



Date December 20, 2021

RESOLUTION APPROVING THIRD AMENDMENT TO AMENDED AND RESTATED URBAN RENEWAL AGREEMENT FOR SALE OF LAND FOR PRIVATE REDEVELOPMENT AND AMENDED DECLARATION OF COVENANTS WITH MIESBLOCK COMMERCIAL, LLC (MICHAEL K. NELSON)

WHEREAS, on April 11, 2016, by Roll Call No. 16-0631, the City Council approved an Urban Renewal Agreement for Sale of Land for Private Redevelopment with Grand 7 Partners, LLC, represented by Mike Nelson, which was amended by the First Amendment approved by the City Council on September 12, 2016, by Roll Call No. 16-1531, and further amended by the Second Amendment approved by the City Council on October 10, 2016, by Roll Call No. 16-1748; and

WHEREAS, on August 14, 2017, by Roll Call No. 17-1406, the City Council approved an Amended and Restated Urban Renewal Agreement for Sale of Land for Private Redevelopment (“Agreement”) with Grand 7 Partners, LLC, whereby Grand 7 Partners, LLC agreed to develop the property in three phases as follows (collectively “Improvements”), in consideration of economic incentives to be provided by the City:

- Phase 1 to include the construction of a building (“skywalk node”) at the southwest corner of the site that provided a connection between the existing Grand Avenue skywalk bridge and the new 7th Street skywalk bridge, including the vertical connection on this block with an elevator and open air stairway connecting between the sidewalk and skywalk levels;
- Phase 2 to include the construction of a 3-story, 18,000 square-foot commercial building with ground floor restaurant and offices on the upper floors along the Grand Avenue frontage, where currently Microsoft’s local offices occupy one floor and a restaurant has recently committed to moving into the first floor with opening planned for summer 2020; and
- Phase 3 to include the construction of an apartment building with a minimum of six (6) floors and 75 market rate dwelling units at the 7th Street and High Street frontages; and

WHEREAS, Grand 7 Partners, LLC has completed Phases 1 and 2 of said project in accordance with the Agreement and the City has issued the Certificates of Completion for said project phases; and

WHEREAS, on October 14, 2019, by Roll Call No. 19-1645, the City Council approved a First Amendment to the Agreement allowing an additional year for completion of Phase 3 of the Improvements; and

WHEREAS, on January 25, 2021, by Roll Call No. 21-0108, the City Council approved a Second Amendment to the Agreement allowing a second additional year for completion of Phase 3 of the Improvements, and further consented to the assignment of the Agreement by Grand 7 Partners, LLC to Miesblock Commercial, LLC (“Developer”), represented by Michael K. Nelson, Manager for purposes of the Developer completing Phase 3 of the Improvements; and

WHEREAS, the Developer has indicated that it will not be able to achieve the required project start or completion deadlines for Phase 3 as currently set forth in the Agreement, as amended by the Second Amendment thereto, of November 1, 2021 and April 1, 2023, respectively, and has requested a one-year extension of each deadline; and



Roll Call Number

Agenda Item Number

31.1924

42

Date December 20, 2021

WHEREAS, City staff and the Developer have negotiated a Third Amendment to the Agreement, in substantially the form on file in the office of the City Clerk, revising the project start and completion deadlines to November 1, 2022, and April 1, 2024, respectively, and revising related dates associated with the commencement of the City's tax abatement and economic development assistance for the project and contained in Exhibit A, Declaration of Covenants, to said Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, as follows:

1. The proposed Third Amendment to Amended and Restated Urban Renewal Agreement for Sale of Land for Private Redevelopment between the City and Miesblock Commercial, LLC, and Amended Declaration of Covenants related thereto, both in form on file in the office of the City Clerk, are hereby approved.
2. The Mayor is hereby authorized and directed to execute the Third Amendment and related Amended Declaration of Covenants on behalf of the City, and the City Clerk is hereby authorized and directed to attest to the Mayor's signature.
3. The City Clerk shall forward a duplicate original or certified copy of the Third Amendment to the Office of Economic Development for release to Miesblock Commercial, LLC, and shall record the Amended Declaration of Covenants in the office of the Polk County Recorder.

(Council Communication No. 21- **564**)

MOVED by Boesen to adopt.

