

COUNCIL ACTION FORM

SUBJECT: RESTRICTIVE COVENANT AGREEMENT WITH THE ASSAULT CARE CENTER EXTENDING SHELTER AND SUPPORT (ACCESS)

BACKGROUND:

Back in 1984 the City utilized \$80,000 of Community Development Block Grant (CDBG) funds to purchase and rehabilitate a property on Duff Avenue. That property was to be used as an emergency shelter on behalf of the Assault Care Center Extending Shelter and Support (ACCESS). The City's agreement with ACCESS included a restrictive covenant whereby the property could not be sold without approval of the City, and the \$80,000 initial investment would need to be repaid back to the City.

In March 2004 the City Council approved a request from ACCESS to sell their property on Duff Avenue and reinvest the \$80,000 in the purchase of a larger facility on Lynn Avenue that included the same restrictive covenant mentioned above.

At the February 9, 2016 City Council meeting, City Council approved a request from ACCESS to sell their property on Lynn Avenue and to reinvest the \$80,000 in the purchase of another property when a suitable property had been selected by ACCESS. Therefore, the \$80,000 was repaid to the City until ACCESS identified a property that would meet the zoning requirements for use by Social Services Providers. Once an eligible property had been identified and a purchase offer accepted, a check would be issued to ACCESS to use toward the purchase of the new property. A new restrictive use covenant agreement also would be created similar to the two previous covenants for the Duff and Lynn properties.

ACCESS has notified staff that they have entered into an agreement to purchase a property that meets their needs and also meets the City's zoning requirements. They would like to close on the property on or by November 30, 2016. Staff has worked with outside legal counsel to prepare the attached restrictive covenant agreement for City Council review and approval. After approval of the restrictive covenant agreement, staff will then process the \$80,000 check on behalf of ACCESS at the time of closing.

ALTERNATIVES:

1. The City Council can adopt a resolution approving the restrictive covenant agreement between the City of Ames and ACCESS and authorizing payment of the \$80,000 on behalf of ACCESS at the time of closing.
2. The City Council can choose not to approve the restrictive covenant agreement between the City and ACCESS and authorization of the \$80,000 payment on behalf of ACCESS at the time of closing.
3. The City Council can make modifications to the restrictive covenant between the City and ACCESS.

MANAGER'S RECOMMENDED ACTION:

It has been the practice of the City to support this type of reinvestment of grant funds to non-profit organizations that provide a valuable service for the citizens in our community.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as described above.

DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER

Prepared by: Judy Parks, City of Ames Legal Department, 515 Clark Avenue, Ames, Iowa, 50010 (Phone: 515-239-5146)
Address Tax Statement To: City of Ames, Iowa, 515 Clark Avenue, Ames, Iowa 50010

**RESTRICTIVE COVENANT AND LIEN
AGREEMENT TO SECURE
REPAYMENT OF PURCHASE MONEY**

THIS AGREEMENT for contractual lien and restrictive covenant, made and entered into effective the day of _____, 20 , by and between the CITY OF AMES, IOWA (hereinafter called “City”) and ASSAULT CARE CENTER EXTENDING SHELTER AND SUPPORT, (an Iowa non-profit corporation), its successors and assigns (hereinafter called “ACCESS”),

WITNESSES THAT:

WHEREAS, pursuant to an agreement dated October 2, 1984 and recorded as Instrument No. 94-10615 in the office of the Story County Recorder, City made a grant of \$80,000.00 to the predecessor of ACCESS for acquisition and rehabilitation of real estate subject to the condition the real estate could not be sold without the consent of the City, and,

WHEREAS on January 28, 2003, the City consented to the sale of the real estate on the condition that the City receive restitution of \$80,000.00 from ACCESS, and

WHEREAS, on December 23, 2003, the real estate having been sold and the City having received restitution of the said \$80,000.00, the City did by Resolution No. 03-481 authorize the grant of the said \$80,000.00 to ACCESS on the same conditions as the said grant of 1984, subject only to the first lien of the financial institution providing purchase money financing:

WHEREAS, pursuant to an agreement dated March 23, 2004 and recorded as Instrument No. 04-03445 in the office of the Story County Recorder, City made a grant of \$80,000.00 to ACCESS for acquisition and rehabilitation of real estate subject to the condition the real estate could not be sold without the consent of the City; and,

WHEREAS, on February 9, 2016, the City by Resolution No. 16-067 authorized permission to ACCESS to sell the real estate referenced Instrument No. 04-03445 with the understanding that ACCESS would repay the City \$80,000.00 upon completion of the sale.

