



# Heritage Global Partners

Asset Advisory and Auction Services

*A Legacy since 1937*

\_\_\_\_\_, 2013

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Company*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*City*

\_\_\_\_\_  
*State*

\_\_\_\_\_  
*Zip code*

\_\_\_\_\_  
*eMail address*

**Re: Bid for Assets of 38 Studios, LLC**

Ladies and Gentlemen:

Heritage Global Partners, a California corporation (“us” or “we”), on behalf of Richard J. Land, court appointed Permanent Receiver (the “Permanent Receiver”) for the assets of 38 Studios, LLC and its affiliated companies (collectively the “Company”) has agreed, subject to the terms of this letter agreement (this “Agreement”), to provide you with certain proprietary information regarding the Company for the limited purpose of assessing and evaluating your potential purchase of the assets of the Company (the “Assets”). All information and materials including without limitation all business, financial, tax, licensing, scientific, intellectual property, regulatory and proprietary information and data of or concerning the Company that is provided to you (“Information”) is referred to in this Agreement as the “Confidential Material.” The term “Confidential Material” will also include all analyses, compilations, studies, valuations or other documents prepared by you or your Representatives (as defined below) containing or based in whole or in part on any Information. The term “Confidential Material” does not include, however, information which (i) is or becomes generally available to the public other than as a result of a disclosure by you or your Representatives, (ii) was available to you on a non-confidential basis prior to disclosure by us, or (iii) becomes available to you on a non-confidential basis from a Person (as defined below) who is not otherwise prohibited from transmitting the information to you. For purposes of this Agreement, the term “Representatives” shall mean any of a Person’s affiliates, directors, partners, officers, employees, attorneys, accountants, agents, advisors or controlling Persons. The term “Person” shall be broadly interpreted to include, without limitation, any individual, corporation, limited liability company, partnership, governmental agency, or other entity. The fact that information may not be deemed Confidential Information hereunder shall not impair any of the Company’s proprietary rights or other rights with respect thereto.

You hereby agree that the Confidential Material (i) will not be used by you in any way detrimental to the Company or the Assets, (ii) will be kept confidential by you and your Representatives, (iii) shall not, without prior written consent from us or the Company, be disclosed by you or your Representatives, in any manner whatsoever, in whole or in part, to any Person, and (iv) shall not be used by you or your Representatives other than for the limited purpose to assess and evaluate the Assets for

purchase by you. Additionally, you will not, and will direct your Representatives who are given access to the Confidential Material not to, disclose to any Person the fact that the Confidential Material has been made available to you.

You hereby agree that as of the date of execution, the Company is the sole owner of the intellectual property assets to be disclosed under this agreement. You hereby agree not to pursue rights in any of the intellectual property owned by the Company, including patents, trademarks, copyrights, trade secrets and any other intellectual property protectable by law.

Moreover, you further agree to transmit Confidential Material only to those of your Representatives who need to know such information for the purposes set forth above and who shall (i) be advised by you of this Agreement and (ii) agree with you to be bound by the provisions hereof. You shall be responsible for any breach of this Agreement by your Representatives.

Neither the Permanent Receiver nor we shall be responsible or have any liability to you for any statements, information or representations contained in, or omitted from, any Information and make no representation or warranty as to the accuracy or completeness of any Confidential Material. You agree to, without reliance upon any Information, make an independent investigation, assessment, appraisal and valuation of the Assets.

If you decide not to purchase the Assets or upon demand by us or the Company, you will promptly return to us or destroy all copies of, extracts from, notes concerning, or other evidence of the Confidential Material in whichever form and confirm the same in writing to us. You acknowledge that we or the Company may supply the Confidential Material to other parties for review and evaluation of the Assets.

Notwithstanding anything to the contrary contained herein, your confidentiality and non-disclosure obligations under this Agreement shall survive for five years from the date of its execution by you.

If you or your Representatives are requested, become legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) or are required to disclose any of the Confidential Material or the fact that the Confidential Material has been made available to you, it is agreed that you or your Representatives, as the case may be, will provide us and the Company with prompt written notice of such request(s) or requirement so that we or the Company may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, you agree that you will furnish only that portion of the Confidential Material and such other information which is legally required and will exercise your best efforts to obtain reliable assurance that confidential treatment will be accorded to that portion of the Confidential Material and such other information which is being disclosed.

You hereby indemnify the Company and us and each of our respective officers, directors, partners, associates, employees and agents (each, an "Indemnified Party") against, and hold each Indemnified Party harmless from, any and all claims, expenses (including, without limitation, attorneys' fees, court costs and costs of investigation, litigation and arbitration and any other costs), losses, tax liabilities, damages, and any claims, costs, expenses or losses (collectively, "Claims") arising out of, in connection with, or resulting from, this Agreement, except as such Claims are determined by a final order of a court of competent jurisdiction to have resulted from an Indemnified Party's willful misconduct or gross negligence. The provisions of this paragraph hereof shall survive any termination or expiration of this Agreement.

No failure or delay by us, the Permanent Receiver or the Company in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial

exercise thereof preclude any other or further exercise thereof or the exercise of any right, power and privilege hereunder. Also, it is agreed that, in addition to all other legal and equitable rights of recovery, the Company, the Permanent Receiver and we shall be entitled to our reasonable, out-of-pocket attorneys' fees and costs and to equitable relief, including injunction and specific performance, in the event of any material breach of the provisions of this Agreement, it being recognized by you that the Company, the Permanent Receiver or we may not have an adequate remedy at law for a breach of the provisions of this Agreement. The provisions of this paragraph shall survive any termination of this Agreement. This Agreement shall remain in effect until you receive written notice from us of its cancellation.

The provisions of this Agreement shall be enforceable by the Company and the Permanent Receiver as if they were direct parties hereto.

You may not assign this Agreement or any rights hereunder, whether in whole or in part.

In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the rest and remainder hereof shall remain in full force and effect and such court shall modify such invalid or unenforceable term to the minimal extent necessary to render the same valid and legally enforceable.

This Agreement will be governed by the internal laws of the State of Rhode Island without regard to its conflicts of law principles. The Rhode Island Superior Court, Providence County, sitting in the matter entitled Rhode Island Economic Development Corp. v. 38 Studios, LLC, P.B. No.: 12-4095, shall have exclusive jurisdiction to enforce this Agreement and to interpret and arbitrate any issues or matters arising hereunder. In any action arising out of or concerning this Agreement, the parties mutually waive trial by jury. If any provision of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement, and all other such provisions shall remain in full force and effect.

If you are in agreement with the foregoing, please sign and return one copy of this Agreement, which will constitute our entire agreement with respect to the subject matter hereof. This Agreement may be executed in counterparts, which together shall constitute one and the same agreement.

Very truly yours,

HERITAGE GLOBAL PARTNERS

By: \_\_\_\_\_

Name: Nick Jimenez

Title: Executive Vice President

Confirmed and Agreed to as of  
the date first set forth above:

Recipient: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title: