



Date February 11, 2013

RESOLUTION CONDITIONALLY GRANTING PRIOR APPROVAL OF
TAX ABATEMENT FOR TWO NEW SINGLE-FAMILY DWELLINGS
AT 6225 & 6255 SE 19th STREET

WHEREAS, the Iowa Urban Revitalization Act, Chapter 404, Code of Iowa (the "Act"), provides for partial exemption from property tax for the actual value added by improvements to property located in a designated Urban Revitalization Area which are consistent with the Urban Revitalization Plan for such Area; and

WHEREAS, the Act provides that persons making improvements may apply to the City Council for prior approval of eligibility for tax abatement, and the City Council shall approve the application by resolution, subject to review by the County Assessor, if it finds (a) the improvements are located in a designated Urban Revitalization Area; (b) the improvements are in conformance with the Urban Revitalization Plan for such area; and (c) the improvements are to be made during the time the area is so designated; and

WHEREAS, R.M. Madden Construction Company, Inc., represented by Todd Madden, Officer, proposes to build a two new single-family dwellings upon two adjoining 0.8 acre lots at 6225 and 6255 SE 19th Street utilizing private septic systems; and,

WHEREAS, the Urban Revitalization Plan permits new dwellings utilizing a private septic system to qualify for tax abatement only under limited circumstances; and,

WHEREAS, R.M. Madden Construction Company, Inc., has made application pursuant to Iowa Code §404.4 for prior approval of the eligibility of such dwellings for tax abatement pursuant to the City-wide Urban Revitalization Plan; and,

WHEREAS, the application for prior approval has been received, reviewed and recommended for conditional approval by City staff; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that:

1. The application of R.M. Madden Construction Company, Inc., for prior approval of eligibility for tax abatement for the construction of the planned single-family dwellings at 6225 and 6255 SE 19th Street is hereby received.
2. The City Council hereby finds that the construction of the two dwellings described above will qualify for tax abatement under the City-wide Urban Revitalization Plan, notwithstanding the lack of public sanitary sewer service, because the following requirements are satisfied:
 - a) Public sewer is not available within 100 feet of the boundaries of the parcel of land upon which the dwellings are to be constructed;
 - b) The dwellings will be assessed as residential property;

(continued)



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- c) The parcels of land upon which the dwellings will be constructed were both created prior to July 1, 1999, and not thereafter voluntarily reduced in size;
 - d) R.M. Madden Construction, Inc., has entered into an agreement in a recordable form acceptable to the Legal Department agreeing to connect the dwellings to the public sewer system when it becomes available and waiving the right to protest the assessment for such sewer; and,
 - e) Each of the dwellings are to be constructed upon a lot under 2 acres in size.
3. The City Council hereby finds that the proposed dwellings at 6225 and 6255 SE 19th Street are located in the City-wide Urban Revitalization Area and are in conformance with the Urban Revitalization Plan for the City-wide Urban Revitalization Area.
 4. The application for prior approval of eligibility for tax abatement is hereby approved for each dwelling, subject to construction of the dwelling being commenced by December 31, 2015, under authority of a valid permit, and completed as represented in the application prior to December 31, 2016, and the recording of the Agreement identified above. As provided by Iowa Code §404.4, such prior approval shall not entitle the owner to an exemption from taxation until the dwelling has been completed and found to be qualified real estate, and a timely application for tax abatement is filed.

MOVED by _____ to adopt.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, 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.

City Clerk

Prepared by: Roger K. Brown, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309
 Phone: 515/283-4130
 Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
 Taxpayer: No change
 Title of Document: Declaration of Covenants
 Grantor's Name: R.M. Madden Construction, Inc.
 Grantee's Name: City of Des Moines, Iowa
 Legal Description:

The property generally known as 6225 SE 19th Street, Des Moines, Iowa, and more specifically described as follows (hereinafter referred to as the "Property"):

Lot 71, New Hope, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

DECLARATION OF COVENANTS
 (Regarding the extension of the City sanitary sewer system)

R.M. Madden Construction, Inc., an Iowa corporation (hereinafter referred to as the "Owner") in consideration of the approval by the City of Des Moines, Iowa (hereinafter "City") of conditional prior approval of a temporary exemption from taxation (also known as tax abatement) pursuant to Iowa Code Chapter 404 for a portion of the taxable value added by the construction of a single-family dwelling upon the above described Property, does hereby CONVEY unto the said City the beneficiary interest of the covenants set forth below, in and to the above described Property.

