

THIS DEVELOPMENT SERVICES AGREEMENT is made effective as of the 7th day of November 2010 by and between 38 Studios, LLC, a Delaware limited liability company (the "Company"), and Orb Development, LLC, a Rhode Island limited liability company (the "Developer").

RECITALS

- A. The Company will be leasing that certain property known as One Empire Street to relocate and occupy as the Company's headquarters (the "Project").
- B. The Developer has provided and the Company desires that the Developer continue to provide certain services with respect to the development of the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Appointment and Term. The Company hereby appoints the Developer to render services in overseeing the Project for the Company as herein contemplated. The term of this Agreement shall begin on the date hereof and shall end when all services to be performed hereunder have been fully performed and all fees or other payments due to the Developer have been made.

2. Authority and Obligations. Subject to the provisions of the Lease Agreement of the Company effective as of November 7, 2010 (the "Lease Agreement"), the Developer shall have the authority and obligation to:

- (i) identify and engage on behalf of the Company an architect, designer, space planner and a general contractor and such professionals as may be necessary for the construction and rehabilitation of the Project;
- (ii) oversee, monitor and direct the design team with respect to the design of the Project in accordance with the terms and conditions of their respective Contracts;
- (iii) oversee, monitor and direct the general contractor with respect to the construction of the Project in accordance with the terms and conditions of the Construction Contract;
- (iv) act on behalf of the Company with federal, state and local government authorities with respect to the construction and rehabilitation of the Project;
- (v) act on behalf of the Company with respect to zoning, building codes, occupancy permits and all other local government matters concerning the Project; and
- (vi) prepare or cause to be prepared such environmental and neighborhood impact studies or reports, engineering surveys, preliminary plans and specifications as may be required in connection with the construction and rehabilitation of the Project.
- (vii) prepare or cause to be prepared a budget for the Project, including but not limited to direct construction hard costs, soft costs associated with the Project such as professional services related to design, furniture and fixture expenses, etc.
- (viii) act on behalf of the Company with respect to any lease modifications regarding building management.
- (ix) act on behalf of the Company with respect to any lease modifications regarding tenant improvements and landlord base building improvements.

Developer acknowledges and agrees that it has no right, title, and interest to any product, including without limitation, any software, domain names, trademarks, and other intellectual properties, created as a direct result of the services provided by Developer under this Agreement.

3. **Development Fee.** For the development services to be performed under this Agreement, the Company shall pay the Developer a development fee (the "Fee") in the amount of ten percent of the construction budget (including the Landlord building improvement budget an the Company's FF&E budget), but no less than Five Hundred Thousand Dollars (\$500,000). Notwithstanding the foregoing, Two Hundred Fifty Thousand Dollars (\$250,000) of the Fee shall earned and be paid upon execution for services rendered and the balance of the Fee shall be payable upon approval by the Company of the Project construction budget, but not later than June 1, 2011. Any Fee or portion thereof not paid on the dates set forth herein shall accrue interest at 18% per annum.

4. **Burdens and Benefits.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. Neither party may assign this Agreement without the consent of the other party.

5. **Severability of Provisions.** Each provision of this Agreement shall be considered to be severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

6. **No Continuing Waiver.** The waiver by either party of any breach of the terms of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

7. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Delaware without regard to principles of conflicts of laws.

8. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.

9. **Headings.** All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

10. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COMPANY:

38 Studios, LLC, a Delaware limited liability company

WITNESS:

Paulette Starck

By:


Name: W.C. THOMAS
Title: COO

Name: W.C. THOMAS

Title: COO

DEVELOPER:

Orb Development, LLC, a Rhode Island limited liability company

WITNESS:

WITNESS: Paulette Stark

By:

Name: Member
Title: