

First Amendment to Tax Incremental District No. 5 Development Agreement Between the Village of Mount Pleasant and Racine County (“Municipalities”) and Microsoft Corporation (“Developer”)

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “*Amendment*”) is entered into as of _____, 2023, by and between **Microsoft Corporation**, a Washington corporation (the “*Developer*”), and the **Village of Mount Pleasant** (the “*Village*”), a Wisconsin municipal corporation and **Racine County, Wisconsin** (the “*County*” and, together with the Village, “*Municipalities*”). Collectively, the Developer, Village and County are the Parties to the Amendment, and each is a Party.

RECITALS

The Municipalities and Developer acknowledge the following:

- A. The Parties entered into a Tax Incremental District No. 5 Development Agreement as of April 18, 2023 (the “*Original Agreement*”) to facilitate Developer’s acquisition and development of the “Property” defined therein, which Property consists of 315 acres of vacant land lying south of Braun Road, north of C.T.H. KR, east of the Canadian Pacific Rail right-of-way and west of 90th Street in the Village of Mount Pleasant, Racine County, Wisconsin (also referred to in this Amendment as “*Area IIIB*”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Original Agreement.
- B. Pursuant to a purchase and sale agreement between Developer and Village (the “*Area IIIA Purchase Agreement*”), Developer has contracted to purchase the approximately 231 acres of land lying south of Braun Road, north of C.T.H. KR, west of the Canadian Pacific Rail right-of-way and east of C.T.H. H adjacent to Area IIIB (other than land owned by American Transmission Company) (“*Area IIIA*”).
- C. Pursuant to a purchase and sale agreement between Developer and Village (the “*Area II Purchase Agreement*” and, together with the Area IIIA Purchase Agreement, the “*New Purchase Agreements*”), Developer has contracted to purchase the portion of the approximately 800 acres of land lying north of Braun Road, south of S.T.H. 11, west of the Village/Sturtevant municipal boundary and east of Wisconsin Valley Way owned by the Village (the “*Village-Owned Area II Property*”). The Village-Owned Area II Property and certain other abutting real property not owned by the Village shall be referred to hereunder as “*Area II*”).
- D. Area IIIA and Area II are located within the boundaries of the District.

- E. All Parties' rights and obligations under this Amendment are contingent upon, and will become effective only in the event of, the closing of Developer's purchase of Area IIIA and the Village-Owned Area II Property. For the avoidance of doubt, if the Developer fails to acquire both Area IIIA and the Village-Owned Area II Property from Village for any reason whatsoever, this Amendment shall be null and void and of no further force or effect, leaving the Original Agreement in place without the modifications provided herein.
- F. Developer plans to expand the Project into Area IIIA and Area II, and the Municipalities find such expansion of the Project will further the public purposes for which the District was created.
- G. The Village, pursuant to Village Board action dated November 27, 2023, has approved this Amendment, and authorized its execution by Village officials, on the Village's behalf.
- H. The County, pursuant to County Board action dated November 28, 2023, has approved this Amendment, and authorized its execution by County officials, on the County's behalf.
- I. Developer has approved this Amendment and authorized its execution by an appropriate representative on its behalf.

AGREEMENTS

In consideration of the foregoing **RECITALS** (which are incorporated herein by reference) and the terms and conditions set forth herein, the Parties agree to amend the Agreement as follows.

ARTICLE I: REPRESENTATIONS AND WARRANTIES

- A. The Municipalities hereby re-make the representations and warranties set forth in Article I(A) of the Original Agreement as of the date of this Amendment.
- B. The Developer hereby re-makes the representations and warranties set forth in Article I(B) of the Original Agreement as of the date of this Amendment with the exception of the representation and warranty set forth in the first two sentences of Article I(B)(3) thereof. In lieu of remaking the aforementioned representation and warranty, Developer makes the following representation and warranty: The execution, delivery and the consummation of the transactions contemplated in this Amendment have been duly authorized and approved by the Developer and no other or further acts or proceedings of the Developer are required with respect thereto other than its acquisition of Area IIIA and Area II pursuant to the New Purchase Agreements. Nothing contained in this Agreement shall limit Developer's rights to terminate the New Purchase Agreements in accordance with the express terms and conditions thereof.

