, Tax Administrator, Division of Taxation  
Claire J.V. Richards, Legal Counsel, Governor's Office