FORM APPROVED:

/s/ Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

J. M. Frankha Cownie
Mayor

CERTIFICATE

I, P. KAY CMELIK, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik

City Clerk

**THIRD AMENDMENT TO AMENDED AND RESTATED
URBAN RENEWAL AGREEMENT FOR SALE OF LAND FOR PRIVATE
REDEVELOPMENT BY AND BETWEEN
CITY OF DES MOINES, IOWA AND MIESBLOCK COMMERCIAL,
LLC (METRO CENTER URBAN RENEWAL PROJECT)**

THIS THIRD AMENDMENT to Amended and Restated Urban Renewal Agreement for Sale of Land for Private Redevelopment by and between City of Des Moines, Iowa and Miesblock Commercial, LLC (Metro Center Urban Renewal Project) (hereinafter “Third Amendment”) is entered into this 13th day of December, 2021 (the “Effective Date”), by and between the City of Des Moines, Iowa (“City”) and Miesblock Commercial, LLC (“Developer”).

It is agreed by and between City and the Developer that:

1. The above-referenced Amended and Restated Urban Renewal Agreement (herein referred to as “Agreement”), as authorized by the Des Moines City Council on August 14, 2017, by Roll Call No. 17-1406, and as amended by First Amendment thereto authorized by the Des Moines City Council on October 14, 2019 by Roll Call No. 19-1645, and by Second Amendment thereto authorized by the Des Moines City Council on January 25, 2021, by Roll Call No. 21-0108, is hereby further amended in accordance with the terms set forth in this Third Amendment.

2. Subsection (C), “*Phase 3 Improvements*”, of Section 2.2, “Time for Completion of Improvements”, is hereby deleted in its entirety and replaced with the following:

C. *Phase 3 Improvements*. Developer shall cause construction of the Phase 3 Improvements to be commenced prior to November 1, 2022, and shall cause such construction to be diligently pursued to completion. The Phase 3 Improvements shall be completed by April 1, 2024.

3. Subsection (B) of Section 4.2, “Availability of Tax Abatement,” is hereby deleted in its entirety and replaced with the following:

B. In January of 2025, Developer shall file an application for tax abatement on all portions of the Phase 3 Improvements that are assessed as residential or multi-residential property. However, in the event the Phase 3 Improvements are sufficiently completed by December 31, 2023, to qualify for the issuance of the Certificate of Completion, Developer shall file the said application for tax abatement in January of 2024.

4. Subsection (A) of Section 4.6, “Phase 3 Economic Development Grant,” is hereby amended as follows:

- The first sentence of said Subsection is amended to replace “December 1, 2033” with “December 1, 2034”. Footnote 10 referenced in this sentence is further replaced in its entirety with the following:

¹⁰The timing of the Phase 3 Grant is based upon the following assumptions:

CY 2024 Substantial completion of the Phase 3 Improvements

01-01-2025 Phase 3 Improvements first assessed at completed value

FY 2026/27 Taxes 1st payable on completed value – 1st year of abatement –

100% abated yrs 1-8
FY 2034/35 9th year of abatement – 60% abated
12-01-2034 1st installment due on the Phase 3 Grant – 100% of Phase 3
Project TIF
FY 2035/36 10th year of abatement – 40% abated
05-01-2046 Final installment due on the City Grant (Phase 3) – 70% of Phase
3 Project TIF

5. Amendment A to the Agreement, “Declaration of Covenants”, is amended in form executed concurrently herewith and to be recorded in the office of the Polk County Recorder.
6. All other terms, provisions, and conditions originally set forth in the Agreement, including all exhibits thereto, remain effective and binding upon City and the Developer.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to the Amended and Restated Urban Renewal Agreement for Sale of Land for Private Redevelopment as of the Effective Date.

**MIESBLOCK COMMERCIAL, LLC,
An Iowa Limited Liability Company**

**By: Grand 7 Partners, LLC,
An Iowa limited liability company
Its: Manager**

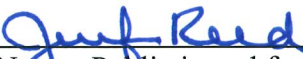
**By: Nelson Development 1, LLC
An Iowa limited liability company
Its: Manager**

By: 
Michael K. Nelson, Manager

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on December 15, 2021, by Michael K. Nelson, the Manager of Nelson Development 1, LLC, Manager of Grand 7 Partners, LLC, Manager of Miesblock Commercial, LLC, on behalf of whom the instrument was executed.