ARTICLE II: DEVELOPER ACTIVITIES AND OBLIGATIONS

- A. In addition to the requirements of Article II of the Original Agreement, Developer shall construct the Project in accordance with all applicable Village zoning and building codes, ordinances, and regulations then in effect and subject to the following terms:
 - 1. The Municipalities acknowledge and agree that Developer has commenced

Vertical Construction of Improvements on the South Parcel of Area IIIB. Accordingly, (a) the South Parcel of Area IIIB is no longer subject to the repurchase right set forth in Article II(A)(2) of the Original Agreement or Article II(A)(2) of this Amendment, and (b) notwithstanding anything to the contrary contained in the Original Agreement, Developer can satisfy its obligation to commence Vertical Construction of Improvements on the North Parcel of Area IIIB by commencing Vertical Construction of Improvements within Area IIIA, Area IIIB or Area II (collectively, the “*Expanded Project Area*”) in accordance with the terms and conditions of this Amendment.

2. Subject to Force Majeure, Developer shall (a) obtain a building permit and commence Vertical Construction of Improvements of a second Building in the Expanded Project Area not later than July 1, 2030, (b) obtain a building permit and commence Vertical Construction of Improvements of a third Building in the Expanded Project Area not later than July 1, 2037, (c) obtain a building permit and commence Vertical Construction of Improvements of a fourth Building in the Expanded Project Area not later than July 1, 2044, and (d) thereafter construct such additional buildings in accordance with the then current Village zoning and building codes, and the Plans and Specifications. The Village Community Development Department shall retain copies of the Village-approved Plans and Specifications. For the avoidance of doubt, it is the intent of the Parties that Developer shall construct at least one (1) building in each of Area IIIA, Area IIIB and Area II with one (1) additional building in any of Area II, Area IIIA, or Area IIIB for a total of at least four (4) buildings.
3. Subject to Force Majeure, in the event that Developer fails to commence Vertical Construction of Improvements on at least a second, third and fourth Building in the Expanded Project Area by the dates set forth above (as such dates may be extended as a result of Force Majeure), then Developer shall neither be in default hereunder nor liable to the Municipalities for damages but, until Vertical Construction of Improvements on the applicable building is commenced, the Municipalities, as their sole and exclusive remedy, shall have an option to repurchase all, but not less than all, of those portions of the Expanded Project Area on which Vertical Construction of Improvements has not yet commenced (a “*Repurchase Option*”) from the Developer on the terms set forth below (the “*Repurchase Terms*”). Notwithstanding the foregoing, the Developer and the Municipalities shall act reasonably and cooperatively to adjust dates set forth in this Article II.
4. In order to exercise a Repurchase Option, the Municipalities shall provide written notice of exercise (a “*Repurchase Notice*”) to Developer, designating the lands to be repurchased and a date of closing the Repurchase Option which shall be not less than one year subsequent to the date of the notice; provided, however, that Developer shall have the right to nullify the effect of a Repurchase Notice by delivering reasonable evidence to the Municipalities that Developer has commenced Vertical Construction of Improvements (as required

above) whereupon the Municipalities shall promptly rescind the Repurchase Notice in writing. If the Municipalities have properly exercised the Repurchase Option and Developer has not commenced Vertical Construction of Improvements on the lands to be repurchased by the closing date named in the Repurchase Notice, the Parties shall proceed to closing of the Repurchase Option and conveyance to the Village in accordance with the Repurchase Terms.

5. For purpose of any Repurchase Option, the Repurchase Terms shall be as follows: (a) the repurchase price shall be the per-acre purchase price paid for the lands being repurchased when acquired by Developer, multiplied by the area of land to be repurchased; (b) all closing costs (including any transfer fee, title insurance costs and escrow fees) shall be paid by Developer; (c) Developer shall convey the lands being repurchased by special warranty deed and in as-is, where-is condition, without any representations or warranties of any kind, and without recourse to Developer.
6. Notwithstanding the foregoing, the parties acknowledge and agree that all Repurchase Options hereunder shall terminate when both of the following have occurred (a) an aggregate Minimum Guaranteed Value (as defined in Article III(C) below) of \$3 billion is achieved for Area II, Area IIIA and Area IIIB, and (b) Vertical Construction of Improvements within Area II has commenced.

