

CITY OF KETCHUM

RESOLUTION 18-010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM MAKING FINDINGS; ELECTING TO ACQUIRE A SECOND OPTION PERIOD UNDER THE OPTION AGREEMENT WITH FIFTH STREET, LLC; AND DIRECTING FOR ADMINISTRATIVE ACTION.

SECTION 1: FINDINGS

- 1.1 The City of Ketchum has entered into an Option Agreement with Fifth Street, LLC, to consider the purchase of 191 Fifth Street West, Ketchum, Idaho.
- 1.2 Such Option Agreement provides for a First Option Period through March 31, 2018, and for the City to elect to extend for a Second Option Period through April 30, 2018 in exchange for an additional option fee, which will be credited to the purchase price if the option is exercised.
- 1.3 It is the intention of the City to continue to move forward on this transaction, but additional time is needed for further due diligence and financial arrangement before a final decision on exercising the option. Therefore the City wishes to elect to purchase the Second Option Period per the terms of the Option Agreement.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Ketchum that:

- 2.1. The City elects to purchase the Second Option Period as defined and on the terms set forth in the executed Option Agreement with Fifth Street, LLC.
- 2.2. The Mayor is authorized and staff is directed to take such administrative action as reasonably necessary to effectuate the Second Option Period.

PASSED BY THE CITY COUNCIL of the City of Ketchum, effective this 19th day of March, 2018.

APPROVED:

Signed: _____

Neil Bradshaw, Mayor

ATTEST:

By _____

Robin Crotty, Interim City Clerk

OPTION AGREEMENT—CONTRACT NUMBER 20071

This OPTION AGREEMENT is made and entered into as of the Effective Date, by and between FIFTH STREET, LLC, an Idaho limited liability company ("Company") and the CITY OF KETCHUM, an Idaho municipal corporation ("City").

1. Grant of Option. Company hereby grants to the City the exclusive option to purchase the improved real property located at 191 Fifth Street West, Ketchum, Idaho and more particularly described in Exhibit A ("Property").

2. Option Fees, Option Periods.

2.1 First Option Period. The consideration for the grant of the option during the First Option Period (defined below) shall be the sum of Twenty Five Thousand Dollars (\$25,000.00). This option fee shall be made by the City to the Company at the time this Agreement is executed by the parties hereto and shall be nonrefundable. The First Option Period shall end at 5 pm, MST, on March 31, 2018. This option fee shall be credited to the purchase price of the Property in the event that the City exercises its option to purchase the Property.

2.2 Second Option Period. Prior to the end of the First Option Period and with the concurrent payment of an additional nonrefundable option fee in the amount of Twenty Five Thousand Dollars (\$25,000.00), the City may extend the First Option Period through April 30, 2018 ("Second Option Period"). The Second Option Period shall end at 5 pm, MST, on April 30, 2018. This option fee shall also be credited to the purchase price of the Property in the event that the City exercises its option to purchase the Property.

3. Notice of Exercise of Option. The City may exercise its option to purchase the Property by giving written notice to the Company prior to the termination of either the First Option Period or the Second Option Period (whichever Period is in force and effect). Notice shall be given as provided below.

4. Failure to Exercise Option. If the City does not exercise its option as herein provided, the option fee(s) paid by the City to the Company pursuant to paragraph 2 above shall be retained by the Company, free of all claims of the City; the option shall automatically lapse and terminate and shall have no further force and effect; all obligations between the parties shall end; and neither party shall have any further rights or claims against the other.

5. Due Diligence. The parties intend that the City shall have the right to conduct its Due Diligence (defined below) during the option periods. Due Diligence may include, without limitation, the right of inspection of the Property, the right to conduct tests, surveys, the right to review architectural drawings and plans, agreements and leases and other information reasonably related to the Property (collectively "Due Diligence"). The Company agrees to deliver any tests

and documents in the Company's possession which are reasonably related to the City's Due Diligence in order to assist the City in its Due Diligence review.

5.1 From the Effective Date to the end of the option periods, the Company shall allow the City, at its sole cost, and the City's representatives a continuing right to conduct its Due Diligence. If the City conducts any physical inspections, surveys and tests on the Property, the City agrees to give the Company reasonable advance notice, shall restore the Property to the state at which it existed prior to the testing, and bear the City's own responsibility and liability with respect to the City activities arising out of such entry onto or inspections or work on the Property.

5.2 The City waives any objection to the condition of the Property if the City provides the Company with notice waiving any objection to the condition of the Property prior to the end of the option periods or gives notice of its intent to exercise its option to purchase the Property prior to the end of the option periods, whichever one may be in force and effect.

5.3 The City shall provide copies of any inspections, surveys, tests, reports, studies and the like that the City or its representatives may have performed on the Property during the Due Diligence review.

6. Title Commitment.

6.1 Within ten (10) days after the Effective Date, the Company shall deliver to the City a preliminary title commitment and copies of all documents referred to therein to approve or disapprove the same and any such items or documents. In the event the City shall disapprove any matter or item set forth in the commitment, the Company shall use reasonable efforts to attempt to eliminate such matter or item; and in any event, the Company shall be required to discharge and remove of record any matter or item which constitutes a monetary lien or encumbrance on the Property other than non-delinquent taxes.

