

**ORDINANCE 94-11
TOWN OF OPHIR**

AN ORDINANCE DISPOSING OF TOWN PROPERTY WITHIN THE TOWN OF OPHIR, ACQUIRING PROPERTY OUTSIDE THE CORPORATE BOUNDARIES OF THE TOWN OF OPHIR, EXECUTING VARIOUS COVENANTS AND AGREEMENTS, AND EXECUTING THE TOWN OF OPHIR/CARIBOO PARTNERS LAND EXCHANGE AGREEMENT

WHEREAS, the Town of Ophir's Master Plan states that it is the goal of 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 Town of Ophir community survey performed in 1992 states the desire of the Ophir community to preserve as open space the area south of the Town of Ophir known as Waterfall Canyon; and,

WHEREAS, Ordinance 94-10 authorizes the Town of Ophir to acquire lands and interest in lands for open space purposes; and,

WHEREAS, the Town of Ophir adopted Resolution 94-5 stating the intent of the Town of Ophir to consummate the Waterfall Canyon Land Exchange with Cariboo Partners; and,

WHEREAS, the Town of Ophir finds the acquisition of property in Waterfall Canyon for park purposes 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, COLORADO, the following:

SECTION 1: EXECUTION OF LAND EXCHANGE

The Town of Ophir hereby authorizes the execution the Town of Ophir/Cariboo Partners Land Exchange Agreement, and all accompanying deeds and covenants, attached hereto as Exhibit "X". The Town Manager and Town Clerk are hereby authorized to execute the Town of Ophir/Cariboo Partners Land Exchange Agreement and take all actions necessary to effectuate the purpose of this Ordinance.


SECTION 2: THIS ORDINANCE SUPERSEDES RESOLUTION 94-5

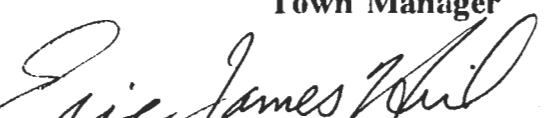
This Ordinance supersedes Resolution 94-5 to the extent of any inconsistencies.

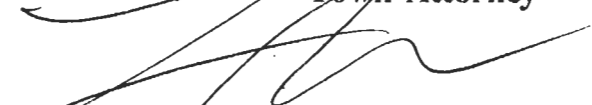
SECTION 3: EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage and adoption of the Second Reading by the General Assembly.

FIRST READING OF THIS ORDINANCE HEARD, APPROVED AND ADOPTED BY THE OPHIR GENERAL ASSEMBLY this 7th day of June, 1994.


Town of Ophir, by: Paul Machado
Town Manager


Approved as to Form: Eric James Heil
Town Attorney


Attest: Lawrence Van Hoey, Town Clerk

(Town Seal)

TOWN OF OPHIR/CARIBOO PARTNERS LAND EXCHANGE AGREEMENT

THIS TOWN OF OPHIR/CARIBOO PARTNERS LAND EXCHANGE AGREEMENT, (hereinafter "Agreement") is made and entered into this 22nd day of June, 1994, by and between the Town of Ophir, a Colorado municipal corporation, (hereinafter "TOWN") and Cariboo Partners, a Texas partnership (hereinafter "CARIBOO").

RECITALS

WHEREAS, TOWN desires to acquire 159 acres, more or less, situated in Waterfall Canyon, approximately one mile south of the Town of Ophir from CARIBOO pursuant to the terms of this Agreement for the purpose of preserving the land for park, open space, and recreation purposes; and,

WHEREAS, the Town of Ophir's Master Plan states that it is the goal of 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 Town of Ophir community survey performed in 1992 states the desire of the Ophir community to preserve as open space the area south of the Town of Ophir known as Waterfall Canyon; and,

WHEREAS, the Town of Ophir adopted Resolution 94-5 stating the intent of the Town of Ophir to consummate the Waterfall Canyon Land Exchange with Cariboo Partners; and,

WHEREAS, the Town of Ophir adopted Ordinance 94-11 authorizing this land exchange as provided herein; and,

WHEREAS, CARIBOO desires to acquire land in the Town of Ophir, from the Town of Ophir, pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual conveyance of property from TOWN to CARIBOO and the conveyance of property from CARIBOO to TOWN, and in consideration of various covenants referenced in this agreement and additional terms, conditions, and covenants as stated in this agreement, TOWN and CARIBOO hereby **AGREE** as follows:

Conveyance of Waterfall Property

1. CARIBOO agrees to convey to TOWN by general warranty deed property (hereinafter "Waterfall Property") as described in Exhibit 'A'.

