

*Passed
Jan 20, 1998*

**ORDINANCE 97- 6
TOWN OF OPHIR**

AN ORDINANCE AUTHORIZING THE SALE OF PROPERTY WITHIN WATERFALL CANYON, AND AUTHORIZING TOWN STAFF TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH RESPECT TO THE SAME

WHEREAS, the Town of Ophir owns certain real property of approximately 160 acres, more or less, and which lies in Waterfall Canyon, south of the Town of Ophir, County of San Miguel, Colorado (the "Property");

WHEREAS, the Town of Ophir acquired the Property for the purpose of preserving the Property as open space and desires to deposit the proceeds from the sale of the Property into an account designated for open space and land conservation purposes only;

WHEREAS, the Town of Ophir Master Plan states that it is the goal for the Town of Ophir to ensure the protection and encourage the restoration of the natural environment and the continued health of both the human and wildlife environment for the area within and surrounding the Town of Ophir;

WHEREAS, the General Assembly finds that the sale of the Property to the San Miguel Conservation Foundation ("SMCF"), as contemplated herein, will further Ophir's goal of protecting the Property as open space and further Ophir's Master Goals of the protection of the natural environment within and surrounding the Town of Ophir; and,

WHEREAS, the General Assembly of the Town of Ophir finds that the sale of the Property will promote and preserve the Health, Safety and Welfare of the Ophir community;

NOW THEREFORE BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR AS FOLLOWS:

1. Execution of Purchase and Sale Agreement

The General Assembly hereby authorizes the Town Mayor and the Town Staff to execute The Agreement, attached hereto as Exhibit "A." The Town Mayor and Town Clerk are hereby authorized to execute the Purchase and Sale Agreement and take all actions necessary to effectuate the purpose of this Ordinance.

2. Allocation of Sale Proceeds.

Proceeds collected and received by the Town from the sale of the Property shall be dedicated to and deposited in a separate Open Space account. Such funds shall be expended only for the acquisition of real property or interests therein in order to preserve and protect open space in the Ophir Valley.

3. Effective Date.

This Ordinance shall take place immediately upon passage and adoption of the Second Reading by the General Assembly. Such action is necessary for the health, safety and welfare of the citizens of the Town of Ophir. No publication shall be necessary for this Ordinance to be effective.

FIRST READING HEARD, APPROVED AND ADOPTED, by the General Assembly of the Town of Ophir, this 16th day of December, 1997.

SECOND READING HEARD, APPROVED AND ADOPTED AS AMENDED by the General Assembly of the Town of Ophir, this 20th day of January, 1998.

TOWN OF OPHIR

Monica Olson, Town Mayor

Attest: _____
Lawrence Van Hoey, Town Clerk

Approved as to Form: _____
Elizabeth M. Covington
Town Attorney

AGREEMENT OF PURCHASE AND SALE

**160 ACRES MORE OR LESS
WATERFALL CANYON,
SAN MIGUEL COUNTY, COLORADO**

Seller: TOWN OF OPHIR
Seller's Address: c/o Paul Machado, Town Manager
110 Granite Avenue
P.O. Box 683
Ophir, Colorado 81426

Purchaser: SAN MIGUEL CONSERVATION FOUNDATION
Purchaser's P.O. Box 1957
Address: 335 North Oak Street
Telluride, Colorado 81435

Property: 160 acres more or less, located in Waterfall Canyon,
San Miguel County, Colorado

Purchase Price: \$150,000

Closing Date: February 16, 1998

Title Company: Telluride Mountain Title Company
P.O. Box 1440
Telluride, CO 81435

Closing Agent: Telluride Mountain Title Company
P.O. Box 1440
Telluride, CO 81435

EXHIBIT "A"

PURCHASE AND SALE AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein the parties agree as follows:

1. Parties and Property. Purchaser agrees to purchase and Seller agrees to sell, on the terms and conditions set forth in this Agreement, the following real property in the County of San Miguel, State of Colorado, which is more particularly described as:

See attached Exhibit "A,"

together with the interests, easements, rights, and benefits appurtenant to the ownership of the Property (the "Property").

2. Purchase Price and Terms. The purchase price shall be One Hundred and Fifty Thousand and No/100 Dollars (\$150,000) payable in U.S. Dollars by Purchaser.

(a) **Earnest Money.** The parties agree that the Purchaser is not required to deposit any earnest money.

(b) **Cash at Closing. \$150,000.00 (One Hundred and Fifty Thousand and No/100 Dollars)** Purchaser shall pay all of the purchase price \$150,000 in cash at closing, plus Purchaser's share of closing costs and prorations. Purchaser shall pay in cash, electronic transfer funds, certified check or cashier's check.

3. Good Funds. All payments required at closing shall be made in good funds which comply with all applicable Colorado laws.

4. Assignment. This Agreement shall not be assignable by Purchaser without Seller's prior written consent. Except, as so restricted, this Agreement shall inure to the benefit of and be binding upon the successors of the parties.

5. Title. On or before January 26th, 1998, Seller shall furnish to Purchaser, at Seller's expense, an ALTA extended coverage preliminary title report, showing fee title to the Property vested in Purchaser and in an amount equal to the purchase price. Copies of instruments listed in the schedule of exceptions in the preliminary title report shall also be furnished to Purchaser at Seller's expense. The preliminary title report, together with any copies furnished pursuant to this paragraph, shall constitute the Title Documents. At closing, Seller shall pay the premium for an owner's title policy showing fee simple title to the Property vested in Seller and shall cause such owner's title policy to be

issued by Telluride Mountain Title at closing. As soon as practical after closing, Purchaser will have the title insurance policy delivered to Purchaser.

(a) Title Review. Purchaser shall have the right to inspect the title documents. Written notice by Purchaser of unmerchantability of title or unsatisfactory title or other title condition unacceptable to Purchaser in Purchaser's sole and absolute discretion, shall be signed by or on behalf of Purchaser and given to Seller on or before February 2, 1998. If Seller does not receive Purchaser's notice by the date specified above, Purchaser shall be deemed to have accepted the condition of title as disclosed by the title documents as satisfactory.

(b) Matter Not Shown by the Public Records. Seller shall deliver to Purchaser on or before January 26th, 1998, copies of all leases and surveys in Seller's possession pertaining to the property and shall disclose to Purchaser all easements, liens and other title matters not shown by the public records of which Seller has knowledge. Purchaser shall have the right, subject to the restrictions contained in Paragraph 9, to inspect the property to look for evidence that any third party has any right in the property not shown by the public record (such as an unrecorded easement, unrecorded lease or boundary line discrepancy), or other unsatisfactory conditions. Written notice of any condition disclosed by Seller or revealed by such inspection or any other matter affecting title to or the condition of the Property that is unsatisfactory or unacceptable to Purchaser in Purchaser's sole and absolute discretion, shall be signed by or on behalf of Purchaser and given to Seller on or before February 2, 1998. If Purchaser delivers to Seller written notice that title is unsatisfactory or unacceptable on or before February 2, 1998, then in that event, this Agreement shall terminate and all funds and things of value shall be returned to Purchaser. If Seller does not receive Purchaser's notice by said date, Purchaser shall be deemed to have accepted title.

(c) Right to Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory or unacceptable matter as provided in subsections (a) or (b), above, closing may be extended for an additional ten (10) business days, if Seller delivers to Purchaser notice of its intent to cure the unacceptable title matter. Seller shall use reasonable efforts to correct said unsatisfactory or unacceptable matter prior to the extended date of closing. If Seller fails to deliver notice of its intent to cure the unacceptable title matter or if Seller fails to correct said unsatisfactory or unacceptable matter on or before the date of closing, this Agreement of Purchase and Sale shall terminate; provided, however, purchaser may by written notice received by Seller on or before closing, waive objection to any unsatisfactory or unacceptable matter conditions.

6. Date of Closing. The date of closing shall be February 16, 1998 or at an earlier date by mutual written agreement. At the time of closing, Purchaser's general warranty deed shall be delivered to the office of the Clerk and Recorder of San Miguel County for recording. The hour and place of closing shall be designated by Telluride Mountain Title Company.

