

State Documentary Fee
Date AUG. 7, 2009
\$EXEMPT JF

DEED OF CONSERVATION EASEMENT

NOTICE: THIS DEED CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY THAT ARE INTENDED TO PROTECT ITS OPEN SPACE VALUES. THE TOWN OF TELLURIDE HAS FOUND THAT THE ADOPTION OF THIS DEED OF CONSERVATION EASEMENT IS IN THE PUBLIC INTEREST.

THIS DEED OF CONSERVATION EASEMENT is made this 4 day of August, 2009, by the TOWN OF TELLURIDE, a Colorado home rule municipality ("Grantor") in favor of SAN MIGUEL CONSERVATION FOUNDATION, a Colorado nonprofit corporation, having an address at P.O. Box 2466, Telluride, CO 81435 ("Grantee").

RECITALS

- A. Grantor is the sole owner in fee simple of approximately 560 acres of real property located in San Miguel County, Colorado, and more particularly described in Exhibit A and depicted on Exhibit B, both of which are attached hereto and incorporated by this reference (the "Property"). Grantor, as owner of the Property, owns the affirmative rights to identify, preserve, and protect in perpetuity its open space character and its natural features and values. The Property also includes Water Rights (as defined in Section 2.3 below) and mineral rights associated with or appurtenant to the Property.
- B. On June 25, 2002, residents of the Town of Telluride passed Town Ordinance No. 1174 ("Ordinance No. 1174"), authorizing the acquisition of the Property to protect its scenic, open space, public recreation and wildlife habitat values and further committing the Town of Telluride to preserve those same values with the imposition of a conservation easement on the Property. On June 20, 2008, the Town of Telluride acquired the Property upon the issuance and filing of a Rule and Order of the San Miguel County District Court in case number 04-CV-22.
- C. A portion of the funds used to acquire the Property was provided by the Valley Floor Preservation Partners, Inc. ("VFPP"). Grantor and VFPP entered into that certain Memorandum of Understanding dated April 5, 2007, which requires preservation of the Property with this Easement.
- D. The Property possesses significant open-space values, as defined in C.R.S. Sections 38-30.5-101 to 38-30.5-111. The Property serves as the scenic gateway to the Town of Telluride. It is highly visible from Colorado Highway 145 and West Colorado Avenue, as well as from the surrounding valley highlands in the Uncompahgre National Forest, including from the Telluride Ski Area. The Property's scenic vistas and open space qualities are central to Telluride's status as a year-round destination resort. The Property includes significant relatively natural habitat for fish, wildlife, plants and ecosystems. Approximately three miles of the San Miguel River and associated tributaries flow through the property, creating substantial natural wetlands supporting high levels of biological diversity. The Property contains potential habitat for Canada lynx, a federally threatened species, summer and transitional seasonal ranges for wildlife species including mule deer,



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elk and black bear, as well as habitat for a myriad of other bird, wildlife, aquatic and plant species. The Property also possesses multiple amenities and opportunities for low-impact outdoor recreational and educational uses by the residents of the Town of Telluride and the general public, including nature walks, trails and areas for hiking, bicycling, running, cross country skiing, agricultural uses, hang/para glider and hot air balloon landing. The Property has been of central importance to the San Miguel River Valley and the Town of Telluride for more than one hundred forty years. The foregoing are collectively the Property's "Conservation Values". The Conservation Values are of great importance to the Grantor and its citizens, guests and invitees, and are worthy of conservation.

- E. The State of Colorado has recognized the importance of public and private efforts toward the preservation of natural systems in the state by enactment of C.R.S. Sections 38-30.5-101 to 38-30.5-111.
- F. Protection of the Property is consistent with the goals and objectives of both the Town of Telluride's Master Plan, Land Use Plan, and Open Lands Plan, and the Telluride Open Space Commission has determined that protection of the Property is of the highest priority to the Town of Telluride.
- G. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity. Furthermore, it is Grantor's intention to provide low-impact recreational opportunities and public park purposes that do not significantly impair or interfere with the Conservation Values.
- H. Grantee is a private organization organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "charitable organization" under the terms of Section 38-30.5-104(2) of the Colorado Revised Statutes and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended (the "IRS Code"), qualified to acquire and hold conservation easements and meets the requirements of the IRS Code as a Sec. 501(c)(3) exempt organization.
- I. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the state of Colorado, and in particular C.R.S. § 38-30.5-101 et. seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in gross in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Recitals. The Recitals are incorporated herein by this reference.
2. Purpose and Allowed Uses. It is the purpose of the Easement to preserve and protect in perpetuity and, in the event of their further degradation or destruction, to enhance and restore, the open space and natural features and values of the Property. It is further the specific

purpose of this Easement to conserve important habitat for wildlife; to protect rare or unique native plants currently known or later identified; and to conserve the diverse meadow, and riparian communities and the wildlife inhabiting these communities. It is further the specific purpose of this Easement to allow Grantor to grant public access for low-impact recreational and educational uses such as nature walks, trails and areas for hiking, bicycling, running, cross country skiing, agricultural uses, hang/para glider and hot air balloon landing on the Property. In accordance with the Management Plan (as defined below), temporary uses associated with a major festival, defined as exceeding 10,000 participants, held within the Town of Telluride may be permitted (for a duration no longer than such major festival is approved by the Town), such as public sanitation facilities, parking (except for recreational vehicles) and tent camping. In addition, except as otherwise provided in this Easement, other public park purposes not requiring improvement of the land or placement of temporary or permanent structures, may be permitted on portions of the Property, provided that such uses do not significantly impair or interfere with the Conservation Values.

Pursuant to the terms of C.R.S. Sections 38-30.5-101 to 38-30.5-111, the Property preserved hereby as natural land may not be converted or directed to any uses other than those provided herein and incorporated in the Management Plan (defined below).

2.1 Remediation. Portions of the Property are subject to certain orders and judgments filed or entered in Civil Action 83-C-2385, U.S. District Court, District of Colorado, and other portions of the Property may be contaminated from prior mining activities. Grantor reserves any rights it may have, in accordance with applicable state and federal statutory and regulatory provisions, to remediate and/or cleanup the Property as necessitated by conditions on the Property which were in existence as of the conveyance to Grantor so long as such remediation minimizes significant impairment or interference with the Conservation Values. Upon the presentation of the current or amended remediation plan, consistent with the orders and judgments in Civil Action 83-C-2385, U.S. District Court, District of Colorado (the "Remediation Plan") and The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") and following approval by the State of Colorado Department of Public Health and Environment, to the Telluride Town Council, and prior to its approval by Town Council, the Grantee shall be afforded an opportunity to review the Remediation Plan. Notwithstanding any contrary language in this Agreement, Grantor and Grantee understand that the temporary and/or short-term Conservation Values of the portion of the Property subject to remediation may appear to be compromised during the implementation of the Remediation Plan. However, Grantor and Grantee accept and acknowledge that the implementation of the Remediation Plan will benefit the long-term Conservation Values of the portion of the Property subject to the Remediation Plan with those long-term benefits outweighing any short-term or temporary impacts associated with the implementation of the Remediation Plan. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of CERCLA. Grantor and Grantee recognize that the orders and judgments in Civil Action 83-C-2385, U.S. District Court, District of Colorado require the placement of a restrictive environmental covenant on the remediated portions of the Property, which environmental covenant may be pursuant to C.R.S. § 25-15-318 *et. seq.* Grantor and Grantee acknowledge that Grantor will consider, in

good faith, the execution of the restrictive environmental covenant and that such restrictive environmental covenant, if placed on the remediated portions of the Property, would not be inconsistent with this Agreement, but would be granted to the Colorado Department of Public Health and Environment to restrict use of the remediated Property for the purpose of protecting human health, the environment and the remediation of the Property. If Grantor subsequently executes a restrictive environmental covenant for the remediated portions of the Property, such restrictive environmental covenant shall be subordinate to the terms and legal obligations of this Conservation Easement.