Notary Public in and for the State of Iowa
My Commission Expires: 9.27.2024

CITY OF DES MOINES, IOWA

ATTEST:

By: *P. Kay Cmelik*
P. Kay Cmelik, City Clerk

By: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 20th day of December, 2021, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 21- 1924 of City Council on the 20th day of December, 2021, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Sandi L. Deery
Notary Public in the State of Iowa



Exhibit "A"

to Amended and Restated Urban Renewal Agreement
for the Sale of Land for Private Redevelopment

Prepared by: Glenna K. Frank, Assistant City Attorney, City Hall - Legal Dept, 400 Robert D. Ray Drive, Des Moines, IA 50309 Phone: 515/283-4130

Return Address: Miesblock Commercial, LLC, Attn: Alexander Grgurich, 218 6th Avenue, Suite 200, Des Moines, IA 50309

Title of Document: Amended Declaration of Covenants

Grantor's Name: Miesblock Commercial, LLC

Grantee's Name: City of Des Moines, Iowa

Legal Description: See below on this page.

Related documents: Amended Declaration of Covenants by Miesblock Commercial, LLC, recorded February 12, 2021, in Book 18356, Page 585; Amended Declaration of Covenants by Grand 7 Partners, LLC, recorded September 13, 2017, in Book 16643, Page 288; Declaration of Covenants by Grand 7 Partners, LLC, recorded September 13, 2016, in Book 16178, Page 692.

AMENDED DECLARATION OF COVENANTS

MIESBLOCK COMMERCIAL, LLC, an Iowa limited liability company ("Miesblock Commercial"), in consideration of the financial incentives to be provided by the City of Des Moines, Iowa, (the "City"), pursuant to the Amended and Restated Urban Renewal Agreement for Sale of Land for Private Redevelopment dated as of August 14, 2017 (the "Agreement"), does hereby convey unto the City the beneficiary interest of the covenants set forth below, in and to the following described Property:

All of Lot 6 of Block E, Grimmel's Addition to Fort Des Moines, an Official Plat; and except the South 7.0 feet, Lots 1 and 2 of the Official Plat of Lots 4 and 5 Block E Grimmel's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Sec. 1. Agreement. The Agreement is on file and available for public inspection in the office of the City Clerk of City. This Declaration of Covenants is executed and filed by Miesblock Commercial in performance of its obligations under Section 1.3 of the Agreement. All references herein to the approved Conceptual Development Plan are intended to refer to the Conceptual Development Plan approved by City as provided in Article 3 of the Agreement, as such Plan may be amended from time to time by Miesblock Commercial with the written consent of City. All references herein to the Certificate of Completion for the Phase 3 Improvements are intended to refer to the Certificate of Completion for the Phase 3 Improvements to be issued by

the City pursuant to Section 3.4 of the Agreement.

Sec. 2. Duration. The Property shall be subject to the covenants set forth herein for a term (the "Restricted Term") commencing upon the recording of this Declaration of Covenants and continuing until May 1, 2046.¹

Sec. 3. Covenants. During the Restricted Term, the Property shall be subject to the following covenants, limitations and restrictions regarding its future use and development (herein referred to as the "Covenants"):

- a) Prohibition Against Discrimination in Sale or Leasing. Miesblock Commercial, and its successors and assigns shall not discriminate against or segregate any person or group of persons on account of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status in the sale, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property or the improvements erected or to be erected thereon, and not establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, sub-tenants or vendees in the property or the improvements erected or to be erected thereon.
- b) Prohibition Against Discrimination in Employment. In the employment of persons upon the Property, Miesblock Commercial and its successors and assigns shall comply with all federal, State of Iowa and local laws prohibiting discrimination.
- c) Conceptual Development Plan. The Property shall be used in conformity with the approved Conceptual Development Plan. All amendments to the Conceptual Development Plan are subject to review and approval by the City to assure continued compliance with the land use requirements set forth in the Urban Renewal Plan for the Metro Center Urban Renewal Area.
- d) Maintenance. The Improvements constructed upon the Property shall be maintained in good condition and repair in substantial conformance with the approved Conceptual Development Plan. In the event of fire or other casualty loss, repairs to restore the Improvements to their former condition in substantial conformance with the approved Conceptual Development Plan shall be commenced within ninety (90) days or such additional time not exceeding one year as may be reasonably required to resolve any disputed insurance claims, obtain any necessary financing and contract for the necessary repairs, and diligently pursued to completion.
- e) Classification for Taxation.
 - 1) Miesblock Commercial shall not cause or voluntarily permit any part of the Property or the improvements thereto to be owned by a telephone utility or any other entity of a type where the assessed value of the Property would not be treated as located within the Metro Center Urban Renewal Area in its entirety pursuant to any present or future statute or ordinance.