7. Transfer of Title. Subject to the tender of payment on closing as required herein and compliance by Purchaser with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient general warranty deed to Purchaser at closing conveying the property free and clear of all encumbrances, except general taxes for the year of closing and exceptions specified in an exhibit to be attached to the deed and approved by the Purchaser, and subject to the building and zoning regulations of the County of San Miguel.

8. Physical Inspection. (a) Inspection; Deadline. Purchaser or any designee, shall have the right to inspect the physical condition of the Property and Inclusions, at Purchaser's expense. If written notice of any unsatisfactory condition, signed by or on behalf of Purchaser, is not received by Seller on or before February 2nd, 1998 ("Objection Deadline"), the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Purchaser. If such notice is received by Seller as set forth above, and if Purchaser and Seller have not agreed, in writing, to a settlement thereof on or before February 6th, 1998 (the "Resolution Deadline"), this Agreement shall terminate three calendar days following the Resolution Deadline, and all funds and things of value shall be returned to Purchaser and neither party shall have any further rights or obligations hereunder; unless, within the three calendar days, Seller receives written notice from Purchaser waiving objection to any unsatisfactory condition.

(b) Indemnity; Payment for Costs or Damages. Purchaser is responsible for and shall pay for any damage which occurs to the Property as a result of such inspection. Additionally, Purchaser agrees to indemnify and hold harmless Seller from any and all losses, costs, damages and expenses resulting from any actual damage to the Property, and any claim, loss or cause of action arising out of any injury to persons or damage to the Property caused by any act of Purchaser or its agents or representatives, as a result of the inspections, investigations or tests performed pursuant to this Paragraph. This Paragraph 9 shall survive closing or termination of this Agreement.

9. Payment of Encumbrances. Any encumbrance required to be paid, shall be paid at or before the time of settlement from the proceeds of this transaction, new loan proceeds or from any other source.

10. Closing Costs, Documents and Services. Seller and Purchaser shall pay their respective closing costs at closing except as otherwise provided herein. Seller and Purchaser shall complete and execute all settlement statements, deeds, proration approvals, and releases at or before closing. Closing Agent's fee for real estate closing and settlement services shall not exceed \$350.00, and shall be paid at closing by Seller and Purchaser equally.

11. Prorations. General taxes for the year of closing, based on the most recent levy and assessment, if any, together with rents, if any, and other prepaid expenses shall be prorated to date of closing. Any sales, use, and real estate transfer tax that may accrue because of this transaction shall be paid by Purchaser.

12. Possession. Possession shall be delivered to the Purchaser upon closing.

13. Costs of Seller at Closing. In closing this transaction the escrow or closing agent shall not charge Seller with any closing costs at closing.

14. Costs of Purchaser at Closing. In closing this transaction the escrow or closing agent shall charge Purchaser with and Purchaser shall pay all closing costs of both parties, including but not limited to, the following:

- (a) Cost of filing deeds, release or other documents for record;
- (b) Closing Agent's fee;
- (c) Any sales, use, and real estate transfer taxes that may accrue because of this transaction;
- (d) Cost of preliminary title commitment and update to the existing title insurance policy in the full amount of the purchase price and cost of owner's title insurance premium, with those endorsements, if any, requested by Purchaser, which shall be issued in the name of the Purchaser;
- (e) Cost of financing, together with the cost of recording Deeds of Trust, Security Agreements or related documents;
- (f) Cost of Lender's title policy premium, if any;
- (h) All cost associated with any due diligence required on behalf of Purchaser; and,
- (i) All attorneys fees incurred by Seller with respect to the transaction referred to in this Agreement. The payment of Seller's legal fees by Purchaser in no way suggests or implies that Purchaser has or will interfere with or influence in any way the representation of Ophir by its counsel.

Immediately after closing on title the escrow or closing agent shall deliver to Seller the balance of the funds payable and due under the terms hereof and shall deliver to Purchaser the deeds to the property and all other items to which Purchaser is entitled hereunder.

15. Seller's Representations and Warranties.

Seller represents, warrants to and agrees with Purchaser that, as of the date hereof, and as of the Closing Date:

(a) **No Conflicts.** The execution and delivery of this Agreement, the consummation of the transaction contemplated herein, and compliance with the terms of this Agreement will not conflict or result in a breach of any of the terms of provisions of, or constitute a default under, any indenture, deed of trust, mortgage, loan agreement, or other document, or instrument or agreement, oral or written, to which Seller is a party or by which Seller or the Property is bound, or any applicable regulation of any governmental agency, or any judgment, order or decree of any court having jurisdiction over Seller or all or any portion of the Property.

