

ORDINANCE NO. 2003-4

Zoning Tract A of the Ophir Millsite Residential

WHEREAS the Town of Ophir enacted Ordinance No. 2003-1 Annexing a Portion of the Ophir Millsite on March 18th, 2003 (“Tract A, Ophir Millsite”); and,

WHEREAS, the annexed Tract A, Ophir Millsite, must be zoned within 90 days after the effective date of the annexation ordinance in accordance with Colorado Revised Statute §31-12-115(2); and,

WHEREAS, the Ophir Planning and Zoning Commission conducted a public hearing on February 13th, 2003, and took action to recommend designation of the Residential Zone District as set forth in Article IV of the Ophir Land Use Code with the condition that a restrictive covenant be applied to Tract A, Ophir Millsite, and Lots 1 through 6, inclusive, Block 24, Town of Ophir, including any portion of Carbonate Avenue as vacated in Ordinance No. 60 which has become part of Lots 1 through 6, Block 24, by operation of law (“Property”), such covenant restricting the Property to one single family residential use and prohibiting further subdivision; and,

WHEREAS, the Ophir General Assembly finds that designation of Tract A, Ophir Millsite, as Residential complies with the Town of Ophir Master Plan; and,

WHEREAS, the Ophir General Assembly conducted a public hearing on April 8th, 2003, after properly noticing such public hearing in accordance with the Ophir Land Use Code;

NOW, THEREFORE, THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR ORDAINS:

Section 1: TRACT A, OPHIR MILLSITE ZONED RESIDENTIAL

Tract A, Ophir Millsite, as annexed by Ordinance No. 2003-1, is hereby designated to be included in the Residential Zone District.

Section 2: RESTRICTIVE COVENANT APPROVED

The attached Restrictive Covenant is hereby approved and the Mayor is authorized to execute such restrictive covenant on behalf of the General Assembly.

Section 3: EFFECTIVE DATE

This Ordinance shall take effect immediately upon final adoption.

Read and approved on first reading on the 18th day of March, 2003

Read and approved on second and final reading on the 8th day of April, 2003

By: _____
Monica Carey, Mayor

Attest: _____
Heidi McDaniels, Town Clerk

Approved as to Form: Eric James Heil, Town Attorney

Restrictive Covenant on Tract A, Ophir Millsite, and Lots 1 through 6, Block 24

This Restrictive Covenant is entered into by and between Mathew Basham and Wendy Coll, as [joint tenants/tenants in common] (“Grantors”) and the Town of Ophir, a Colorado municipal corporation (“Grantees”) on the 9th day of April, 2003.

R E C I T A L S

Whereas, the Town of Ophir annexed Tract A of the Ophir Millsite as requested by the property owner in order to correct title issues associated with the encroachment of a historic residential structure on the Ophir Millsite, and has taken action to zone such annexed tract Residential; and,

Whereas, the Town of Ophir does not intend to increase the density of residential development to allow more than one single family residence use on Lots 1 through 6, Block 24; and,

Whereas, the annexation of Tract A, Ophir Millsite, included with Lots 1 through 6, Block 24, including the portion of Carbonate Avenue vacated by Ordinance No. 60 would result in a property larger than 10,000 sq.ft. which would otherwise allow for the construction of two single family residential dwellings according to Article IV of the Ophir Land Use Code;

Now, therefore, in consideration of the mutual covenants and promises contained herein and as a condition of passage of Ordinance No. 2003-4 Zoning Tract A, Ophir Millsite Residential, Grantor and Grantee agree as follows:

1. Grantor hereby covenants that Lots 1 through 6, inclusive, Block 24, along with the portion of Carbonate Avenue vacated by Ordinance No. 60 and included with Lots 1 through 6, Block 24, by operation of law, and Tract A, Ophir Millsite, (collectively referred to as the “Property”) is hereby restricted to one single family residential use as defined in Article IV notwithstanding the actual square footage of the Property.
2. Grantor further covenants that the Property shall be restricted from further subdivision and shall not be conveyed separately. This Paragraph 2 shall not restrict the Grantor from subordinating the Property.
3. Grantor agrees Grantee may enforce this Restrictive Covenant by withhold building permits, issuance of water taps, and issuance of other development permits if the provisions of this Restrictive Covenant are in material breach.
4. Grantee may enforce this Restrictive Covenant by enjoining any sale or conveyance of a portion of the Property in violation of Paragraph 2.
5. This Restrictive Covenant shall burden and run with the Property.
6. This Restrictive Covenant shall be recorded at the San Miguel County Clerk and Recorder’s office.
7. The duration of this Restrictive Covenant shall be permanent unless modified or terminated by mutual agreement of Grantor and Grantee.
8. The laws of the State of Colorado shall apply to this Restrictive Covenant and the venue for any dispute shall be in San Miguel County.

This Restrictive Covenant is hereby agreed and executed by Grantor and Grantee:

Grantor(s): _____
Wendy Coll

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Wendy Coll, acknowledged the foregoing instrument before me this _____ day of _____, _____.

Witness my hand and official seal.

My commission expires: . _____

(S E A L)

Notary Public

Grantor(s): _____
Mathew Basham

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Mathew Basham, acknowledged the foregoing instrument before me this _____ day of _____,
_____.

Witness my hand and official seal.

My commission expires: . _____

(S E A L)

Notary Public

Town of Ophir:

By: _____
Monica Carey, Mayor

Attest: _____
Heidi McDaniels, Town Clerk

[Town Seal]