- B. All references to the "Project" in the Original Agreement and in this Amendment shall be deemed to include, but shall not be limited to, the four (4) buildings referenced in Article II(A)(2), above.

ARTICLE III: AMENDMENT TO THE AGREEMENT.

Article III(B) and (C) of the Agreement are hereby amended and restated in their entirety as follows:

"B. Subject to Article III(C) hereof, the Village shall make annual payments to Developer, or its designee, solely from Incremental Project Revenues from Buildings on Area IIIB only and not including any Buildings on Area IIIA or Area II. Such payments shall be forty-two percent (42%) of the Incremental Project Revenues from Buildings on Area IIIB only paid by Developer and collected and received by the Village for the previous tax year (the "Annual Incentive Payment"), which payment shall not exceed a maximum annual amount of five million dollars (\$5,000,000) (the "Maximum Annual Payment"). Except as otherwise set forth in Article III(C) hereof, each Annual Incentive Payment shall be made within thirty (30) days of payment in full of (1) all real estate taxes then due and payable with respect to the entire expanded Project (i.e., Area II, Area IIIA and Area IIIB), (2) any special assessments levied against the entire expanded Project under Wis. Stat. § 66.0701-0733 then due and payable, (3) any special charges levied against the entire expanded Project under Wis. Stat. § 66.0627 then due and payable, and (4) all Shortfall Amounts due and payable as defined in Article III(C) below, provided however that one or more Annual Incentive Payments due to Developer may be prepaid by the Municipalities in their sole discretion at any time. In no event shall such Annual Incentive Payments continue after the termination or expiration of the Agreement or

the District or after all such payments have been prepaid in full. The Annual Incentive Payments are expressly conditioned on (i) Developer not being in an uncured monetary default hereunder, (ii) Developer not being tax delinquent or delinquent in paying any Shortfall Amounts due, and (iii) sufficient Tax Increment Revenue from the District being collected in each year to fully fund all annual payments due on the obligations of the Municipalities set forth in Article III(C) and all annual payments and costs contemplated in the Project Plan.

C. The Municipalities represent that all Tax Increment Revenue has been pledged as collateral for the Village's Tax Increment Revenue Bonds (TID 5), Series 2018A (the "TIF Bonds"), bonds issued for debt service on the Village's Sewer System Revenue Bonds, Series 2021 (the "Sewer Bonds") and the Village's \$20,510,000 Note Anticipation Notes, Series 2022A dated March 15, 2022 ("Village GO Bonds"), as the same may be refunded or refinanced, and that the Municipalities have committed to additional borrowing estimated in the fourth column of the Schedule G attached to the Agreement ("Estimated Additional Borrowing") (the TIF Bonds, Sewer Bonds, Village GO Bonds and Estimated Additional Borrowing are collectively referred to herein as "Other Municipal Obligations"). In reliance on Developer's development of the Project in accordance with the terms hereof, the Municipalities also have committed to allocate Tax Increment Revenue pursuant to a Second Implementation Agreement with Foxconn attached hereto as Exhibit A (the "Second Foxconn Agreement"). Accordingly, as of January 1, 2028, Developer agrees to cause the minimum "Value Increment" (as defined in the Tax Increment Law) for Area II, Area IIIA and Area IIIB to be not less than \$1.4 billion (the "Minimum Guaranteed Value") and to maintain that Minimum Guaranteed Value until December 31, 2047. In any year commencing January 1, 2028 that the Value Increment of Area II, Area IIIA and Area IIIB is less than the Minimum Guaranteed Value, then Developer shall neither be in default hereunder nor liable to the Municipalities for damages but, as the Municipalities' sole and exclusive remedy, Developer shall pay to the Village, for deposit in the District special fund, an amount equal to the lesser of (1) \$15,000,000 or (2) the difference between [a] the real property and personal property taxes that would have been payable had Area II, Area IIIA and Area IIIB had a Value Increment equal to the Minimum Guaranteed Value, using the tax rates for the year for which such calculation is to be performed, and [b] the real property and personal property taxes assessed to the actual Value Increment of Area II, Area IIIA and Area IIIB for such tax year (the "Shortfall Amount"). Any Shortfall Amounts paid to the Village by Developer under this section shall become additional Annual Incentive Payments subsequently to become due to Developer, in excess of the Maximum Annual Payment set forth above. Municipalities agree that Developer shall have no further obligation to pay any Shortfall Amounts with respect to Area II, Area IIIA and/or Area IIIB after Municipalities acquisition thereof pursuant to an exercise of the Repurchase Option.