¹If the Phase 3 Improvements are completed as anticipated by the Agreement and Third Amendment thereto, the final installment on the economic incentives to be provided by City to 7 Partners will be due and payable on May 1, 2046.

- 2) Miesblock Commercial shall further not cause or voluntarily permit any part of the Property or the improvements thereto to be owned or leased by any entity that can qualify for property tax exemption under Iowa Code Chapter 427, and shall not apply for, seek or voluntarily allow, the classification of any portion of the property as exempt from taxation.
- f) Payment of Taxes. Miesblock Commercial shall pay when due all taxes and assessments, general or special, levied upon or assessed against any part of the Property.
- g) Public Use of Open Space. The completed portions of the open courtyard and pedestrian pathways designated in the approved Conceptual Development Plan for public use shall be open for public pedestrian use at all times, excepting only special events with the prior written approval of the City Manager of the City or the City Manager's designee. Such public use shall be subject to reasonable rules and regulations established by Developer and approved by the City Manager of the City or the City Manager's designee, and to temporary closure of the area for necessary repairs and maintenance.

Sec. 4. Required Terms in any Conveyance. During the Restricted Term, Miesblock Commercial shall endeavor to include in every deed, and other instrument conveying all or any part of Miesblock Commercial' ownership interest in any portion of the Property (exclusive of leases in the ordinary course of business), a provision identifying the terms, conditions, restrictions and requirements of this Declaration of Covenants, and acknowledging that the City may enforce the terms, conditions, restrictions and requirements of this Declaration against Miesblock Commercial' successors and assigns to the same extent as against Miesblock Commercial. Miesblock Commercial shall cooperate in good faith in the City's enforcement of the requirements of Sec. 3, above, against Miesblock Commercial' successors and assigns to any interest in the Property.

Sec. 5. Covenants; Binding Upon Successors in Interest. It is intended that the covenants undertaken by Miesblock Commercial pursuant to this Declaration of Covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Declaration of Covenants, be binding, only to the extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against Miesblock Commercial, and Miesblock Commercial' successors and assigns and every successor in interest to any portion of the Property and the improvements erected or to be erected thereon, or any part thereof or any interest therein, and any party in possession or occupancy of any of such property, or any part thereof.

Sec. 6. Replacement of Prior Declaration of Covenants. This Amended Declaration of Covenants is intended to replace and restate that prior Amended Declaration of Covenants recorded on February 12, 2021, in Book 18356, commencing at Page 585, in the office of the Recorder of Polk County, Iowa. Upon the recording of this Amended Declaration of Covenants and the City's Consent to Amended Declaration of Covenants below, the prior Amended Declaration of Covenants shall terminate and be of no further force or effect.

SIGNED on or as of the 13 day of December, 2021.

"Miesblock Commercial"

Miesblock Commercial, LLC,
an Iowa limited liability company

By: Grand 7 Partners, LLC,
an Iowa limited liability company
Its: Manager

By: Nelson Development 1, LLC,
an Iowa limited liability company
Its: Manager


By: 

Michael K. Nelson, Manager

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on December 15, 2021, by Michael K. Nelson, Manager of Nelson Development 1, LLC, Manager of Grand 7 Partners, LLC, Manager of **Miesblock Commercial, LLC**, on behalf of whom the instrument was executed.





Notary Public in and for the State of Iowa
My Commission Expires: 9.27.2024

City's Consent to Amended Declaration of Covenants

The City of Des Moines, Iowa, being one of the beneficiaries of that Amended Declaration of Covenants recorded on February 12, 2021, in Book 18356, commencing at Page 585, does hereby consent to the replacement and restatement of that prior Amended Declaration of Covenants with the foregoing Amended Declaration of Covenants. The City further agrees that upon the recording of the foregoing Amended Declaration of Covenants, the prior Amended Declaration of Covenants shall terminate and be of no further force or effect.

CITY OF DES MOINES, IOWA

ATTEST:

By: 
P. Kay Cmelik, City Clerk

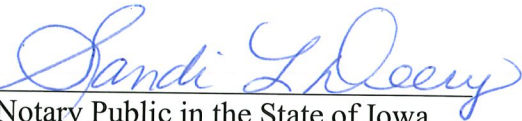
By: 
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 20th day of December, 2021, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of the City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by the City Council under Roll Call No. 21-1924 of the City Council on the 20th day of December, 2021, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.


Notary Public in the State of Iowa
My commission expires: 3/5/22

