

SPECIAL COUNCIL MEETING  
 Tuesday, August 25, 2015  
 4:30 p.m.

2015 CITY COUNCIL GOALS

**Downtown** - The City of Casper will foster growth and prosperity of the City's core through infrastructure development, creating public spaces and supportive facilities.

**Infrastructure** - The City of Casper will create the conditions for economic development by expanding and maintaining its physical assets and equipment, including streets, water lines, parking garages, fire stations, buildings and parks.

**Recreation** - The City of Casper will support, maintain and upgrade its current recreational facilities and programs and develop recreational opportunities that provide citizens and visitors with a variety of affordable activities for all ages that serve to enhance quality of life.

<b>Council Goals Scorecard</b> <i>Actions to Date</i>
<b>6</b>
<b>43</b>
<b>25</b>

AGENDA

1. ROLL CALL
2. RESOLUTION
  - A. Authorizing the Execution of a Real Estate Purchase Agreement with **Ash Street Plaza, LLC**, in the Amount of \$1,160,000, for the Purchase of Real Property Located at **135 North Ash Street**.
3. ADJOURNMENT

2015 Goals		
Downtown	Infrastructure	Recreation
	X	

August 25, 2015

MEMO TO: John C. Patterson, City Manager  
FROM: V.H. McDonald, Assistant City Manager  
SUBJECT: Real Property Purchase



Recommendation:

That Council, by resolution, authorize the Mayor to execute a Purchase Agreement with Ash Street Plaza, LLC, in the amount of One Million One Hundred Sixty Thousand Dollars (\$1,160,000.00) for real property located at 135 North Ash Street, Casper Wyoming.

Summary:

The principals of Ash Street Plaza, LLC, approached the City and offered to sell the office building located at 135 North Ash Street. The building is located adjacent to City Hall and will provide cost effective future expansion space for City administrative operations.

The building is approximately 11,850 square feet in size and appraised at the purchase price of \$1,160,000. The Purchase Agreement specifies that closing on the property will occur on or before June 1, 2016, with the current tenant of the building vacating upon closing. The tenant is currently initiating remodeling of another building and may be able to vacate the building as early as December 2015. If the tenant's other building is not completed by December 2015, the tenant will probably remain at the 135 North Ash Street building until closing and possession of the building occurs June 1, 2016.

Funding for the purchase of the building is from General Fund reserves.

A resolution has been prepared for Council's consideration.

**MEMORANDUM OF SALE**

This Memorandum of Sale is an abstract of the agreement made between Ash Street Plaza, LLC, 135 North Ash, Casper, Wyoming 82601, hereinafter referred to as "Seller"; and the City of Casper, Wyoming, a Wyoming municipal corporation, 200 North David, Casper, Wyoming 82601, hereinafter referred to as "Buyer".

By separate Real Estate Purchase Agreement dated August \_\_\_\_\_, 2015, Seller agreed to sell, and Buyer agreed to purchase the following described real property:

East Fifteen (15) Feet of Lot 1, and all of Lots 2, 3, 4, and 5, Block 1, Midwest Addition to the City of Casper, Natrona County, Wyoming, the "Real Property," together with all buildings and other improvements situate thereon

This Memorandum of Agreement is an abstract of the Real Estate Purchase Agreement herein referred to and is not intended to and shall not change, diminish, or enlarge in any manner the terms and conditions of said Real Estate Purchase Agreement, but the sole purpose hereof is to enable this document to be recorded in the Office of County Clerk and Ex-Officio Recorder of Deeds in order that constructive notice be given of Buyer's interest in and to the property.

DATED \_\_\_\_\_, 2015

SELLER: ASH STREET PLAZA, LLC

By: Larry Graham  
Larry Graham, Managing Member

BUYER: CITY OF CASPER, WYOMING  
A Municipal Corporation, Buyer

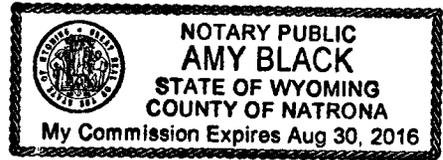
By: \_\_\_\_\_  
Charlie Powell, Mayor

Attest:

\_\_\_\_\_  
City Clerk

**ACKNOWLEDGMENTS**

STATE OF WYOMING )  
 ) SS.  
COUNTY OF NATRONA )



The foregoing instrument was acknowledged before me by Larry Graham, Managing Member of Ash Street Plaza, LLC this 19 day of August, 2015.

Witness my hand and official seal.

