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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

Type of Document: **MINIMUM ASSESSMENT AGREEMENT BETWEEN THE
CITY OF WEST DES MOINES AND MICROSOFT
CORPORATION (OSMIUM)**

✓ **Return Document to:** **Ryan T. Jacobson
City Clerk
City of West Des Moines
4200 Mills Civic Parkway, Suite 28
West Des Moines, Iowa 50265**

Preparer Information: **Nathan J. Overberg
Ahlers & Cooney, P.C.
100 Court Ave., Ste. #600
Des Moines, IA 50309
(515) 243-7611**

Taxpayer Information: **N/A**

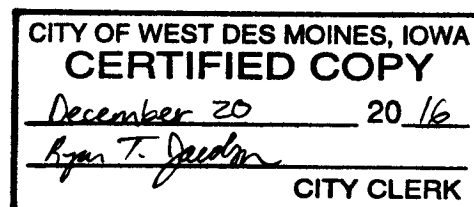
GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION: See first and second pages of the Minimum Assessment Agreement.

01295580-1\11333-280

Madison County



Prepared by: _____
Return to: _____

EXHIBIT D

Minimum Assessment Agreement between the City of West Des Moines and Microsoft Corporation (Osmium)

THIS MINIMUM ASSESSMENT AGREEMENT ("Minimum Assessment Agreement" or "Assessment Agreement"), is dated as of the 14th day of November 2016, by and between the CITY OF WEST DES MOINES, IOWA (the "City"), an Iowa municipal corporation, acting under the authorization of Chapter 403 of the Code of Iowa, 2015, as amended, and MICROSOFT CORPORATION, a Washington corporation, having an office for the transaction of business at One Microsoft Way, Redmond, Washington ("Developer").

RECITALS

WHEREAS, the City and Developer have entered into a Development Agreement dated as of 14th day of November 2016 ("Agreement" or "Development Agreement") regarding certain real property located in the City, which is legally described as follows:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4SE1/4) SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA.

AND

PARCEL 1:

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA,

PARCEL 2:

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA, EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 121 AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.

PARCEL 3:

THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (E1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 122 AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.

PARCEL 4:

THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (W1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.

PARCEL 5:

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.

(the "Development Property");

WHEREAS, the defined terms in the Development Agreement will also apply to this Minimum Assessment Agreement; and

WHEREAS, it is contemplated that Developer undertake the construction of certain building improvements (as described in the Development Agreement) (together, the "Minimum Improvements") on the Development Property, as provided in the Development Agreement; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, as amended, the City and Developer desire to establish a minimum actual value for the Minimum Improvements to be constructed on the Development Property by Developer pursuant to the Development Agreement; and

WHEREAS, the City, the Warren County Assessor, and the Madison County Assessor have reviewed the preliminary plans and specifications for the Minimum Improvements that are contemplated to be constructed; and

WHEREAS, the City expects to authorize the issuance of general obligation bonds (the "City Bonds") the proceeds of which will be used to fund an Economic Development Grant to the Developer and the construction of Public Use Improvements; the principal and interest on which City Bonds are expected to be paid from the real property taxes paid with respect to the Development Property and the Minimum Improvements located thereon.

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon substantial completion of construction of the above-referenced Minimum Improvements but no later than the dates set forth below, the minimum actual value, which shall be fixed for assessment purposes for the Minimum Improvements on the Development Property (building and land), shall be not less than the following:

<u>Assessment Date</u> <u>(January 1)</u>	<u>Minimum Actual</u> <u>Value (Aggregate</u> <u>Values for all</u> <u>Phases)(land and</u> <u>buildings)</u>
<u>2018</u>	<u>\$88,775,649</u>
<u>2019</u>	<u>\$125,819,474</u>
<u>2020</u>	<u>\$236,345,067</u>
<u>2021</u>	<u>\$307,200,052</u>
<u>2022</u>	<u>\$310,346,247</u>
<u>2023</u>	<u>\$313,495,409</u>
<u>2024</u>	<u>\$313,527,482</u>
<u>2025</u>	<u>\$313,435,439</u>
<u>2026</u>	<u>\$313,214,304</u>
<u>2027</u>	<u>\$312,858,948</u>
<u>2028</u>	<u>\$308,988,076</u>
<u>2029</u>	<u>\$308,280,763</u>
<u>2030</u>	<u>\$307,421,562</u>
<u>2031</u>	<u>\$302,822,025</u>
<u>2032</u>	<u>\$297,915,537</u>
<u>2033</u>	<u>\$296,419,057</u>
<u>2034</u>	<u>\$290,941,608</u>

<u>2035</u>	<u>\$285,126,493</u>
<u>2036</u>	<u>\$278,962,397</u>
<u>2037</u>	<u>\$268,403,034</u>

(herein referred to as the "Minimum Actual Value.") The Minimum Actual Value is the value before commercial rollback.

The Minimum Actual Value(s) shall continue to be effective from the date of this Assessment Agreement and shall terminate and be of no further force or effect upon the earlier of (i) the end of the last fiscal year the City can legally collect incremental taxes from the Osmium Urban Renewal Area (to be clear, this terminating event shall not occur so long as the City can collect incremental taxes from any portion of the Osmium Urban Renewal Area); and (ii) the date that the City has received tax increment reimbursement of all remaining Debt Service for the City Bonds issued to pay the Economic Development Grant and to construct the Public Use Improvements ("Termination Date"). Upon the occurrence of the Termination Date, the City shall certify to the Warren County Assessor, the Madison County Assessor, and to the Developer that the Termination Date has occurred and this Minimum Assessment Agreement shall no longer control the assessment of the Development Property.

The Minimum Actual Value shall be maintained until the Termination Date regardless of (a) any failure to complete the Minimum Improvements; (b) destruction of all or any portion of the Minimum Improvements; (c) diminution in value of the Development Property or the Minimum Improvements; or (d) any other circumstance, whether known or unknown and whether now existing or hereafter occurring.

2. Developer shall pay or cause to be paid when due all real property taxes and assessments payable with respect to all and any parts of the Development Property and the Minimum Improvements pursuant to the provisions of this Minimum Assessment Agreement and the Development Agreement. Such tax payments shall be made without regard to any loss, complete or partial, to the Development Property or the Minimum Improvements, any interruption in, or discontinuance of, the use, occupancy, ownership or operation of the Minimum Improvements by Developer, or any other matter or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Development Property or the Minimum Improvements.

3. Developer agrees that its obligations to make the tax payments required hereby, to pay the other sums provided for herein, and to perform and observe its other agreements contained in this Minimum Assessment Agreement shall be absolute and unconditional obligations of Developer (not limited to the statutory remedies for unpaid taxes) and that Developer shall not be entitled to any abatement or diminution thereof, or set off therefrom, nor to any early termination of this Minimum Assessment Agreement for any reason whatsoever.

4. Developer agrees that, prior to the termination of this Assessment Agreement, it will not:

(a) seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of property contained as a part of the Development Property or the Minimum Improvements determined by any tax official to be applicable to the Development Property or the Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

(b) seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other local, City, or State law or regulation, of the taxation of real property, including improvements and fixtures thereon, contained on the Development Property or the Minimum Improvements; or

(c) request any Assessor to reduce the Minimum Actual Value; or

(d) appeal to the board of review of Warren or Madison County, State, District Court, or to the Director of Revenue of the State to reduce the Minimum Actual Value; or

(e) cause a reduction in the actual value or the Minimum Actual Value through any other proceedings.

5. The parties agree that the Minimum Actual Values set forth in this Assessment Agreement takes into account the expectation that Developer will avail itself of the property tax exemptions provided by the State of Iowa's web search portal exemption (Iowa Code Sections 423.3(92) and 427.1(35)), and that such exemptions shall not reduce the property tax assessments for the Development Property and Minimum Improvements (land and buildings) below the Minimum Actual Values set forth herein. In order to allow Developer to do so, Developer agrees not to claim the exemption provided by Section 1.10A-3 of the Municipal Code of the City (regarding Industrial Tax Abatement).

6. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Warren County, Iowa and the Recorder of Madison County, Iowa. Such filing shall constitute notice to any subsequent encumbrancer of the Development Property (or part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

7. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Development Agreement.

8. This Minimum Assessment Agreement shall not be assignable without the written consent of the City and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

9. Nothing herein shall be deemed to waive the rights of Developer under Iowa Code Section 403.6(19) to contest that portion of any actual value assignment made by the Warren Assessor in excess of the Minimum Actual Values established herein. In no event, however, shall Developer seek to reduce the actual value to an amount below the Minimum Actual Values established herein during the term of this Agreement. This Minimum Assessment Agreement may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

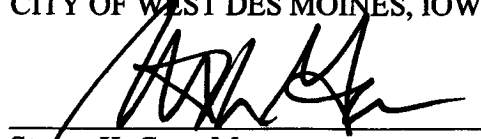
10. If any term, condition or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

11. The Minimum Actual Values herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Termination Date set forth in Section 1 above.

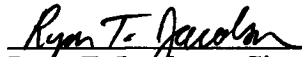
12. Developer has provided a title opinion or lien or title search/certificate to City listing all lienholders of record as of the date of this Assessment Agreement and all such lienholders have signed a consent to this Assessment Agreement substantially in the form of the Lienholder Consent set forth in this Exhibit D, which consents are attached hereto and made a part hereof.

Remainder of this page is blank. Signatures start on the next page.

CITY OF WEST DES MOINES, IOWA


Steven K. Gaer, Mayor

ATTEST:


Ryan T. Jacobson, City Clerk

(SEAL)

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this 14th day of November, 2016, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, and that the seal affixed to the foregoing instrument is the seal of the City of West Des Moines, Iowa, and that said instrument was signed and sealed on behalf of said City of West Des Moines, Iowa by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said City of West Des Moines, Iowa, by it and by them voluntarily executed.




Notary Public in and for the State of Iowa

MICROSOFT CORPORATION

By: _____

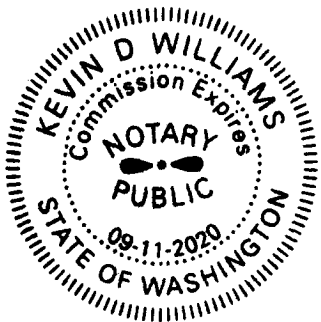
Christian Belady

General Manager, Cloud Infrastructure,
Strategy & Architecture, MCIO

STATE OF WASHINGTON)

COUNTY OF KING)

On this 14th day of NOVEMBER, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Christian Belady, to me personally known, who, being by me duly sworn, did say that he is the General Manager, Cloud Infrastructure, Strategy & Architecture of Microsoft Corporation, and that said instrument was signed on behalf of said corporation; and that the said Christian Belady, as such representative acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by them voluntarily executed.



Notary Public in and for the State of
Washington

EXHIBIT D (Cont.)
LIENHOLDER CONSENT

In consideration of one dollar and other valuable consideration, the receipt of which is hereby acknowledged, and notwithstanding anything in any loan or security agreement to the contrary, the undersigned ratifies, approves, consents to and confirms the Minimum Assessment Agreement entered into between the parties, and agrees to be bound by its terms and subordinates any previously acquired mortgage, lien or other interest in the Development Property to the City of West Des Moines, Iowa. This provision shall be binding on the parties and their respective successors and assigns.

Name of Lienholder

By: _____
Signature

By: _____
Signature

Date _____

[illegible]

On this _____ day of _____, 2016, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____ of _____ and that said instrument was signed on behalf of said company, and that the said acknowledged the execution of said instrument to be the voluntary act and deed of said domestic company, by them voluntarily executed.