2.2 Restoration. Future restoration of the San Miguel River, environmentally sensitive areas, riparian and wildlife habitats is permitted, including changing the course of the San Miguel River back to its natural course or some other environmentally preferred course. Such restoration work shall be done in accordance with the Management Plan and in a manner that does not permanently and significantly impair or interfere with the Conservation Values.

2.3 Water Rights. Pursuant to C.R.S. Section 38-30.5-102, which authorizes the inclusion of "water rights beneficially used upon the land...owned by Grantor" in a conservation easement, the Property subject to this Easement includes any and all right, title and interest in and to water rights, ditches and ditch rights, ponds, springs and spring rights, reservoir and reservoir rights, wells and groundwater rights, water allotments, units or shares, and any other types of rights, including contracts, permits, easements, and rights-of-way, related to the ownership of water, tributary, non-tributary and not non-tributary, appurtenant to or customarily or historically used or associated with or upon the Property, together with any and all of the rights associated with the historical and beneficial use of any of the embankments, flumes, headgates, measuring devices or any other structures that are appurtenant to those water rights (collectively, the "Water Rights"), including but not limited to those specifically described in Exhibit C attached hereto and made a part of this Deed.

2.3.1 Permitted Uses of Water Rights. The Parties agree that the Water Rights are included in this Easement in order to retain or maintain the Water Rights predominantly for agricultural use in accordance with historical practices, as well as for , wildlife, wildlife habitat, wetlands, recreational, piscatorial, forest, open space, and scenic uses related to the Property or other uses consistent with the protection of open land, environmental quality or life sustaining ecological diversity, such as the conveyance of all or part of such Water Rights to the Colorado Water Conservation Board or other entity for the specific conservation purpose of protecting or enhancing instream flows and/or water levels in streams, rivers, lakes, and reservoirs to preserve or improve the natural environment of such water body(s) (the "Permitted Water Uses"). The Water Rights are hereby dedicated and restricted to support, enhance, and further the Permitted Water Uses. The Permitted Water Uses include, but are not limited to, the continuation of the historic use of the Water Rights on the Property. Grantor shall retain the right to use and enjoy the Water Rights on the Property in a manner that is consistent with historic practices and this Easement. Grantor shall have the right to maintain, repair and, if destroyed, reconstruct any facilities related to the Water Rights (such as ditches, wells and reservoirs). Grantor may also construct additional improvements necessary for irrigation activities (such as headgates, measuring devices, pipe or sprinkler systems and ditches), so long as the irrigation activities are permitted by this Easement and the

improvements are constructed in a manner that does not significantly impair or interfere with the Conservation Values. If Grantor or Grantee determines that adjudication of a change of any part of the Water Rights is necessary or desirable to accomplish Permitted Water Uses or to further the Conservation Values consistent with this Easement, the party making such determination shall consult with the other party and attempt to agree on the scope of a water court application or other procedure necessary or desirable to accomplish such change. Subject to the right of Grantee to take certain actions to prevent or to remedy a threat of abandonment as set forth in paragraph 2.3.4, the agreement of Grantor and Grantee shall be required prior to the commencement of any such adjudication or other proceeding to change the Water Rights to accomplish Permitted Water Uses or to further the Conservation Values.

2.3.2 Restrictions on Water Rights. The Water Rights may not be used for municipal, commercial, or industrial purposes. Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Property. Grantor shall not create alternate points of diversion, engage in temporary leases or transfers, or change the historic use of the Water Rights without the prior written consent of, and determination by, Grantee that such change is not inconsistent with the preservation and protection of the Conservation Values. Grantor shall not abandon or allow abandonment of the Water Rights by action or inaction. Except as otherwise set forth herein, Grantor shall not change the historic use or point of diversion of the Water Rights unless Grantee determines that said change is not inconsistent with the preservation and protection of the Conservation Values. Except as permitted in Section 2.3.1 above, Grantor shall not construct, or permit others to construct, any new diversion, storage or other water structures upon the Property, shall not develop any conditional water rights for use on the Property, and shall not otherwise undertake any new development of water resources for use on the Property, unless Grantee determines that said action is not inconsistent with the preservation and protection of the Conservation Values.