2. CARIBOO warrants and represents to TOWN that the Waterfall Property comprises 159 acres, more or less, and that CARIBOO has a good and merchantable title to the Waterfall Property, free from all liens, encumbrances, restrictions, easements and tenancies, except for 1993 taxes and except as disclosed pursuant to the Title Commitment.

3. CARIBOO agrees to provide a current commitment for title insurance policy for the Waterfall Property through San Miguel Title Co., located at 124 E. Pacific Ave., Telluride, Colorado, in an amount equal to the most recent assessed valuation of the Waterfall Property, furnished to TOWN at CARIBOO's expense. CARIBOO will deliver the title insurance policy and will pay the premium thereon after closing.

4. TOWN agrees to execute and record the instrument described as "Covenant and Agreement Restricting the Use of Real Property" which is attached as Exhibit "B" to the conveyance by general warranty deed conveying the Waterfall Property to TOWN.

5. CARIBOO agrees to pay for any and all general taxes and special assessments for 1994.

Conveyance of East Ophir Property

6. TOWN agrees to convey to CARIBOO by general warranty deed property (hereinafter "East Ophir Property") as described in Exhibit 'C'.

7. TOWN warrants and represents to CARIBOO that it has a good and merchantable title to the Waterfall Property, free from all liens, encumbrances, restrictions,

easements and tenancies, except taxes for 1993 and except as disclosed pursuant to the Title Commitment.

8. TOWN agrees to provide a current commitment for title insurance policy through San Miguel Title Co., located at 124 E. Pacific Ave., Telluride, Colorado, in an amount equal to the most recent assessed valuation of the East Ophir Property, furnished to CARIBOO at TOWN's expense. TOWN will deliver the title insurance policy and will pay the premium thereon at closing.

9. CARIBOO agrees to execute and record the covenant described as "Covenant Restricting the Use of Real Property" which is attached as Exhibit "D" to the conveyance by general warranty deed conveying the East Ophir Property to CARIBOO.

10. TOWN agrees to execute and record the instrument described as "Covenant Restricting the Use of Real Property" restricting certain lands in the Town of Ophir owned by the Town of Ophir, as described by Exhibit 'E'.

11. TOWN agrees to adjust the boundary of the Avalanche Hazard Zone on the West side of Block 11 to the actual hazard boundary as delineated on the "Avalanche Hazard Map" prepared by INSTAAR under NASA-PY, prior to conveyance.

12. TOWN agrees to vacate the right-of-way West of, and adjacent to, Block 11, and transfer the the Town's interest in the vacated right-of-way to CARIBOO at the time of the conveyance to CARIBOO of Town Property.

13. In recognition of CARIBOO's agreement to include the vacated portion of the Eighth Street right of way conveyed to CARIBOO within the plat of the first subdivision of the East Ophir Property, TOWN agrees to waive any requirement to subdivide at this time.

14. CARIBOO agrees to pay for any and all general taxes and special assessments for 1994.

15. TOWN agrees that in the event of any transfer of the East Ophir Property, or portion thereof, or interest therein, to a qualified purchaser after the date of this Agreement and for a period of two years thereafter, each such transfer or transfers shall be exempt, one-time only, from the provisions of TOWN's real estate transfer tax, as it presently or may hereafter be amended. For purpose of this Section, a "qualified purchaser" shall be Keith Williams, Robert A. Bristol, Jr., CARIBOO, or any other partnership in which Keith Williams, Robert A. Bristol, Jr., or CARIBOO is a partner or holds any interest in a partnership interest. All partners in any such partnership shall be disclosed to the TOWN upon entering into this Agreement. To the extent an exemption may not legally be authorized by the power and authority of the TOWN, the TOWN shall credit each purchaser under a transfer intended by this Section to be exempt with the amount of any real estate transfer tax otherwise due.