Notary Public in and for the State of Iowa

[add additional pages for each lienholder]

Note: If there are no lienholders, this page shall have no signatures.

EXHIBIT D (Cont.)
CERTIFICATION OF WARREN COUNTY ASSESSOR

The undersigned, having reviewed the plans and specifications for the Minimum Improvements already constructed or to be constructed and the market value assigned to the land upon which the Minimum Improvements are constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of a portion of the Development Property described in the foregoing Minimum Assessment Agreement, certifies that the actual value assigned to the land and improvements located in Warren County upon completion, but no later than the effective dates set forth below, shall be at least as follows until the Termination Date contained in Section 1 of the Assessment Agreement:

<u>Assessment Date</u> <u>(January 1)</u>	<u>Minimum Actual</u> <u>Value (Aggregate</u> <u>Values for all</u> <u>Phases)(land and</u> <u>buildings)</u>
<u>2018</u>	<u>\$88,775,649</u>
<u>2019</u>	<u>\$125,819,474</u>
<u>2020</u>	<u>\$236,345,067</u>
<u>2021</u>	<u>\$307,200,052</u>
<u>2022</u>	<u>\$310,346,247</u>
<u>2023</u>	<u>\$313,495,409</u>
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<u>2025</u>	<u>\$313,435,439</u>
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<u>2027</u>	<u>\$312,858,948</u>
<u>2028</u>	<u>\$308,988,076</u>
<u>2029</u>	<u>\$308,280,763</u>

<u>2030</u>	<u>\$307,421,562</u>
<u>2031</u>	<u>\$302,822,025</u>
<u>2032</u>	<u>\$297,915,537</u>
<u>2033</u>	<u>\$296,419,057</u>
<u>2034</u>	<u>\$290,941,608</u>
<u>2035</u>	<u>\$285,126,493</u>
<u>2036</u>	<u>\$278,962,397</u>
<u>2037</u>	<u>\$268,403,034</u>

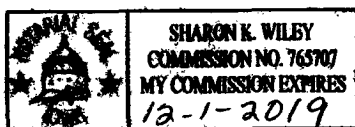
The Minimum Actual Value is the value before commercial rollback.

Janet Bunce
Assessor for the County of Warren, Iowa

12-12-16
Date

STATE OF IOWA)
) SS
COUNTY OF WARREN)

Subscribed and sworn to before me by Janet Bunce, Assessor for the County of Warren, Iowa on this 12th day of December, 2016.



Sharon K. Wiley
Notary Public for the State of Iowa

EXHIBIT D (Cont.)
CERTIFICATION OF MADISON COUNTY ASSESSOR

The undersigned, having reviewed the plans and specifications for the Minimum Improvements already constructed or to be constructed and the market value assigned to the land upon which the Minimum Improvements are constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of a portion of the Development Property described in the foregoing Minimum Assessment Agreement, certifies that the actual value assigned to the land and improvements located in Madison County upon completion, but no later than the effective dates set forth below, shall be at least as follows until the Termination Date contained in Section 1 of the Assessment Agreement:

<u>Assessment Date</u> <u>(January 1)</u>	<u>Minimum Actual</u> <u>Value (Aggregate</u> <u>Values for all</u> <u>Phases)(land and</u> <u>buildings)</u>
<u>2018</u>	<u>\$88,775,649</u>
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<u>2036</u>	<u>\$278,962,397</u>
<u>2037</u>	<u>\$268,403,034</u>

The Minimum Actual Value is the value before commercial rollback.

Joni J Hopkins
Assessor for the County of Madison, Iowa

12/8/16
Date

STATE OF IOWA)
) SS
COUNTY OF MADISON)

Subscribed and sworn to before me by Joni J Hopkins, Assessor for the County of Warren, Iowa on this 8th day of December, 2016.



Jess Aldridge
Notary Public for the State of Iowa

EXHIBIT D (cont.)

Consistent with Iowa Code §403.6(19)(b), filed with this assessor certification is a copy of subsection 19 as follows:

19. a. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$

b. This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.