



## City of Ketchum

September 20, 2021

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to Approve Amendment to Warm Springs Option Agreement #20610**

#### Recommendation and Summary

Staff respectfully recommends that the City Council approve the proposed amendment to the Warm Springs Purchase Option Agreement which will extend the first performance date from October 28 to December 31, 2021.

***Motion: I move to approve Extension Amendment to the Warm Springs Purchase Option Agreement #20610.***

The reasons for the recommendation are as follows:

- The fundraising committee comprised of community members recommends this adjustment to align with traditional end of year giving/tax planning cycles
- This action will build upon fundraising success to date
- Property owner supports extension terms

#### Introduction and History

The new property owner completed the required land-use approvals to re-zone the adjacent 13 acres for single family development. During the entitlement process, the property owner offered a purchase option (see attached) to the city for the 65 acres. The agreement was structured with two performance date periods of October 28, 2021 and April 28 2022. On April 5, 2021, the City Council approved the option agreement to purchase 65 acres of the Warm Springs Ranch property which has been utilized informally by the community for the last decade as a passive park. While the city holds the option agreement, it was envisioned that private donations would be solicited for the bulk of the purchase price.

Following the Council's approval of the option agreement, the city retained a professional fundraising consultant; formed a steering committee comprised of residents; and partnered with Spur Foundation to serve as the custodian of funds. The committee has made solid progress with the fundraising efforts but felt it was best to request for a modest extension of the first performance date as it aligns with the end of year giving period that local philanthropists have become accustomed to. The property owner was very supportive of the request and has executed (see attached) the amendment to the purchase option agreement. This amendment does not alter the second April 28, 2022 performance date.

### Financial Impact

None

### Sustainability Impact

Should the option agreement be executed, it will preserve 65 acres of open space with close proximity to downtown. The city would also plan to revegetate certain areas and upgrade the irrigation system to significantly conserve water consumption. The city would also look to partner with other organizations on stream restoration to improve wildlife habitat and stream health, as well as improve flood control conditions.

### Attachments

- Purchase Option Agreement 20610
- Extension Amendment Agreement



**EXTENSION AMENDMENT TO OPTION AGREEMENT 20610**

This Extension Amendment to Option Agreement 20610 ("Extension") is made and entered \_\_\_\_\_, 2021 by and between Brennan Holdings 300, LLC, ("Optionor"), an Idaho limited liability company, and City of Ketchum ("Optionee" or "City"), an Idaho municipal corporation.

- A. The Parties have entered into Option Agreement 20610 ("Option") providing City an option to purchase the Property as referenced therein.
- B. Provision 1 provides for the Option to be available for exercise until October 28, 2021 (six months from the Option date).
- C. The City has requested additional time in which to exercise the Option, and Optionor is agreeable to such extension of the option period.

Therefore, the Option is amended as follows:

- 1. The Option Period shall be extended to December 31, 2021. Any reference to the Option Period or "first six-month period" is hereby extended and understood to extend until December 31, 2021.

The remainder of the Option, including the additional six-month automatic extension upon funding commitments of \$4.5 million dollars, remain the same and unchanged by this Extension.

**OPTIONOR:**

Dated: Sept. 15, 2021

Robert M. Brennan

Robert M. Brennan, Managing Member  
Brennan Holding 300, LLC

**OPTIONEE:**

Dated: \_\_\_\_\_

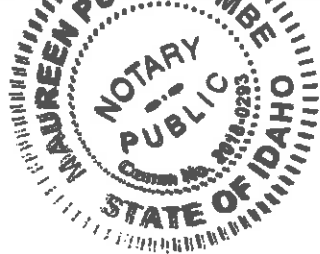
\_\_\_\_\_  
Neil Bradshaw, Mayor  
City of Ketchum

Attest: \_\_\_\_\_  
Tara Fenwick, City Clerk

STATE OF IDAHO )  
 ) ss.  
County of Blaine )

On this 15<sup>th</sup> day of September, 2021, before me Robert M Brennan personally appeared Robert M. Brennan, known or identified to me to be the person whose name is subscribed to the within instrument, on behalf of and as authorized for Brennan Holdings300, LLC, and acknowledged to me that he/she/they executed the same on its behalf.

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



Maureen Pudliscombe  
NOTARY PUBLIC FOR IDAHO  
Residing at Ketchum, ID  
My Commission Expires 2-14-24

STATE OF IDAHO )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me \_\_\_\_\_, personally appeared Neil Bradshaw, known or identified to me, to be the person whose name is subscribed to the within instrument as Mayor of the City of Ketchum, and acknowledged to me that he executed the same as authorized and on behalf of the City of Ketchum.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

## OPTION AGREEMENT 20610

THIS OPTION AGREEMENT (this “Agreement”) dated as of April 28, 2021, is by and among Brennan Holdings No. 300, LLC, an Idaho limited liability company (“Optionor”) and the City of Ketchum, Idaho, a municipal corporation (“Optionee”, and together with Optionor the “Parties”).

### RECITALS

A. Optionor is the owner of the real property in the City of Ketchum, Idaho described as Blocks 2 through 8, Warm Springs Ranch Large Block Plat according to the plat thereof recorded as Instrument No. 576508, records of Blaine County, Idaho a copy of which is attached hereto as Exhibit A and water rights 37-212A, 37-2621, and 37-20381 both referred to as (“Property”) for purposes of this Agreement.

B. Optionee desires to obtain an option to purchase the Property from Optionor and Optionor is willing to grant an option to purchase the Property to Optionee on the terms and conditions contained herein.

**NOW THEREFORE**, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Option.** For and in consideration of the sum of one dollar and other valuable consideration received, Optionor hereby grants to Optionee the exclusive right and option (“Option”) to purchase the Property from Optionor. The purchase price (“Purchase Price”) for the Property shall be nine million dollars (\$9,000,000). Optionee’s exclusive right and option to purchase the Property herein provided shall be exercisable by Optionee, in accordance with the terms hereof, (provided this Option has not been terminated pursuant to the terms hereof) during the six (6) month period which commences on date the last signature is obtained on this Agreement. (such time period being hereinafter referred to as the “Option Period”). The Option period shall be automatically extended for an additional six (6) month period after the first six (6) period provided the Optionee has raised or has funding commitments totaling \$4.5 million dollars towards the purchase of the Property.

**2. Exercise.** The Option herein granted to Optionee shall be exercisable by delivery of written notice by Optionee to Optionor of its unconditional exercise of the Option to purchase the Property. Such notice shall be delivered to Optionor either by personal delivery or by certified or registered United States mail, postage prepaid, return receipt requested, addressed to Optionor at the address provided for Optionor in Section 9 of this Agreement.

**3. Binding Contract.** In the event Optionee exercises its Option to purchase the Property, this Option shall thereupon become and be a legally enforceable and binding contract

for the purchase by Optionee and sale by Optionor of the Property, in accordance with the terms and conditions herein provided. In the event Optionee fails to exercise the Option within the Option Period, this Option shall automatically terminate, and in the event of such termination, both parties shall be released from any further obligations hereunder, except for liabilities, actual or contingent, which arose prior to the date of termination. Optionor agrees not to sell, transfer, mortgage or otherwise encumber the Property during the Option Period.

**4. AS IS Purchase:** Optionee is relying solely upon Optionee's inspections as to the condition of the Property. Optionor is not making, has not made and expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature, or condition of the Property, including, without limitation, the existence of hazardous waste, or the suitability of Property for Optionee's intended use. Optionee shall independently verify all information and reports regarding any aspect or feature of the Property provided by Optionor. Optionor does not guaranty the accuracy of any information or reports provided by Optionor, its agents or consultants. Optionee is purchasing the Property in "As Is" condition with all faults, including both latent and patent defects. As used herein "hazardous waste" shall mean any hazardous waste or pollutants, contaminants, or hazardous waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1990 and any amendments thereto, the Resource Conservation and Recovery Act and any amendments thereto or any similar state, local or federal law, rule, or regulation, including, without limitation, asbestos, PCBs, petroleum and petroleum products and urea-formaldehyde.

**5. Use of Property.** Optionee agrees that the Property shall be used as a passive park for open space and that purpose shall be reflected in the Deed transferring ownership of the Property. Public facilities to improve access and maintenance, provide sanitation facilities, and restore Warm Springs Creek and its riparian zone and floodplain shall be expressly permitted.

**6. Optionee's Conditions:** Notwithstanding the exercise of this Option by Optionee, Optionee may terminate the Contract formed by the exercise of the Option unless each of the following conditions have been met or waived by Optionee on or before the Closing Date (hereinafter defined):

(a) Condition of Title. Title to the Property shall be conveyed by Special Warranty Deed ("Deed") and shall be free and clear of all liens, encumbrances, easements, assessments, restrictions, and tenancies, whether recorded or unrecorded, except those shown on Exhibit "B" attached hereto and made a part hereof, the lien of taxes not yet due and payable, and the title insurer's standard printed exceptions ("Permitted Exceptions"). The Permitted Exceptions shall include the Development and Rezoning Agreement attached hereto as Exhibit "C".

(b) Title Insurance. Escrow Holder shall be prepared to deliver to Optionee, upon closing, an Owner's Policy of Title Insurance, in the full amount of the purchase price, insuring fee simple title to the Property to be vested in Optionee, subject only to the Permitted Exceptions.

**7. Closing:** Within two (2) days from the date of the exercise of the Option by Optionee, Optionee shall open escrow with Blaine County Title, Inc., Ketchum, Idaho ("Escrow

Holder”). Closing shall occur on the tenth (10th) business day following the date of Optionee’s exercise of the Option (“Closing Date”). In the event closing does not occur on the Closing Date for reasons other than the default of Optionor, Optionor may terminate the Contract formed by the exercise of this Option by giving five (5) days’ written notice to Optionee. If closing has not occurred within five (5) days after giving such notice, the Contract formed by the exercise of this Option shall automatically terminate and neither Optionee nor Optionor shall have any further obligations to the other and Optionor shall be entitled to retain the Option consideration paid by Optionee. On or before the Closing Date the parties shall deposit the following with Escrow Holder: (a) Optionor shall deposit a duly executed and acknowledged Deed conveying the Property to Optionee, (b) Optionee shall deposit the purchase price in immediately available funds, and (c) both parties shall provide instruction to the Escrow Holder to disburse the entire purchase price to Optionor upon recordation of the Deed, and when Escrow Holder is in a position to issue the title policy required by Section 5(b).

**8. Costs:** Optionee shall pay the costs of recording the Deed conveying Property to Optionee. Any escrow fees shall be paid equally by both parties. Taxes and assessments shall be prorated as of the Closing Date. For the purposes of prorations, Optionee shall be deemed to have owned the Property for the entire Closing Date. Optionee shall pay the cost of Optionee’s Owner’s Policy of Title Insurance. All other costs including all other recording fees, any state documentary stamps, transfer taxes and excise taxes shall be paid by Optionee.

**9. Default:** Time is of the essence of this Option. Upon the failure of either party to perform their obligations hereunder, such party shall be deemed to be in default. Upon a default occurring, and failure of the defaulting party to cure such default within the cure period described below), the non-defaulting party may at its election:

(a) If the defaulting party is the Optionor, Optionee may terminate this Agreement or the contract formed by the exercise of the Option by written notice to the Optionor, or (ii) pursue its legal or equitable remedies;

(b) If the defaulting party is Optionee, Optionor may (i) terminate the contract formed by the exercise of the Option by written notice to Optionee, or (ii) pursue its legal remedies including money damages, or (iii) its equitable remedies including seek specific performance of this Agreement or the contract formed by the exercise of the Option.

The parties declare it to be their intent that this Agreement and the contract formed by the exercise of the Option may be specifically enforced. A defaulting party shall have the right to cure any default within five (5) days following receipt of notice of default from the non-defaulting party.

**10. Notices:** All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, U.S. Mail, certified, return receipt requested, or other reliable delivery service such as Federal Express or UPS, postage or delivery charges prepaid, addressed to the appropriate party at the address set forth below:

If to the Optionor: Brennan Holdings No. 300, Post Office Box 1991, Sun Valley, Idaho 83353, Attention: Robert M. Brennan, Managing Member



With a copy to:            Lawson Laski Clark, PLLC, Post Office Box 3100, Ketchum,  
Idaho 83340, Attention: Edward A. Lawson

If to Optionee:            City of Ketchum, Post Office Box 2315, Ketchum, Idaho 83340  
Attention: City Administrator

All notices given pursuant to this Agreement shall be deemed given upon receipt. For the purpose of this Agreement, the term “*receipt*” shall mean the earlier of any of the following: (a) the date of delivery of the notice or other document as shown on the return receipt, (b) the date of receipt of the notice or other document by the person or entity to whom it was addressed, or (c) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (i) the date of the attempted delivery or refusal to accept delivery, (ii) the date of the postmark on the return receipt, or (iii) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

## **11. Miscellaneous**

A.     *Expenses.* Except as otherwise provided in this Agreement, or as otherwise agreed to in writing by the parties, all legal and other costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

B.     *Rules of Construction.* The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

C.     *Counterparts.* This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

D.     *Entire Agreement.* This Agreement, together with the Exhibits and Schedules hereto, and any documents delivered by the parties in connection herewith constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties hereto, or any of them, with respect to the subject matter hereof.

E.     *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the state of Idaho without regard to its rules of conflict of laws.

F.     *Severability.* In the event that any one or more provisions of this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and the parties shall use their reasonable best efforts to substitute a valid, legal,

and enforceable provision which, insofar as practicable, implements the original purposes and intents of this Agreement.


G. *Assignment; Reliance of Other Parties.* Neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any of the parties hereto in whole or in part (whether by operation of law or otherwise) without the prior written consent of the other parties and any attempt to make any such assignment without such consent shall be null and void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns. This Agreement (including the documents and instruments referred to herein) is not intended to confer upon any Person other than the parties hereto any rights or remedies under or by reason of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

Brennan Holdings No. 300, LLC,  
an Idaho limited liability company

City of Ketchum, Idaho, a municipal  
corporation

By:   
Robert M. Brennan, Managing Member

By:   
Neil Bradshaw, Mayor