WHEREAS, on February 9, 2016, the City by Resolution No. 16-068 directed staff to pay ACCESS \$80,000.00 once it has an accepted Purchase Offer for a property that meets zoning requirements for the City of Ames with a new Restrictive Covenant on the same conditions as the said grant of 1984, subject only to the first lien of the financial institution providing purchase money financing.

NOW, THEREFORE, the parties hereto agree that:

- 1. The restrictive covenant and contractual lien is made with respect to the real estate for which ACCESS is the owner and holder of record title of property located in the City of Ames, Iowa and legally described as:

Subdivision to Ames, Story County, Iowa, commonly known as , Ames, Iowa.

2. ACCESS agrees and declares that the above described property and all portions of it are and shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants and lien hereinafter set forth, which covenants and lien are for the purpose of securing restitution of the said amount of \$80,000.00 at such time as the said property is sold or it ceases to be used in its entirety as the site of services that are specific to the needs of victims of sexual assault.

3. ACCESS and the City agree that it is intended that all current and future holders of any interest in the above described property, or any portion thereof, shall at all times hold their interests subject to the covenants and lien herein stated.

4. In the event that ACCESS desires to sell the above described property or otherwise transfer the legal or equitable title to that property, ACCESS shall first obtain the consent of the city by an enacted measure of the City Council. The City's consent may be subject to conditions pertaining to a public purpose. From the proceeds of any such sale, the sum of \$80,000.00 shall be disbursed to the City for appropriation by the City to any public purpose.

5. In the event that the above described property ceases to be used in its entirety as the site of services that are specific to the needs of the victims of domestic violence and sexual assault, ACCESS, or its successor in interest to the above described property, shall immediately pay the sum of \$80,000.00 to the City.

6. The provisions of paragraph 4 and 5 above constitute a contractual lien on the above described property. The City shall have the right to collect the charge stated, with interest and costs, and to enforce the said lien as in foreclosure proceedings as permitted by law and equity. ACCESS recognizes and agrees that the City has a valid interest in ensuring that the restrictive covenants and lien is properly adhered to and therefore does hereby grant to the City the right to enforce these covenants and the said lien by any proceedings at law or in equity against any

person or persons attempting to violate the said restriction, either to restrain violations, to compel affirmative action or to recover damages.

7. This agreement may be modified, amended, or rescinded only upon the express prior written approval of the City by an enacted resolution of the City Council.

8. The restrictive covenant and lien as aforesaid shall run with the land and shall be binding upon and inure to the benefit of the parties and their successors, assigns, agents, licensees, invitees, and representatives, including without limitation, all subsequent owners of the above described property or any portion thereof, and all persons claiming under them.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized representatives as of the date above written.

CITY OF AMES, IOWA

STATE OF IOWA, COUNTY OF STORY, ss

On this day of _____, 2016, before me, a Notary Public in and for the State, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known, and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the day of _____, 20 , and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

By: _____
Ann H. Campbell, Mayor

Attest: _____
Diane R. Voss, City Clerk

Notary Public in and for the State of Iowa

ACCESS/Assault Care Center Extending Shelter and Support

STATE OF IOWA, COUNTY OF STORY, ss

On the day of _____, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared Mike Tupper and Angie Schreck, to me personally known, who being by me duly sworn, did say that that they are the Board Chair and Executive Director, respectively, of said corporation, that the seal affixed to said instrument is the seal of said corporation, or no seal has been procured by said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said Mike Tupper and Angie Schreck acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

By _____
Mike Tupper, Board Chair

By _____
Angie Schreck, Executive Director

Notary Public in and for the State of Iowa