Other Terms and Conditions

16. TOWN and CARIBOO hereby make the following representations and covenants to each other:

a. CARIBOO hereby discloses to TOWN the possible disposal, release, and threatened release of hazardous materials on, from, or under the Waterfall Property, as summarized in "ENVIRONMENTAL SITE INVESTIGATION WATERFALL CREEK CANYON PATENTED CLAIMS NEAR OPHIR, COLORADO" prepared by Golder Associates Inc., dated April 1994.

b. TOWN agrees to accept the Waterfall Property to be conveyed "as is," with no warranty as to the present or future environmental condition of the Waterfall Property.

c. TOWN hereby represents that to the best of TOWN's knowledge (a) the East Ophir Property has never been used as a landfill or waste dump; (b) there has been no installation in, or production, disposal or storage on, the East Ophir Property of any hazardous waste or other toxic substances; and (c) there is no proceeding or inquiry by and governmental authority or agency with respect thereto.

d. CARIBOO agrees to accept the East Ophir Property to be conveyed "as is," with no warranty as to the present or future environmental condition of the East Ophir Property.

e. As used in this section, "Hazardous Materials" shall mean any and all

flammable explosives, radioactive materials, hazardous water, hazardous substances, toxic substances, and related materials, and shall include, but shall not be limited to, materials identified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 A.S.C. 9601-9657 ("CERCLA"); the Hazardous Material Transportation Act of 1975, 49 U.S.C. 1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6001-6007; the Colorado Hazardous Materials Transportation Act of 1987, C.R.S. section 25-7-101, et. seq.; and the Colorado Hazardous Waste Management Act, C.R.S. section 25-15-101 et. seq. For the purpose of this section, the terms "disposal," "release" and "threatened release," shall mean and include any disposal, discharge, or release as defined in CERCLA or any other governmental rule relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous water, substance, or material, as now or at any time hereinafter in effect.

f. Each party hereby releases and covenants not to sue the other party or seek to impose any liability upon the other party in any manner for (a) any cost of removal, remedial action, response, or natural resource damages, as defined by CERCLA, or (b) for any other costs or damages, whether statutory or common law, which either party may incur or be obligated directly or indirectly to pay or reimburse to any third party, by virtue of the disposal, release, threatened release, removal, response action to, or remediation of, hazardous materials on or deriving from the property acquired by such party, or (c) from the violation of any federal, state or local law, whether past or future, resulting from the environmental condition of the property as of the date of transfer of the property pursuant to this agreement. Both parties agree that neither party shall have a right of contribution from the other party with respect to any costs referred to herein.

g. Each party represents and warrants to the other that to the best of its knowledge, there are no pending or threatened actions or proceedings with respect to the environmental condition of the Properties to be conveyed by the Agreement as of the date of this Agreement.

h. The release, covenants, representations and warranties provided for herein shall survive the conveyance of the Waterfall Property and the East Ophir Property.

17. CARIBOO agrees to pay the sum of \$10,000.00 (ten thousand dollars) to TOWN as a charitable contribution which TOWN intends to use for costs associated with additional open space acquisitions.

18. Closing shall be on June 22nd, 1994, at such time and place as designated by San Miguel Title Co.

19. All costs associated with closing and recording of the instruments referenced in this Agreement which are not specifically provided for elsewhere in this Agreement shall be born equally by the TOWN and CARIBOO.

20. TOWN and CARIBOO agree that this Agreement shall be duly executed and acknowledged in two original counterparts, one of which shall be recorded with the San Miguel County Clerk and Recorder. An authentic photocopy of any original executed Agreement shall be effective as if it were an original.

21. This Agreement shall be enforceable by any remedy allowed at law or equity including, but not limited to, injunctive relief. In the event legal action is initiated to enforce this Agreement, then the prevailing party shall be entitled to reasonable attorney's fees and costs as may be incurred.

22. All representations and warranties of TOWN and CARIBOO in this Agreement shall survive the conveyances of the Waterfall Property and East Ophir Property.

23. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use on any gender shall be applicable to all parties.

24. This Agreement is made in and shall be interpreted and enforced in accordance with and shall be governed by the laws of the State of Colorado, without giving effect to those principles of conflict of law which might otherwise require the application of the laws of another jurisdiction.

DATED this 22nd day of June, 1994.

CARIBOO PARTNERS:

By: _____
Keith Williams
Partner

By: _____
Robert A. Bristol, Jr.
Partner

IN WITNESS WHEREOF, this Agreement was executed on the date set forth above.

State of Colorado)
) ss
County of San Miguel)

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Keith Williams and Robert A. Bristol, Jr.

My commission expires _____, 199__.

Witness my hand and official seal.

Notary Public

TOWN OF OPHIR:

By: _____
Paul Machado, Town Manager

Attest: _____
Lawrence Van Hoey, Town Clerk

Approved as to form:

Eric James Heil, Town Attorney

IN WITNESS WHEREOF, this Agreement was executed on the date set forth above.

State of Colorado)
) ss
County of San Miguel)

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Paul Machado as Ophir Town Manager and Lawrence Van Hoey as Ophir Town Clerk.

My commission expires _____, 199__.

Witness my hand and official seal.

Notary Public

WARRANTY DEED

THIS DEED, made this 22nd day of June, 1994, between Cariboo Partners, a Texas Partnership, of the County of Routt and State of Colorado, Grantor, and,

The Town of Ophir, a Colorado municipal corporation whose legal address is P.O. Box 683, Ophir, Colorado, 81426, of the County of San Miguel and State of Colorado, Grantee:

WITNESSTH that the Grantor, for and in consideration of the conveyance by Grantee to Grantor of 10 lots and portion of Eighth Steet owned by the Town of Ophir, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee, its successors and assigns forever, all the real property together with improvements, if any, situate, lying and being in the County of San Miguel and State of Colorado, described as follows:

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.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with appurtenances, unto the Grantee, its successors and assigns forever. And the Grantor, for itself and its successors and assigns, does covenant, grant, bargain, and agree to and with the Grantee, its successors and assigns, that at the time of the ensealing and delivery of these presents, Grantor is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except for taxes for the current year, a lien not yet due and payable, recorded easements, restrictions, covenants and rights of way of record, if any, lack of access from the property to and from a public road, the Waterfall Canyon Easement Agreement between Cariboo Partners, Richard Donnelly, and Donald M. Koll, and subject to the Covenant and Agreement Restricting the Use of Real Property hereto attached as exhibit 'A'.

The Grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof. The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

By: _____
Keith Williams, Partner

By: _____
Robert A. Bristol, Jr., Partner

State of Colorado }
 } ss
County of San Miguel }

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Keith Williams, General Partner of Cariboo Partners, and Robert A. Bristol, Jr., General Partner of Cariboo Partners.

My commission expires _____, 199__.

Witness my hand and official seal.

Notary Public

COVENANT AND AGREEMENT RESTRICTING THE USE OF REAL PROPERTY

THIS COVENANT AND AGREEMENT Restricting the Use of Real Property made this 22nd day of June, 1994, by and between the Town of Ophir, a Colorado municipal corporation (hereinafter "Town"), and Cariboo Partners, a Texas partnership (hereinafter "Cariboo").

RECITALS

WHEREAS, the Town is the record owner of the following described real property and any improvements which have been or may be constructed thereon (hereinafter referred to as "Property"):

**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.**

WHEREAS, the Town of Ophir acquired the Property pursuant to the Town of Ophir/Cariboo Partners Land Exchange Agreement entered into on June 21st, 1994, which sets forth an Agreement one term and condition of which is the requirement for the Town to execute and record this Covenant for the purpose of restricting the Property situated in Waterfall Canyon restricting the land to open space purposes, as more fully described below.