Amy Black  
Notary Public

My Commission Expires: August 30, 2016

STATE OF WYOMING )  
 ) SS.  
COUNTY OF NATRONA )

The foregoing instrument was acknowledged before me by Charlie Powell, Mayor, on behalf of the City of Casper, Wyoming this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Witness my hand and official seal.

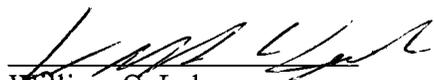
\_\_\_\_\_  
Notary Public

My Commission Expires.

APPROVAL AS TO FORM

I have reviewed the attached *Memorandum of Sale between Ash Street Plaza, LLC and the City of Casper*, and approve it as to form on behalf of the City of Casper, Wyoming.

Dated: August 19, 2015.

A handwritten signature in black ink, appearing to read 'William C. Luben', written over a horizontal line.

William C. Luben  
City Attorney

## **REAL ESTATE PURCHASE AGREEMENT**

This Real Estate Purchase Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Ash Street Plaza, LLC, 135 North Ash, Casper, Wyoming 82601, hereinafter referred to as "Seller"; and the City of Casper, Wyoming, a Wyoming municipal corporation, 200 North David, Casper, Wyoming 82601, hereinafter referred to as "Buyer." The Seller and the Buyer may be collectively referred to as the "parties."

### **RECITALS**

Whereas, Seller is the owner of Real Property more particularly described in Article I below; and

Whereas, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller all of Seller's right, title and interest in and to the Real Property described and set forth in Article I, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the premises and sums herein agreed to be paid by Buyer to Seller, and in further consideration of the terms, covenants and conditions hereinafter set forth, it is agreed and understood by and between the parties as hereinafter set forth.

### **ARTICLE I: DESCRIPTION OF REAL PROPERTY**

Seller hereby agrees to sell and convey to Buyer, pursuant to the terms of this Agreement, the following described real property and all fixtures attached thereto:

East Fifteen (15) Feet of Lot 1, and all of Lots 2, 3, 4, and 5, Block 1, Midwest Addition to the City of Casper, Natrona County, Wyoming, the "Real Property."

### **ARTICLE II: PURCHASE PRICE AND CLOSING COSTS**

Buyer agrees to pay to Seller and Seller agrees to accept from Buyer in full payment for the Real Property described in Article I above, the total sum of One Million One Hundred Sixty Thousand Dollars (\$1,160,000.00), said sum to be payable to the Seller at closing.

The City agrees to deposit and escrow the sum of Ten Thousand Dollars (\$10,000.00) as an earnest money deposit with the American Title Agency, 315 West 1<sup>st</sup> Street, Casper, Wyoming 82601, as the closing agent upon approval and execution of this Agreement by the Buyer, said

sum to be credited to the balance of funds due from the Buyer to the Seller at closing.

Seller agrees to pay and be solely responsible for the following expenses at closing:

1. The Title Insurance premium.
2. All costs incurred for the recording of any and all documents or instruments necessary to clear the title to the property, including, but not limited to, any and all mortgage or other lien releases.

Buyer agrees to pay and be solely responsible for the following expenses:

1. The cost of the recording of the warranty deed with the Natrona County Clerk as provided for in this Agreement.

The Seller and Buyer further agree to split the cost, equally between them, for American Title Agency, 315 West 1<sup>st</sup> Street, Casper, Wyoming 82601, to serve as the closing agent for this transaction.

### **ARTICLE III: WARRANTY DEED**

Seller hereby agrees to convey to Buyer at closing a warranty deed conveying to Buyer all of Seller's right, title and interest in and to the Real Property described in Article I above, free and clear of all liens and encumbrances, except for easements, covenants, restrictions, and reservations of record.

### **ARTICLE IV: TAXES AND INSURANCE**

Seller hereby agrees to pay all of the current and prior general real estate taxes, if any, levied against the Real Property described in Article I above to the date of closing, and any special assessments levied against said Real Property that are due and owing prior to the date of closing.

The general real estate taxes levied against the Real Property, if any, described and set forth in Article I for the calendar year of closing shall be prorated by and between the Seller and the Buyer, and if the amount of such taxes are not ascertainable by the date of closing, the proration thereof shall be based upon the tax levied for the 2015 tax year.

## **ARTICLE V: POSSESSION AND CLOSING**

THE PARTIES HEREBY SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF THIS AGREEMENT AND THE CLOSING THEREOF AT THE TIME AND DATE SPECIFIED HEREIN.

The parties agree that this Agreement shall be closed no later than the 1st day of June, 2016 at 10:00 o'clock a.m. at the office of the American Title Agency, 315 West 1<sup>st</sup> Street, Casper, Wyoming, 82601 or such other place as agreed to in writing between the parties.

The Parties understand and agree that the Seller is in the process of remodeling another building for its use, the completion and occupancy date which is currently uncertain. Seller will vacate the Real Property and close as soon as possible having due regard for the Seller's business operational needs and the availability of the replacement premises, but in any event will vacate and close by no later than June 1, 2016.

Seller shall deliver all keys and access codes (if any) to the Real Property to the Buyer upon Buyer taking possession of the Real Property. If Seller leaves any personal property on the Real Property after the Buyer takes possession of the Real Property, such property shall become the sole and separate property of the Buyer if the Buyer gives the Seller written notice to remove the same and the Seller fails to do within five (5) business days of such notice.

## **ARTICLE VI: TITLE INSURANCE**

Seller agrees to furnish, at Seller's expense, a current commitment for an Owner's title insurance policy through the American Title Agency in an amount equal to the purchase price, showing merchantable title in Seller of the Real Property described in Article I above. Seller agrees to deliver the title insurance commitment to Buyer no later than fifteen (15) business days prior to the closing date, and to further deliver the title insurance policy to Buyer without unreasonable delay after closing.

Title shall be merchantable in Seller. If title is not merchantable or otherwise recordable and written notice of such defects in title is given by Buyer to Seller within the time herein provided for delivery of deed at closing and shall not be rendered merchantable within 30 days after such written notice, then this contract, at Buyer's option, may be specifically enforced or may be declared void and of no effect, and each party hereto shall be released from all obligations hereunder and the payments made hereunder shall be thereupon returned forthwith to Buyer.

PROVIDED, HOWEVER, that in lieu of correcting such defects, Seller may, within said 30 days, obtain a commitment for an owner's title insurance policy in the amount of the purchase price reflecting title insurance protection in regard to such defects, and Buyer may elect, in writing, to accept the then existing title insurance in lieu of such merchantable title, in which case Buyer shall be deemed to have waived such defect. Seller shall pay the full premium for such owner's title insurance policy.

#### **ARTICLE VII: WARRANTIES**

SELLER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED REGARDING THE CONDITION OF THE REAL PROPERTY BEING SOLD TO BUYER PURSUANT TO THIS AGREEMENT EXCEPT AS TO GOOD AND MERCHANTABLE TITLE IN THE SELLER AND THAT NO WORK HAS BEEN PERFORMED ON THE REAL PROPERTY THAT WILL, OR COULD RESULT IN THE FILING OF A CONTRACTORS LIEN AGAINST SAID PROPERTY.

#### **ARTICLE VIII: INSPECTIONS**

Buyer shall have the right to inspect the Real Property up to, but excluding the closing date as hereinafter set forth. Seller hereby agrees to allow the Buyer reasonable access to the Real Property for inspection and testing purposes pending the closing of this Agreement as provided below. Buyer agrees to hold the Seller harmless from any and all liability for injury, death, or property damage that may occur to the Buyer, its employees, agents, or contractors that may be incurred thereby during any such inspections and Buyer agrees to be responsible for any damages caused by such inspections.

- A. Documents. Seller has, or will, prior to closing, deliver to Buyer all documents in its possession or reasonably available on the Real Property, including, but not limited to, any surveys, soil surveys, geotechnical, and environmental reports, relating to, or concerning the Real Property.
- B. Due Diligence. Seller hereby grants Buyer a license to enter upon the Real Property, during business hours and upon reasonable advance notice, with Seller's representatives having the right to be present during such times, for the purpose of inspection(s) of the Real Property at Buyer's sole cost and expense. Buyer

acknowledges that Seller is operating a business on the Real Estate that involves confidential client information. Accordingly, the Buyer will coordinate all “on site” inspections with Seller to avoid disruption of Seller’s business and to avoid disclosure of confidential client information.

Buyer shall complete its inspections before the closing date for this Agreement. Buyer’s inspections of the Real Property may include, but not be limited to, soil, mechanical, electrical, and structural inspections. In the event that Buyer does not close upon the purchase of the Real Property, Buyer, at Buyer’s expense, shall restore the Real Property substantially to its condition existing immediately prior to such inspections.

In the event the inspections result in findings that are not acceptable to Buyer, then Buyer, in its sole discretion, may terminate this Agreement upon written notice to the Seller prior to the closing date and time. If this Agreement is terminated pursuant to the provisions of this paragraph, the Buyer shall, within ten (10) business days of such termination, return all of the Seller’s documents, surveys and reports, and the earnest money deposit shall be returned to Buyer.

Buyer may, however, elect to close the sale and take and accept the Real Property in its present condition following its inspections, in which case Buyer will be deemed to have accepted such defects free and clear of any claim against the Seller, which acceptance shall survive the closing of this Agreement.

## **ARTICLE IX: RISK OF LOSS, MAINTENANCE, INDEMNIFICATION AND INSURANCE**

### **A. RISK OF LOSS**

Risk of loss shall remain with Seller until Seller delivers possession of the Real Property to the Buyer, at which time risk of loss of the Real Property sold hereby shall pass to Buyer.

In the event the premises shall be damaged by fire, other casualty, or act prior to Buyer taking possession of the Real Property, Buyer shall have the option to either rescind, in writing, this agreement prior to closing, or accept the insurance proceeds for such casualty or damage from the Seller and close this transaction. In the event the Buyer rescinds this agreement, then this agreement shall be null and void between the parties and the Buyer’s earnest money deposit shall

be refunded to the Buyer.

## **B. MAINTENANCE**

Seller, while in possession of the Real Property, prior to closing, shall maintain the property in good condition, reasonable wear and tear excepted.

## **ARTICLE X: LEASE, SALE, OR ASSIGNMENT**

Seller hereby states and warrants that no portions of the Real Property described in Article I above have been leased to third parties and Seller shall not lease, assign, sell, or otherwise transfer any interest in and to the Real Property without the express written consent of the Buyer.

## **ARTICLE XI: ENCUMBRANCES AND CONTRACTOR'S LIENS**

Seller states and warrants that there have been no improvements constructed, or repairs of existing improvements on the Real Property described in Article I made within the last six months, or if any such construction or repairs have occurred, that all bills or obligations incurred in connection therewith have been paid in full and in cash (as distinguished from any method requiring any payment in the future), and that there are not claims for labor, services or material furnished in connection with said improvements which remain unpaid.

Seller agrees not to authorize or otherwise incur any expenses for construction on or repair of the Real Property after the execution of this Agreement without notifying the Buyer, in writing, and obtaining written consent for any such construction or repairs from the Buyer.

Seller agrees not to mortgage, encumber or otherwise allow any lien to be placed on the Real Property without the express written consent of the Buyer.

Seller agrees to indemnify and save harmless the Buyer from any and all liens or encumbrances placed on the Real Property or any loss or claim arising for labor or material furnished to or for said Real Property not otherwise consented to, in writing, by the Buyer. This indemnification shall survive, and be enforceable by the Buyer after the closing of this transaction and the taking of possession of the Real Property by the Buyer.

## **ARTICLE XII: DEFAULT AND REMEDY PROVISIONS**

Each Party hereto shall have all rights against the other Party for any default in the terms or conditions of this Agreement as provided by law, including the right to bring an action for specific performance of this Agreement.

In the event of any such litigation, American Title Agency, as the closing agent shall retain the earnest money deposit pending a written agreement between the parties hereto, or the receipt of a final order from a court of competent jurisdiction determining the disposition thereof.

## **ARTICLE XIII: GENERAL AGREEMENTS OF THE PARTIES**

Each individual executing this Agreement for and on behalf of both the Seller and the Buyer hereby state that they have the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated and intended hereby.

Failure of the Seller or the Buyer to exercise any remedy otherwise provided for herein at the time of any default shall not operate as a waiver of such party's right to exercise any such remedy for the same or any subsequent default.

This Agreement shall constitute the entire understanding and agreement of the parties, and no amendment or modification of the terms of this Agreement shall be valid or enforceable unless made in writing and executed by all parties hereto.

The parties specifically agree that all prior agreements between them, oral or written, regarding the sale and purchase of the Real Property are hereby contained, set forth and merged in this Agreement.

This Agreement may be executed in more than one (1) copy, each copy of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement.

Any and all notices required to be made under the terms of this Agreement shall be made by mailing said notice to the other party at the other party's address as stated and set forth above, or such other address specified in writing by either party to the other party by United States First Class, Certified Mail, Return Receipt Requested.

The City of Casper, as the Buyer, does not waive any right or rights it may have pursuant to the Wyoming Governmental Claims Act, Wyoming Statutes Section 1-39-101 *et seq.*, and the Buyer specifically reserves the right to assert any and all rights, immunities, and defenses it may

have pursuant to the Wyoming Governmental Claims Act.

The Parties agree to execute a separate "Memorandum of Sale" as an abstract of this agreement for recording in the real estate records of Natrona County, Wyoming.

Each Party agrees to produce at closing any and all necessary documentation to enable the closing agent to close this transaction including, but not limited to, properly executed lien or mortgage releases, deeds, and W-9 forms.

This Agreement shall be binding upon the parties hereto, and their respective successors, heirs, grantees and assigns.

#### **ARTICLE XIV: TAX DEFERRED EXCHANGE**

Buyer acknowledges that Seller may wish to structure this transaction as a tax deferred exchange of like-kind property within the meaning of Section 1031 of the Code. Buyer agrees to reasonably cooperate with the Seller to effect such an exchange; provided, however, that (i) the Buyer shall not be required to acquire or take title to any exchange property, (ii) the Buyer shall not be required to incur any expense or liability whatsoever in connection with the exchange, including, without limitation, any obligation for the payment of any escrow, title, brokerage or other costs incurred with respect to the exchange, (iii) no substitution of the Seller shall release the Seller from any of its obligations, warranties or representations set forth in this Contract or from liability for any prior or subsequent default under this Contract by the Seller, (iv) the Seller shall be responsible for preparing all additional agreements, documents and escrow instructions (collectively, the "**Exchange Documents**") required by the exchange, at its sole cost and expense, and (v) the Seller shall be responsible for making all determinations as to the legal sufficiency, tax considerations and other considerations relating to the proposed exchange, the Exchange Documents and the transactions contemplated thereby, and the Buyer shall in no event be responsible for, or in any way be deemed to warrant or represent any tax or other consequences of the exchange transaction arising by reason of the Buyer's performance of the acts required hereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ASH STREET PLAZA, LLC, Seller:

Larry Graham  
Larry Graham, Managing Member

Approved as to Form:

William C. Luben  
William C. Luben, City Attorney

ATTEST:

CITY OF CASPER, WYOMING,  
A Municipal Corporation, Buyer:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Charlie Powell  
Mayor

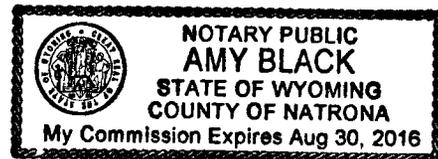
STATE OF WYOMING     )  
  ) ss.  
COUNTY OF NATRONA    )

The foregoing Real Estate Purchase Agreement was acknowledged before me on the 19 day of August, 2015 by Larry Graham, as a Managing Member of Ash Street Plaza, LLC.

Amy Black  
Notary Public

My commission expires: August 30, 2016

STATE OF WYOMING     )  
  ) ss.  
COUNTY OF NATRONA    )



The above and foregoing Real Estate Purchase Agreement was acknowledged before me on the \_\_\_\_\_ day of August, 2015, by Charlie Powell, as the Mayor of the City of Casper, Wyoming, a Wyoming Municipal Corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

RESOLUTION NO. 15-248

A RESOLUTION AUTHORIZING A "REAL ESTATE PURCHASE AGREEMENT" AND OTHER NECESSARY DOCUMENTS FOR THE PURCHASE OF REAL PROPERTY FROM ASH STREET PLAZA, LLC.

WHEREAS, Ash Street Plaza, LLC owns the East Fifteen (15) Feet of Lot 1, and all of Lots 2, 3, 4, and 5, Block 1, Midwest Addition to the City of Casper, Natrona County, Wyoming; and,

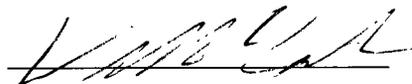
WHEREAS, the City of Casper desires to purchase, and Ash Street Plaza, LLC is willing to sell said real property to the City for the total sum of \$1,160,000 under the terms and conditions of a "Real Estate Purchase Agreement" and a "Memorandum of Agreement" for recording in the real estate records of Natrona County, Wyoming.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CASPER, WYOMING THAT: That the Mayor is hereby authorized and directed to execute, and the City Clerk to attest, a "Real Estate Purchase Agreement" and a "Memorandum of Agreement" with Ash Street Plaza, LLC the for the purchase of the above described real property under the terms and conditions set forth therein.

BE IT FURTHER RESOLVED: That the City Attorney, or his designee, is hereby authorized to close the transaction contemplated in the above described Real Estate Purchase Agreement and is hereby authorized to execute all necessary documents on behalf of the City of Casper to close the transaction set forth therein.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

APPROVED AS TO FORM:



ATTEST:

\_\_\_\_\_  
V. H. McDonald  
City Clerk

CITY OF CASPER, WYOMING  
A Municipal Corporation:

\_\_\_\_\_  
Charlie Powell  
Mayor