(b) **Requisite Municipal Action; Consents.** Seller is a home rule municipality, organized under the laws of the State of Colorado. All requisite action by Seller has been taken prior to entering into this Agreement and will be taken prior to the closing in connection with the execution and delivery of the instruments referenced herein and the consummation of the transactions contemplated hereby. No consent of any beneficiary, creditor, judicial, municipal or administrative body, governmental authority or other party is required in connection herewith which has not been obtained.

(c) **Seller Authority; Validity of Agreement.** Seller has full right, power and authority to sell and convey the Property to Purchaser as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof. This Agreement is, and all other documents and instruments to be executed and delivered by Seller in connection with this Agreement shall be, duly authorized, executed and delivered by Seller and shall be valid, binding and enforceable obligations of Seller.

(d) **Condition of Property.** At closing Purchaser shall purchase the Property "as-is", with no representations or warranties, except as contained in the Deed or otherwise set forth herein.

(e) **Survival.** Paragraph 15 shall survive for six months following closing.

16. **Purchaser's Representations and Warranties.**

Purchaser represents, warrants to and agrees with Seller that, as of the date hereof, and as of the Closing Date:

(a) **No Conflicts.** The execution and delivery of this Agreement, the consummation of the transaction contemplated herein, and compliance with the terms of this Agreement will not conflict or result in a breach of any of the terms of provisions of, or constitute a default under, any indenture, deed of trust, mortgage, loan agreement, or other document, or instrument or agreement, oral or written, to which Purchaser is a party or by which Purchaser is bound, or any applicable regulation of any governmental agency, or any judgment, order or decree of any court having jurisdiction over Purchaser.

(b) Due Organization; Consents. Purchaser is a nonprofit corporation duly organized and existing in good standing under the laws of the State of Colorado. All requisite corporate action has been taken by Purchaser in connection with entering into this Agreement, and will be taken prior to the Closing in connection with the execution and delivery of the instruments referenced herein and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required in connection herewith which has not been obtained.

(c) Purchaser's Authority; Validity of Agreements. Purchaser has full right, power and authority to purchase the Property from Seller as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Purchaser have the legal power, right and actual authority to bind Purchaser to the terms hereof and thereof. This Agreement is and all other documents and instruments to be executed and delivered by Purchaser in connection with this Agreement shall be duly authorized, executed and delivered by Purchaser and shall be valid, binding and enforceable obligations of Purchaser.

(d) Purchaser's Intent to Preserve the Property. Purchaser intends to preserve and maintain the Property in perpetuity as undeveloped open space, passive recreation, and municipal city park purposes as described or implied in Colorado Revised Statutes section 31-25-201, et. seq.

(e) Survival. Paragraph 16 shall survive closing for six months.

17. Condition/Damage to the Property. If prior to Closing and notwithstanding the pendency of this Agreement, the entire risk of loss or damage by earthquake, flood, landslide, fire or other casualty shall be borne and assumed by Purchaser. In the event of such casualty, Seller shall assign and turn over, and Purchaser shall be entitled to receive and keep, all insurance proceeds payable with respect to such destruction and the parties shall proceed to Closing pursuant to the terms hereof without modification of the terms of this Agreement and without any reduction in the Purchase Price.

18. Time of the Essence/Remedies. Time is of the essence herewith. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid or tendered when due or if any other obligation hereunder is not performed or waived as provided, there shall be the following remedies:

(a) IF PURCHASER IS IN DEFAULT: All payments or things of value hereunder shall be forfeited by Purchaser and retained on behalf of Seller and both parties shall thereafter be released from all obligations hereunder. The parties agree that Seller's remedies shall lie at law or at equity and that Seller expressly waives the right to require an earnest money deposit.

(b) IF SELLER IS IN DEFAULT: If Seller is in default under this agreement, Purchaser may either waive such default by Seller or terminate this agreement or pursue any other remedy available to Purchaser at law or equity, including specific performance, damages, or

both. If Purchaser terminates this agreement pursuant to such default, Purchaser shall execute and deliver a release and quit claim deed in a form satisfactory to Seller and return all documents and information provided to Seller by Purchaser pursuant to the Agreement.