6.2 The City shall examine said preliminary title commitment and shall, in writing, make any objections thereto known to the Company within ten (10) days of receipt or if the condition of title is acceptable to the City, the City may waive any objection to title. Notwithstanding, the failure by the City to object in writing to the condition of title shown in said preliminary title commitment within the time specified above shall constitute acceptance by the City of the condition of such title and waiver of any defects in title. In the event there exists any defect in title to which the City objects in the manner provided above, the Company shall have until the end of the First Option Period to cure and remove said defects. In the event the Company is unable to cure and remove said defects by the First Option Period or within any extended time period which the City may grant, the City may give notice of its intent to not exercise its option or may simply allow the option to lapse.

7. Purchase and Sale Agreement. Within five (5) days after giving notice of its intent to exercise its option to purchase the Property, the City and Company shall finalize and execute a Purchase and Sale Agreement substantially in the form attached hereto as Exhibit B and proceed to perform the terms and conditions of said Purchase and Sale Agreement.

8. Confidentiality Agreement. Concurrently with the execution of this Agreement, the City shall execute a Confidentiality Agreement to protect the Company's Confidential Information (defined in the Confidentiality Agreement) against disclosure of said Confidential Information, except as allowed under the Confidentiality Agreement. The form of the Confidentiality Agreement to be executed is attached hereto as Exhibit C.

9. Notices. All notices, demands, and other communications given or delivered under this Agreement shall be in writing and shall be deemed to have been given (i) when received if given in person; (ii) after being deposited in the U.S. mail, by certified or registered mail, return receipt requested, postage prepaid; (iii) after being deposited with Federal Express or UPS or other established overnight courier, specifying overnight delivery, costs prepaid; or (iv) by facsimile actually received by the receiving facsimile machine; or (v) any other electronic communication method, provided the sender immediately follows that notice with a second notice in one of the other methods set forth herein. Notices, demands, and communications to the parties shall be sent to the addresses indicated below:

For Company:	Fifth Street, LLC Attn: Thomas Praggastis
Mailing Address:	P. O. Box 6090 Ketchum, ID 83340
Courier Address:	191 Fifth Street West Ketchum, ID 83340
	Facsimile: (208) 726-5998 Email: tom@tcplaw.net
For City:	City of Ketchum Attn: Neil Bradshaw
Mailing Address:	P.O. Box 2315. Ketchum, ID 83340
Courier Address:	480 East Ave. N _____ Ketchum, ID 83340 Facsimile: (208) 726-8234 Email: nbradshaw@ketchumidaho.org

10. Time is of the Essence. Time is hereby expressly declared to be of the essence of this Agreement and each and every covenant, term, condition and provision hereof.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties herein and their respective successors and assigns. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party.

12. Applicable Law. This Agreement is being executed and delivered within the State of Idaho and shall be construed and enforced in all respects in accordance with the laws of the State of Idaho.

13. Attorney's Fees. In the event that either party hereto retains an attorney to enforce any right or duty arising out of this Agreement, the prevailing party in such dispute shall be entitled to be paid reasonable attorney's fees by the non-prevailing party, whether or not litigation is actually instituted.

14. Entire Agreement. The parties acknowledge that the terms of this Agreement may vary from the terms contained in any other preliminary agreements, written or oral, made prior to the execution of this Agreement and may vary from any negotiations between the parties prior to the execution of this Agreement. The parties agree that the terms, covenants and conditions of this Agreement shall supersede all such prior negotiations and agreements, and that there are no other agreements not contained in this Agreement, and that this Agreement shall be and is the final expression of the agreement of the parties and shall control.

15. Severability. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction (or, if applicable, an arbitrator), the remaining provisions of this Agreement shall not be affected and shall remain in full force and effect, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Agreement. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

16. Exhibits. All exhibits attached to this Agreement are hereby incorporated into this Agreement by reference.

17. Survival of All Representations and Warranties. The representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the termination of this Agreement.

18. Effective Date. The Effective Date of this Agreement is the last date on which this Agreement is fully executed by the parties.

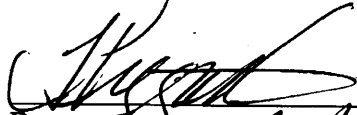
19. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or other electronic means shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

20. Entity Authority. The Company is an Idaho limited liability company and the City is an Idaho municipal corporation. Each individual executing this Agreement on behalf of said entity, represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of said entity, in accordance with a duly adopted resolution of said entity and that this Agreement is binding upon said entity in all respects.

IN WITNESS WHEREOF, this OPTION AGREEMENT is executed by the parties as of the Effective Date.


Date: 2/6/2018

FIFTH STREET, LLC


By: THOMAS C. PRALLASTU
Its: member

Date: 2/6/2018

CITY OF KETCHUM


By: Neil Bradshaw, Mayor

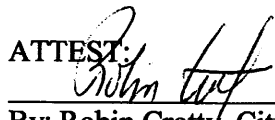
ATTEST: 
By: Robin Crotty, City Clerk



EXHIBIT A

LEGAL DESCRIPTION FOR FIFTH STREET REAL PROPERTY

Lot 8, Block 55, Ketchum Townsite, according to the official plat thereof, on file in the office of the County Recorder, Blaine County, Idaho.