NOW, THEREFORE, in consideration of Cariboo Partners' conveyance of 159 acres more or less of real property which it owns in Waterfall Canyon, and in consideration of the promises and obligations set forth in the Land Exchange Agreement, the Town and Cariboo, on behalf of its executors, administrators, representatives, successors, agents, and assigns, hereby **AGREE AND COVENANT** unto each other as follows:

1. The use of Property is restricted to undeveloped open space, passive recreation, and municipal city park purposes as described or implied in Colorado Revised Statutes section 31-25-201 *et. seq.*, as may be amended from time to time.
2. This restriction on the use of real property and restriction on the right to bring an action constitutes a covenant that runs with the property for a period of ninety nine (99) years from the date of recordation hereof. This Covenant restricting the use of land shall be binding on the Town, its designee, representatives, successors, assigns, lessees, licensees and any transferees of the Town. In the event of any transfer, conveyance, or lease of the Property or any portion thereof or interest therein, such transfer, conveyance, or lease shall be made expressly subject to the provisions of this Covenant.
3. This Covenant shall be expressly referenced in any instrument conveying the Property.
4. The foregoing Covenant shall be enforceable by any party hereto and any registered elector of the Town of Ophir by any remedy allowed at law or equity including, but not limited to, injunctive relief. In the event legal action is initiated to enforce or construe this covenant, then the prevailing party shall be entitled to reasonable attorney's fees and costs as may be incurred.

DATED this 22nd day of June, 1994.

ACCEPTED BY TOWN OF OPHIR:

By: _____
Paul Machado, Town Manager

Attest: _____
Lawrence Van Hoey, Town Clerk

Approved as to form:

Eric James Heil, Town Attorney

IN WITNESS WHEREOF, this Covenant and Agreement was executed on the date set forth above.

State of Colorado }
 } ss
County of San Miguel }

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Paul Machado as Ophir Town Manager and Lawrence Van Hoey as Ophir Town Clerk.

My commission expires _____, 199__.

Witness my hand and official seal.

Notary Public

ACCEPTED BY CARIBOO PARTNERS:

By: _____
Keith Williams, Partner

By: _____
Robert A. Bristol, Jr., Partner

IN WITNESS WHEREOF, this Covenant and Agreement was executed on the date set forth above.

State of Colorado }
 } ss
County of San Miguel }

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Keith Williams, General Partner of Cariboo Partners, and Robert A. Bristol, Jr., General Partner of Cariboo Partners.

My commission expires _____, 199__.

Witness my hand and official seal.

Notary Public

WARRANTY DEED

THIS DEED, made this 22nd day of June, 1994, between The Town of Ophir, a Colorado municipal corporation of the County of San Miguel and State of Colorado, Grantor, and,

Cariboo Partners, a Texas Partnership, whose legal address is P.O. Box 2101, Steamboat Springs, Colorado, 80477, of the County of Routt and State of Colorado, Grantee:

WITNESSETH that the Grantor, for and in consideration of the conveyance by Grantee to Grantor of 159 acres, more or less, of property located in Waterfall Canyon, situated approximately one mile south of the Town of Ophir, and for and in consideration of the mutual promises and obligations of the parties as set forth in the TOWN OF OPHIR/CARIBOO PARTNERS LAND EXCHANGE AGREEMENT, and the payment by Grantee to Grantor of \$10.00, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the grantee, its successors and assigns forever, all the real property together with improvements, if any, situate, lying and being in the County of San Miguel and State of Colorado, described as follows:

Lots 1, 2, 3, 4, 20, 19, 18, 17, 16 & 15, Block 11 and the portion of land between Block X and Block 11 lying south of the south boundary of the Aurum Street right of way and north of the north boundary of the Porphyry Street right of way (referred to as the "Eighth Street Vacation" in Town of Ophir Ordinance No. 94-8) all in the Town of Ophir, according to the Plat filed in the office of the San Miguel County Clerk and Recorder,

San Miguel County, State of Colorado;

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with appurtenances, unto the Grantee, its successors and assigns forever. And the Grantor, for itself, its successors and assigns, does covenant, grant, bargain, and agree to and with the Grantee, its successors and assigns, that at the time of the ensealing and delivery of these presents, Grantor is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except for taxes for the current year, a lien not yet due and payable, recorded easements, restrictions, covenants and rights of way of record, if any, as well as the Covenants Restricting the Use of Real Property hereto attached as Exhibit 'A':

The Grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

By: Paul Machado, Town Manager

Attest: Lawrence Van Hoey, Town Clerk

State of Colorado)
County of San Miguel) ss

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Paul Machado as Ophir Town Manager and Lawrence Van Hoey as Ophir Town Clerk.

