

*Passed
Jan 20, 1998*

**ORDINANCE 97-7
TOWN OF OPHIR**

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN LOTS WITHIN THE TOWN OF OPHIR, AND AUTHORIZING TOWN STAFF TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH RESPECT TO THE SAME

WHEREAS, the Town of Ophir owns certain lots located in the Town of Ophir, Colorado, which are more particularly described as:

Lots 11 and 12, Block 4, Town of Ophir,
San Miguel County, Colorado. (the "Property");

WHEREAS, the Town of Ophir General Assembly desires to apply the proceeds from the sale of the Property in a fund which is 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 continued health of both the human and wildlife environment for the area 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 Purchase and Sale 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 and around 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

LOTS 11 & 12, BLOCK 4, TOWN OF OPHIR, 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: RICHARD M. SALEM
Purchaser's P.O. Box 1957
Address: 335 North Oak Street
Telluride, Colorado 81435

Property: Lots 11 and 12, Block 4, Town of Ophir,
San Miguel County, Colorado

Purchase Price: \$100,000

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

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 described real property in the County of San Miguel, State of Colorado, commonly known as 205 Aurum Street, Telluride, Colorado, and more particularly described as:

Lots 11 and 12, Block 4, Town of Ophir,
San Miguel County, Colorado.

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 Thousand and No/100 Dollars (\$100,000) 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. \$100,000 (One Hundred Thousand and No/100 Dollars)** Purchaser shall pay part of the purchase price \$100,000 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 heirs, personal representatives, and 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, 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. Any Lender's title insurance policy required by the Purchaser's lender shall be the sole cost and expense of the 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 2nd, 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 2nd, 1998. If Purchaser delivers to Seller written notice that title is unsatisfactory or unacceptable on or before February 2nd, 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. Seller shall use reasonable efforts to correct said unsatisfactory or unacceptable matter prior to the extended date of closing. 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 conditions.

6. Date of Closing. The date of closing shall be February 16, 1998 or at an earlier date by mutual agreement. At the time of closing, the purchasers' 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 ("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; unless, within the three calendar days, Seller receives written notice from Purchaser waiving objection to any unsatisfactory condition.

(b) Indemnity; Payment for Costs and 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 or use tax or real estate transfer tax that may accrue because of this transaction shall be paid by Purchaser. The Town of Ophir acknowledges that Ordinance No. 79-3, which provides for a real estate transfer tax on the sale of property within the Town of Ophir, does not apply to this transaction. Section 5(a) of the Ordinance provides an exemption for the transfer of property

either to or from the Town of Ophir, and therefore, Purchaser is not obligated to pay real estate transfer tax to the Town.

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 charge the Seller with and Seller shall pay for the following:

- (a) Seller's proportionate share of real estate taxes, prorated up to and including the date of transfer of title;
- (b) 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 reasonably required by Purchaser, which shall be issued in the name of Purchaser;
- (c) One-half of closing fee;
- (d) Cost of satisfying any existing deed of trust or other encumbrance on the Property, together with the cost of any release, recording fee or other cost incidental to the satisfaction of such indebtedness or encumbrance; and
- (e) All customary charges properly borne by Seller consistent with the terms of this Agreement and general real estate practice in San Miguel County.

14. Costs of Purchaser at Closing. In closing this transaction the escrow or closing agent shall charge Purchaser with and Purchaser shall pay the following:

- (a) Cost of filing deeds for record;
- (b) One-half closing fee;
- (c) Any sales, use, and real estate transfer taxes that may accrue because of this transaction;
- (d) Any prorated real estate taxes, transfer taxes other payments which may have been prepaid by Seller;
- (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;

- (g) All costs associated with any due diligence required on behalf of Purchaser;
- (h) 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; and,
- (i) All charges properly borne by Purchaser consistent with the terms of this Agreement and general real estate practice in San Miguel County.

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 and 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, duly 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 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 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 after 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) **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. This Agreement is, and all instruments, documents and agreements to be executed by Seller in connection herewith, shall be duly authorized, executed and delivered by Seller and shall be valid, binding and enforceable obligations of Seller.

(c) **Survival.** The representations and warranties contained in this Paragraph 16 shall survive closing for six months.

17. Condition/Damage to the Property. In the event the Property shall be damaged by casualty prior to closing, the risk of loss shall be borne and assumed by Purchaser. Seller and Purchaser agree that in the event of casualty to the Property, this Agreement shall not terminate and that Purchaser and Seller elect to carry out this Purchase and Sale Agreement despite such damage 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:** In the even that Purchaser is in default, then Purchaser and Seller agree that Purchaser shall owe to Seller the amount of \$100,000 (One-Hundred Thousand and no/100 Dollars) and that such amount of \$100,000 is LIQUIDATED

DAMAGES and, except as provided in subsection (c), is Seller's SOLE AND ONLY REMEDY for Purchaser's failure to perform the obligations of this Agreement of Purchase and Sale. Seller expressly waives the remedies of specific performance and additional damages. PURCHASER AND SELLER AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES WAS SELECTED AS A REASONABLE, GOOD FAITH ESTIMATE OF THE DAMAGES WHICH SELLER WOULD SUFFER IF PURCHASER WERE TO DEFAULT UNDER THIS AGREEMENT. DAMAGES WOULD BE DIFFICULT TO ASCERTAIN, BUT WOULD INCLUDE COSTS OF TITLE COMMITMENT, PROVIDING DOCUMENTS, LEGAL FEES AND OTHER COSTS INCURRED IN PERFORMANCE AND ANY OTHER REMEDY AVAILABLE AT LAW OR EQUITY.

As acknowledged by his initials, Purchaser has read, understood and accepts the foregoing Paragraph 18(a) ____.

As acknowledged by the initials of its Mayor, Moncia Olson, Seller has read, understood, and accepts the foregoing Paragraph 18(a). ____

(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 Purchaser by Seller 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: Richard M. Salem
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 81426

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 party 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.

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

PURCHASER: RICHARD M. SALEM

_____ date

SELLER: TOWN OF OPHIR

By: _____
Monica Olson, Mayor date

Attest:

Lawrence Van Hoey, Town Clerk date