(c) Cost and Expenses: Anything to the contrary herein notwithstanding, in the event of any litigation or arbitration arising out of this Agreement, the court shall award to the prevailing party all reasonable costs and expenses, including attorneys fees.

19. Special Taxing Districts. Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such districts. Property owners in such districts may be placed at risk for increased mill levies and excessive tax burdens to support the servicing of such debt where circumstances arise resulting in the inability of such a district to discharge such indebtedness without financing requirements of the authorized general obligation indebtedness of such districts, existing mill levies of such district servicing such indebtedness, and the potential for an increase in such mill levies. The property is subject to one or more Special Taxing Districts. This disclosure is required by the Colorado Real Estate Commission.

20. Notices. Any notice to Seller, Purchaser or Telluride Mountain Title Company shall be effective when written notice is received by either Seller or Purchaser at the following physical address or mailing address:

If to Purchaser: San Miguel Conservation Foundation
P.O. Box 1957
335 North Oak Street
Telluride, Colorado 81435

If to Seller: Paul Machado, Manager
P.O. Box 683
110 Granite Avenue
Ophir, Colorado 81

If to Telluride Mountain Title: Telluride Mountain Title Company
P.O. Box 1440
335 West Colorado Avenue
Telluride, Colorado 81435

21. Severability. Any provision or part of this Agreement which is invalid or unenforceable in any situation in any jurisdiction shall, as to such situation and such jurisdiction, be ineffective only to the extent of such invalidity and shall not affect the enforceability of the remaining provisions hereof of validity or enforceability of any such provision in any other situation or in any other jurisdiction.

22. Attorney's Fees. Notwithstanding anything to the contrary herein, in the event of any arbitration or litigation arising out of this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

23. Alternative Dispute Resolution; Mediation. If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediator. If mediation proves unsuccessful, the parties may then proceed with such other means of dispute resolution as they so choose.

24. Recommendation of Legal Counsel. By signing this document, Purchaser and Seller acknowledge that this document has important legal consequences and that each party has had the opportunity to review this document with their legal counsel.

25. Modification of this Contract. This Agreement constitutes the entire contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.

26. No Agency. Seller and Purchaser acknowledge and attest that there are no real estate commissions due and payable at the closing of the property and that negotiations for the purchase and sale of the property were conducted by the principals and without the assistance of real estate brokers.

27. Construction. This Agreement shall not be construed more strictly against one party hereto than against any other party hereto merely by virtue of the fact that it may have been prepared by counsel for one of the parties.

IN WITNESS WHEREOF, Purchaser and Seller have caused this Purchase and Sale Agreement to be executed.

**PURCHASER: SAN MIGUEL CONSERVATION FOUNDATION,
 a Colorado nonprofit corporation.**

By: _____
Its: _____ date

SELLER: TOWN OF OPHIR

By: _____
Monica Olson, Mayor date

EXHIBIT "A"

Big Boy Lode, Favorite Lode, Favorite Extension Lode, Gold Lode, Link Lode, Little Boy Lode, Little Girl Lode, Minnie Lode, Mount Vernon Lode, Slide Lode and Three Brothers Lode, all survey No. 19031, Iron Springs Mining District, except ground embraced in survey Nos. 751, 752, and 15496, Iron Springs Mining District;

Gold Chord Lode, Gold Eagle Lode, Golden Cycle Lode, Modena Lode and Sitting Bull Lode, all survey No. 19488, Iron Springs Mining District, except ground embraced in survey Nos. 777, 1234, 14076 and Favorite Lode and Link Lode, survey No. 19031, Iron Springs Mining District;

Elcoro Lode and Yankton Lode, all survey No. 19727, Iron Springs Mining District, Camp Bird Lode, Confidence Lode and Katie Lode, all survey No. 19728, Iron Springs Mining District, except ground embraced in survey No. 19727, Big Boy Lode and Minnie Lode, survey No. 19031, and Baltimore Lode and Silver King Lode, unsurveyed, Iron Springs Mining District.