My commission expires _____, 199____. Witness my hand and official seal.

Notary Public

COVENANT RESTRICTING THE USE OF REAL PROPERTY

THIS COVENANT AND AGREEMENT restricting the use of real property is made this 22nd day of June, 1994, by and between the Town of Ophir, a Colorado municipal corporation (hereinafter "Town"), and Cariboo Partners, a Texas partnership (hereinafter "Cariboo").

RECITALS

WHEREAS, the Cariboo is the record owner of the following described real property and any improvements which have been or may be constructed thereon (hereinafter referred to as "Property"):

Lots 1, 2, 3, 4, 20, 19, 18, 17, 16 & 15, Block 11, and the portion of land between Block X and Block 11 lying south of the south boundary of the Aurum Street right of way and north of the north boundary of the Porphyry Street right of way, all in the Town of Ophir, according to the Plat filed in the office of the San Miguel County Clerk and Recorder,

San Miguel County,
State of Colorado;

WHEREAS, the Town of Ophir adopted Ordinance No. 94-11 on June 21st, 1994, which sets forth various terms and conditions of an agreement to complete a land transaction with Cariboo, such terms and conditions including the imposition of a land use restriction on Property to be acquired by Cariboo, such land use restriction being more fully described below;

NOW, THEREFORE, in consideration of Cariboo Partners' conveyance of 159 acres more or less of real property which it owns in Waterfall Canyon, situated approximately one mile south of the Town of Ophir, and the Town and Cariboo, on behalf of itself, its successors and assigns, hereby **AGREE AND COVENANT** unto each other as follows:

1. The use of Property is restricted to four detached single family residential structures, each structure having a minimum lot area of 5,000 square feet. No more than four dwelling structures shall be allowed on the Property. Cariboo agrees not to subdivide the Property so as to create more than four separate and distinct parcels thereon.
2. The use of the Property is restricted by the requirement for payment of \$5,500 (five thousand, five hundred dollars) to the Town of Ophir for credit to the East Ophir Improvement District Fund for each dwelling prior to obtaining a building permit for a dwelling structure.
3. This restriction on use of this Property constitutes a covenant that runs with the Property for a period of ninety nine (99) years from the date of recordation hereof as a burden on the Property for the benefit of the Town of Ophir, Colorado, and its designee, and for the benefit of the land owned by the Town of Ophir adjacent or near the Property, and for the benefit of the assessed properties in the East Ophir Improvement District. This Covenant restricting the use of land shall be binding on Cariboo, and its designees, representatives, successors, assigns, lessees, licensees and any transferees.
4. This Covenant shall be expressly referenced in any instrument subsequently conveying the Property.
5. The foregoing Covenant shall be enforceable by any remedy allowed at law or equity including, but not limited to, injunctive relief or the withholding and denial of a building permit. Any forbearance by the Town of Ophir in exercising any right or remedy hereunder, or otherwise provided for by law, shall not be a waiver or preclude the subsequent exercise of any such right or remedy. In the event legal action is initiated to enforce or construe this Covenant, then the prevailing party shall be entitled to reasonable attorney's fees and costs as may be incurred.

DATED this 22nd day of June, 1994.

ACCEPTED BY CARIBOO PARTNERS:

By: _____
Keith Williams, Partner

By: _____
Robert A. Bristol, Jr., Partner

IN WITNESS WHEREOF, this Covenant and Agreement was executed on the date set forth above.

State of Colorado)
) ss
County of San Miguel)

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Keith Williams and Robert A. Bristol, Jr.

My commission expires _____, 199__.

Witness my hand and official seal.

Notary Public

ACCEPTED BY TOWN OF OPHIR:

By: _____
Paul Machado, Town Manager

Attest: _____
Lawrence Van Hoey, Town Clerk

Approved as to form:

Eric James Heil, Town Attorney

IN WITNESS WHEREOF, this Covenant was executed on the date set forth above.