Section 1. Background. Owner intends to improved the Property by constructing thereon a single family dwelling. The Property is not presently served by the City sewer system and City sewer system cannot be economically extended at this time to serve the Property. The new dwelling will initially be served by a private septic system.

The City has determined that development within and at the fringes of the City on private septic

systems creates a barrier to the orderly extension of the City sewer system and the development of the City at urban densities in accordance with the adopted comprehensive plan of the City. It is burdensome upon the taxpayers of the City and upon the ratepayers of the City sewer system to extend the City sewer system through or around intervening areas developed with septic systems to serve future development. For that reason the City has sought to discourage development not served by the City sewer system unless adequate provision is made for the future extension of the City sewer system through the development when warranted by additional development in the area. To that end, the City has provided in its urban revitalization plans adopted pursuant to Iowa Code Chapter 404, that an improvement to property consisting of a new building requiring sewer service shall not qualify for tax abatement unless adequate provision has been made for the future extension of the City sewer system through such development and the future connection of such building to the City sewer system.

The Owner has executed this Declaration of Covenants for the purpose of making adequate provision for the future extension of the City sewer system through the Property and the future connection of any dwelling upon the Property to the City sewer system.

Sec. 2. Restrictions on Use. Owner agrees for itself, and for its successors and assigns, and every successor in interest to the Property or any part thereof, that the Property is subject to the following covenants:

- a) If the City of Des Moines, in the City's sole discretion, elects to finance an extension of the City sewer system to serve an area which includes the Property by creation of a special assessment district, then the Owner, and its successors and assigns hereby irrevocably waive the right to protest the creation of the district, the levy of the special assessment and the amount of any special assessment so levied upon a uniform formula upon the land benefited by such extension of the City sewer system.
- b) When the City of Des Moines, in the City's sole discretion, extends the City sewer system to serve the area in which the Property is located, and a City sewer line with the capacity to serve the Property is constructed within 100 feet of the boundaries of the Property and any necessary easement(s) for the construction of a private service line from such City sewer line to the Property is provided by the City, then upon request by the City, the Owner of the Property shall construct a service line and necessary sewer connections to cause any dwelling then existing upon the Property to receive sewer service from the City sewer system, and to abandon any septic system then in use upon the Property. All such construction to be made at the Owner's expense in compliance with the applicable building and plumbing codes, and all necessary permit and connection fees shall be paid.

Sec. 3. Covenants Binding Upon Successors in Interest; Duration. It is intended that the a covenants provided in this Declaration shall be covenants running with the land and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against the Owner, its successors and assigns and every successor in interest to the Property, or any part thereof or any interest therein.

Sec. 4. City's Rights To Enforce. In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its successors and assigns shall be

deemed beneficiaries of the agreements and covenants provided in this Declaration, both for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Sec. 5. Warranty of Title. Owner hereby covenants that Owner has lawful authority to subject the Property to the covenants imposed by this Declaration of Covenants, and Owner hereby covenants to WARRANT AND DEFEND the beneficial interest of the City in the covenants hereby imposed upon the Property against the lawful claims of all persons whomsoever.

SIGNED this 4th day of February, 2013.

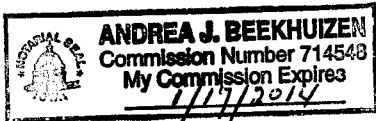
"Owner"

R.M. Madden Construction, Inc.

By: R. Todd Madden V.P.
R. Todd Madden, Vice President

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on February 4, 2013, by **R. Todd Madden**, as Vice-President of **R.M. Madden Construction, Inc.**, an Iowa corporation, on behalf of whom the instrument was executed.



Andrea J. Beekhuizen
Notary Public
My commission expires: 1/17/2014

Prepared by: Roger K. Brown, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309
 Phone: 515/283-4130
 Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
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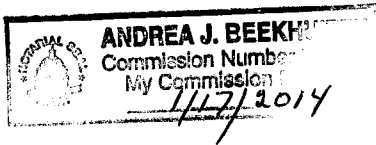
"Owner"

R.M. Madden Construction, Inc.

By: R. Todd Madden V.P.
R. Todd Madden, Vice President

STATE OF IOWA)
) ss:
COUNTY OF POLK)

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Andrea J. Beekhuizen
Notary Public
My commission expires: 1/17/2014