D. Village's obligations to pay Developer any Annual Incentive Payments are contingent on (1) annual receipt by the Village of Tax Increment Revenue (either by way of real property and personal property tax payments, tax shortfall payments, Shortfall Amounts, payments in lieu of taxes under applicable contracts including make-up payments, or similar payments or other revenue sources) in excess of amounts required to be paid on the Other Municipal Obligations and (2) annual receipt by the Village, following January 1, 2028, of Tax Increment from Area II, Area IIIA and Area IIIB based on the Minimum Guaranteed Value. Village shall provide Developer with a written notice (a "*TIF Performance Notice*") not later than January

31 of each year during the Term indicating whether the Tax Increment Revenue for the previous calendar year was sufficient to pay the amounts due on the Other Municipal Obligations in the previous year and whether the Minimum Guaranteed Value has been achieved. In the event that such Tax Increment Revenue was sufficient to pay the amounts due on the Other Municipal Obligations for the previous calendar year and the Minimum Guaranteed Value was achieved or maintained, then no Shortfall Amount shall be due from Developer and the Village shall pay Developer an Annual Incentive Payment for the previous year, to the extent that Incremental Project Revenues from Buildings on Area IIIB is available, not to exceed the Maximum Annual Payment. In the event that the Tax Increment Revenue for the previous year was not sufficient to pay the amounts due on the Other Municipal Obligations for the previous calendar year or the Minimum Guaranteed Value was not achieved or maintained, then Developer shall pay the Shortfall Amount to the Village within thirty (30) days following receipt of the TIF Performance Notice and Village's obligation to pay the Annual Incentive Payment to Developer for such year shall be deferred, and shall roll over to the next future year, or years, in which the Tax Increment Revenue exceeds the amounts due on the Other Municipal Obligations and the Minimum Guaranteed Value is achieved. Prior to the expiration of the Term of the Agreement, the Municipalities shall pay Developer any Shortfall Amounts paid by Developer and any Annual Incentive Payments that have been deferred or rolled-over as a result of any Tax Increment Revenue shortfalls ("Roll-Over Payments"). The final Annual Incentive Payment (which shall include any unpaid Roll-Over Payments from prior years and shall include interest calculated at the rate of five and one-half percent (5.5%) per annum) will be made the year after such expiration or closure (but only to the extent that Incremental Project Revenues are available), and no additional amounts shall be paid to Developer thereafter. The Village agrees it will not, without Developer's prior written consent (which consent may be withheld in Developer's sole and absolute discretion), increase any obligations related to the Other Municipal Obligations during the Term of the Agreement, except for [x] obligations that may be undertaken by Village to complete the required installation of sanitary sewer system improvements, water system improvements, transportation improvements or a new fire station for the District, [y] certain reimbursements due to the Wisconsin Department of Transportation, referenced as the Estimated Additional Borrowing on Schedule G of the Agreement, or [z] as set forth in the Second Foxconn Agreement."

ARTICLE IV: MISCELLANEOUS

- A. A Memorandum of this Amendment, specifically referencing the Repurchase Option and otherwise in a form reasonably acceptable to the Parties, shall be recorded in the office of the Register of Deeds of Racine County, Wisconsin, immediately following the recording of the deed and prior to the recording of any mortgage securing any construction loan, or any other mortgage on Area IIIA and Area II, it being understood by the Parties that this Amendment will run with the land and will be binding upon the Expanded Project Area and any owner of all or any portions of the Expanded Project Area and their successors and assigns. Promptly upon the earlier of (i) the commencement of Vertical Construction of Improvements on Area IIIA, the North Parcel of Area IIIB and Area II, and (ii) the expiration of the Repurchase Option, the Municipalities shall execute, deliver and record a termination of such Memorandum in a form and with content acceptable to the Parties with respect to the applicable portion(s) of the Expanded Project Area. Concurrent with its execution and delivery

of this Agreement, the Municipalities shall execute, deliver and record a termination of the Memorandum recorded on the South Parcel of Area IIIB.