State of Colorado)
) ss
County of San Miguel)

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Paul Machado as Ophir Town Manager and Lawrence Van Hoey as Ophir Town Clerk.

My commission expires _____, 199__.

Witness my hand and official seal.

Notary Public

_____, the Town of Ophir, the record owner of the following described real property and any improvements which have been or may be constructed thereon (hereinafter referred to as "Property"):

Lots 1 through 20, Block 10, Lots 1 through 20, Block 12, Lots 5, 6, 7, 8, 11, 12, 13, & 14, Block 11, all in the Town of Ophir, according to the Plat filed in the office of the San Miguel County Clerk and Recorder.

COVENANT RESTRICTING THE USE OF REAL PROPERTY

THIS COVENANT AND AGREEMENT restricting the use of real property is made this 22st day of June, 1994, by and between the Town of Ophir, a Colorado municipal corporation (hereinafter "Town"), and Cariboo Partners, a Texas partnership (hereinafter "Cariboo").

RECITALS

WHEREAS, the Town is the record owner of the following described real property and any improvements which have been or may be constructed thereon (hereinafter referred to as "Property"):

Lots 1 through 20, Block 10, Lots 1 through 20, Block 12, Lots 5, 6, 7, 8, 11, 12, 13, & 14, Block 11, all in the Town of Ophir, according to the Plat filed in the office of the San Miguel County Clerk and Recorder.

County of San Miguel,
State of Colorado; and,

WHEREAS, the Town of Ophir adopted Ordinance No. 94-11 on June 21st, 1994, which sets forth various terms and conditions of an agreement to complete a land transaction with Cariboo, one term and condition being the imposition of a land use restriction on Town owned land on Blocks 10, 11 & 12, Town of Ophir, such land use restriction being more fully described below.

NOW, THEREFORE, in consideration of Cariboo Partners' conveyance to the Town of 159 acres, more or less, of real property located in Waterfall Canyon, situated approximately one mile south of the Town of Ophir, and for and in consideration of the mutual promises and obligations of the parties as set forth in the TOWN OF OPHIR/CARIBOO PARTNERS LAND EXCHANGE AGREEMENT, on behalf of themselves, and their successors and assigns, the parties hereby AGREE AND COVENANT unto each other as follows:

1. The use of Property is restricted to detached single family residential structures, each structure having a minimum lot area of 5,000 square feet.
2. The Town of Ophir agrees not to approve or cause any transfer of density, including the right to construct or develop dwelling units or residential structures which are allowed by right, or which may be permitted by review, elsewhere within the Town of Ophir to the Property. The prohibited transfer of dwelling units shall be evidenced by a transaction, zoning or other approval by the Town of Ophir which results in the sale, disposition, or trade of the Property, or any portion of the Property, from Town to a separate entity for residential use, and the simultaneous conveyance to the Town of private property within the Town boundaries for open space or park purposes, or the simultaneous conveyance to the Town of a covenant or other restriction on private property restricting residential use. The restriction in this paragraph shall not in any way restrict the Town of Ophir from developing, selling, disposing, leasing, renting, trading or transferring Town-owned land for any legitimate municipal purpose, or selling or trading Town-owned land for the acquisition of open space outside the Town boundaries and within three miles of the boundaries of the Town of Ophir.
3. This restriction on the use of Property constitutes a covenant that runs with the Property for a period of ninety nine (99) years from the date of recordation hereof as a burden on Property for the benefit of certain adjacent or adjoining property previously owned by the Town and conveyed to Cariboo Partners on June 22nd, 1994, such Property described as follows:

Lots 1, 2, 3, 4, 20, 19, 18, 17, 16 & 15, Block 11, and the portion of land between Block X and Block 11 lying south of the south boundary of the Aurum Street right of way and north of the north boundary of the Porphyry Street right of way (referred to as the "Eighth Street Vacation" in Town Ordinance No. 94-8) Town of Ophir, according to the Plat filed in the office of the San Miguel County Clerk and Recorder,