2.3.3 Protection of Water Rights. Grantor shall cooperate with Grantee to help assure the continued use of the Water Rights in order to preserve and protect the Conservation Values. Grantor shall provide Grantee with a copy of any written notice received by Grantor from any state water official concerning the use or possible abandonment of the Water Rights.

2.3.4 Abandonment of Water Rights. If any portion of the Water Rights appear on the decennial abandonment list or Grantee determines that the Water Rights are otherwise subject to a threat of abandonment, Grantee shall give Grantor written notice of such threat of abandonment. If Grantor fails to cure the threat of abandonment within 90 days of receipt of said notice from Grantee, Grantee shall, in addition to any other remedies available to Grantor under the terms of this Easement including Section 9 hereof, have the right to (1) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights; (2) seek removal of the Water Rights from the decennial abandonment list; (3) seek to change the Water Rights to another Permitted Water Use; and (4) sell or otherwise convey all or part of such Water Rights to the Colorado Water Conservation Board or other entity for the specific conservation purpose of protecting or enhancing instream flows and/or water

levels in streams, rivers, lakes, and reservoirs to preserve or improve the natural environment of such water body(s).

2.4 Utility Systems. The installation of new utilities, or repair, maintenance, extension or relocation of existing utilities may be permitted under this Easement, with prior written notice to Grantee, if construction is underground and is in accordance with the Management Plan and does not significantly impair or interfere with the Conservation Values. The general location of all utilities and deeded utility easements on the Property will be mapped as part of the Management Plan.

2.5 Boomerang Road. Grantor and Grantee acknowledge that a pre-existing right of way for San Miguel County Road 64F, also referred to as Forest Service Road 632, also known as Boomerang Road, crosses the Property, and the parties recognize all rights to the same under the jurisdiction of San Miguel County. If the Grantor should acquire rights to Boomerang Road as the same traverses the Property, the terms and restrictions of this Easement shall fully apply to Boomerang Road, subject to any pre-existing private rights to continue to use Boomerang Road.

2.6 Weed Control. Weed control shall be undertaken by Grantor on the basis of the best management practices commonly used at the time of application. Grantor shall have responsibility for compliance of the Property with the Colorado Noxious Weed Act (C.R.S. Sections 35-5.5-101 to 35-5.5-119) and any other governmental noxious weed control regulations. Agricultural chemicals may be used for the following purposes and under the following conditions:

2.6.1 For the control of noxious weeds, as required by Colorado state law, and for the control of other invasive exotic plant species; provided that chemical herbicides may be used only in those amounts and with a frequency of application that constitute the minimum necessary for control; and that the herbicide is not applied by aerial spraying.

2.6.2 For the control of agricultural or forest pests, in accordance with the Management Plan.

2.6.3 Use of biological weed and insect control agents, in accordance with the Management Plan.

2.7 Limited Environmental and Cultural Educational Uses. Grantor and Grantee intend to permit limited environmental and cultural educational uses of the Property conducted by non-profit or charitable organizations, as will be specifically authorized by Grantor or an agency of Grantor pursuant to the Management Plan, provided these activities do not significantly impair or interfere with the Conservation Values.

2.8 Limited Signage. Limited educational, interpretive, public information and directional signage is permitted on the Property, which may include temporary signs for restoration or remediation activities on the Property as well as wildlife or natural resource closures on the Property.

2.9 Limited Trails. Improvements to existing trails are permitted and the construction of new trails, including ancillary trail structures such as bridges, culverts, boardwalks, railings and retaining walls, are permitted on the Property, in accordance with the Management Plan, so long as such improvements and/or construction do not significantly impair or interfere with the Conservation Values.