- B. This Amendment may be executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any electronic signature to this document or to any other certificate, agreement or document related to this transaction, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the federal Electronic Signatures in Global and National Commerce Act, any state electronic signatures and/or records act, or any similar state law based on the Uniform Electronic Transactions Act. The parties hereto waive any objection to the contrary. "Electronic signature" as used herein includes (a) any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record (including any signature affixed by Adobe Sign), and (b) any facsimile or .pdf signature.
- C. The Original Agreement remains in full force and effect, except as expressly modified by this Amendment. Subject to the satisfaction of the condition precedent set forth in Recital E, above, all references in the Original Agreement "this Agreement", "herein" or "hereunder", shall refer to the Original Agreement as modified by this Amendment; provided, however, that in the event of any inconsistency between the Original Agreement and this Amendment, the terms of this Amendment shall control.
- D. If this Amendment is executed first by Developer, then Developer and Municipalities acknowledge and agree that such executed Amendment shall not bind Developer unless and until this Amendment has been executed and delivered by the Municipalities. In such event, unless the Municipalities execute and deliver this Amendment to Developer on or before 5:00 p.m. Pacific Time, on that day which is ten (10) business day(s) after the date at which this Amendment is finally approved by the Municipalities, then Developer shall have the right to revoke its signature at any time prior to Developer's receipt of such signed counterpart(s) by delivering written notice of such election (which notice may be delivered by email notice alone).

IN WITNESS WHEREOF, this Amendment is executed as of the date first above written.

[signature pages to follow]

DEVELOPER:

Microsoft Corporation,
a Washington corporation.

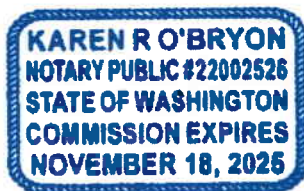
By: [Signature]
Name: Aditya Dalmia
Its: CVP

Date: 11/20/2023

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I CERTIFY that I know or have satisfactory evidence that Aditya Dalmia is the person who appeared before me, and said person acknowledged that he or she signed this instrument, on oath stated that he or she was authorized to execute the instrument and acknowledged it as the CVP of Microsoft Corporation, a Washington corporation, to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

DATED this 20 day of November, 2023



[Signature]
Typed/Printed Name Karen R O'Bryon
NOTARY PUBLIC, State of Washington
My Commission Expires 11/18/2025

By:

Date:

By:

Date:

By:

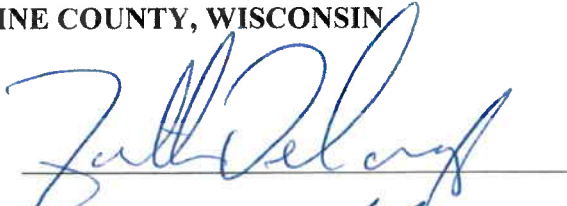
My commission expires:

Approved as to Form:

50749704

RACINE COUNTY, WISCONSIN

By:



Jonathan Delagrave, County Executive

By:

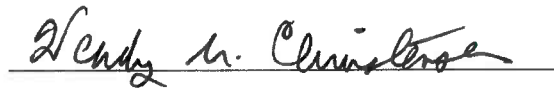


Thomas E. Roanhouse, County Board Chair

Date: _____

ATTEST

By:



Wendy M. Christiansen, County Clerk

Date: _____

STATE OF WISCONSIN)
) ss
Racine COUNTY)

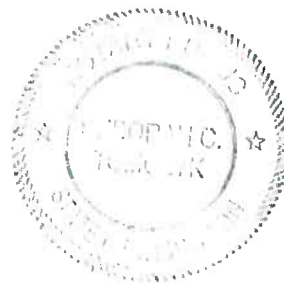
Personally appeared before me this 28th day of November, 2023, the above named Jonathan Delagrave and Wendy Christiansen, the County Executive and County Clerk, respectively, of the Racine County, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of Racine County and by its authority.

By:



Notary Public State of Wisconsin

My commission expires: permanently



Certified to be correct as to form this 28 day of November, 2023:


Michael Lanzdorf, Corporation Counsel

Reviewed by Finance Director:

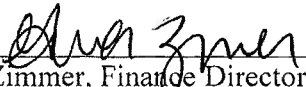

Gwen Zimmer, Finance Director

Exhibit A
Second Foxconn Agreement