3. Management Plan. Grantor and Grantee have prepared and executed a Management Plan, dated August 2009, which identifies appropriate land areas for the uses authorized herein as well as program specifics for conducting allowed activities (the "Management Plan"). Grantor and Grantee commit to update the Management Plan at least every four (4) years, or sooner if it is determined by both parties to be in the best interest of the Conservation Values of the Property. Until any changes to the Management Plan have been agreed to in writing by Grantor and Grantee, the prior Management Plan in place shall remain in effect.

4. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- 4.1 To preserve and protect the Conservation Values of the Property;
- 4.2 To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement;
- 4.3 To prevent any activity on or use of the Property that is prohibited by or inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or uses, except as set forth in Section 13 hereof;
- 4.4 To review and approve or deny requests from the Grantor for uses of the Property which are neither expressly granted nor specifically prohibited by this Easement; Grantee may deny requests if Grantee reasonably determines such uses would significantly impair or interfere with the Conservation Values of the Property.
- 4.5 To enjoy any activity on or any use of the Property that is prohibited by or inconsistent with this Easement.

5. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- 5.1 Construction of Structures or Improvements. The construction of any new structure or improvement is prohibited, except those otherwise identified herein in this Easement. Existing structures or improvements, identified in the Baseline Reports, may be preserved, restored, repaired, maintained or

removed, provided such use of the structures or improvements is in accordance with the Management Plan.

- 5.2 Fences. Construction of fences is prohibited, except for delineation of the Property boundary, fences required to control the movement of people on the Property, those required to protect certain environmentally sensitive or culturally significant areas on the Property, those required for wildlife management, those required for temporary remediation or restoration of the Property and those required for repair or maintenance of authorized improvements. Any new fences on the Property must be constructed in accordance with the Management Plan and following prior written approval by the Grantee.
- 5.3 Livestock. Grazing of livestock is prohibited unless provided for in the Management Plan for range improvement.
- 5.4 Subdivision and Annexation. Any division or subdivision of title to the Property, whether by physical or legal process, is prohibited except as may be required to vacate existing platted lots and rights of way. The aggregation of legal parcels on the Property is not subject to this limitation. In addition, nothing in this provision or this Easement shall be deemed to prohibit Grantor from annexing the Property into the corporate and municipal boundaries of the Town of Telluride, provided that (a) no development is associated with such annexation, (b) any such annexation must be made subject to the terms and restrictions of this Easement, and (c) if all or part of the Property is annexed into the Town of Telluride, the annexed parcel shall be zoned in an appropriate zoning district consistent with the development limitations of this Easement.
- 5.5 Timber Harvesting. Timber harvesting on the Property shall be prohibited. Trees may be cut to control insects and disease, to control invasive non-native species, to mitigate wildfire danger and to prevent personal injury and property damage, in accordance with the Management Plan.
- 5.6 Mining/Surface Alteration. Any activity related to the exploration for, or development or extraction of, soil, sand, gravel, rock, lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, peat, oil, natural gas, fuel, or any other mineral or hydrocarbon substance, is prohibited. Removal of gravel, rock, and soil for river channel maintenance or restructuring of the river channel and sediment detention facility is subject to Grantee's prior written approval (except as required to implement and maintain the Management Plan and Remediation Plan, and for emergency flood and erosion activities). The creation, preservation or enhancement of wetlands in addition to those described in the Management Plan is subject to Grantee's prior written approval.

- 5.7 Paving. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other paving material without the prior written approval of Grantee.
- 5.8 Dumps/Trash. Any dumping or uncontained accumulation of any kind of trash, refuse, debris, fill material or Hazardous Material, as that term is defined under any applicable county, municipal, state, or federal law, rule, ordinance, direction, or regulation as may be amended from time to time, is prohibited.
- 5.9 Commercial or Industrial Activity. No industrial uses shall be allowed on the Property. No Commercial uses are permitted by third parties, except those limited activities recognized in Section 2.7 hereinabove.
- 5.10 Wetlands and Stream Buffer. Draining, filling, dredging, or diking a wetland area located on the Property is prohibited unless authorized by and in accordance with the Management Plan and local, state and federal law.
- 5.11 Motorized Vehicles. Motorized vehicles on the Property are prohibited (subject to any rights that may exist pursuant to Section 2.5, hereinabove), except for authorized personnel when necessary for patrol, rescue, maintenance, restoration and remediation activities, park and recreation equipment as authorized by and in accordance with the Management Plan and motorized vehicular access as approved in writing by Grantee for any allowed temporary use.
- 5.12 Erosion and Pollution. Any use or activity that cause or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters, is prohibited.
- 5.13 Golf-Related Activities and Playing of Golf. Golf-related activities and the playing of golf are expressly prohibited on the Property.
- 5.14 Hunting and Hunting Access. Hunting and using the Property to access nearby areas on which to hunt is expressly prohibited. However, the Grantee and Grantor may agree to provide for the emergency culling of a wildlife species solely to avoid an outbreak of a disease or other infestation or to prevent environmental damage to other Conservation Values on the Property.
- 5.15 Camping. Except for temporary camping associated with a major festival, defined as exceeding 10,000 participants, held within the Town of Telluride (for a duration no longer than such major festival is approved by the Town) as provided in Section 2 of this Easement, camping is prohibited on the Property.
- 5.16 Roads. No new permanent roads may be constructed on the Property.

5.17 Athletic Fields and Sports Courts. No athletic playing fields or sports courts may be constructed on the Property.

6. Reserved Rights. Grantor reserves to itself, and to its successors, and assigns, all rights accruing from the ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement or inconsistent with the Management Plan. Grantee may deny a request for a change in the use of the Property if, in the opinion of the Grantee, the exercise of such rights would significantly impair or interfere with the Conservation Values.

7. Baseline Reports. Competent naturalists familiar with the Property have prepared a collection of baseline data on the Property and its resources that have been compiled into two baseline reports. The *Baseline Documentation Report: Telluride Valley Floor Conservation Easement*, prepared by Steve Boyle of BIO-Logic, Inc. and dated August 22, 2008, and the *Telluride Valley Floor Environmental Report*, prepared by Ecological Resource Consultants, Inc. and dated March 23, 2009, shall collectively be referred to as the "Baseline Reports." The Baseline Reports will be kept on file at the offices of Grantee with a copy to Grantor and by this reference made a part hereof. The Baseline Reports will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Baseline Reports are not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Deed. The parties acknowledge that the Baseline Documentation Reports are intended to establish the condition of the Property subject to the Easement as of the date written above, and that both parties have acknowledged in a signed statement, a copy of which is attached hereto and incorporated herein as Exhibit D, that the Baseline Documentation Reports accurately represent the condition of the Property at the time of the conveyance of this Easement to Grantee.

8. Grantee's Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be prohibited by or inconsistent with the purpose of this Easement. Failure of Grantee to timely respond will be deemed approval.

9. Enforcement. Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Deed. Grantee may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. When, in Grantee's opinion, an ongoing or imminent violation could diminish or impair the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. Should mediation fail to

resolve the dispute, Grantee may, at its discretion, take appropriate legal action. If a court with applicable jurisdiction in San Miguel County determines that a violation is imminent, exists, or has occurred, Grantee may get an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation.

10. Costs of Enforcement. Any reasonable costs incurred by Grantee either in enforcing the terms of this Easement against Grantor, including without limitation, costs of suit and attorney's fees, and any reasonable costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor.

11. Joint Defense. If a third party brings legal claims as to the legal validity of this Easement, challenges Grantee's enforcement of this Easement or otherwise challenges any provisions of this Easement, the parties shall cooperate and jointly and vigorously defend this Easement with Grantor being the lead party in defending and bearing the costs associated with the joint legal defense of the Easement. If Grantee believes that its legal interests are not adequately defended and/or represented by Grantor, Grantee may retain independent legal counsel to defend the third party challenge.

12. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

13. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

14. Access. This Easement permits the Grantor to grant public access to the Property under terms and conditions determined by Grantor that are consistent with the terms of this Easement, subject, however, to the provisions of the Management Plan.

15. Taxes. Grantor is a governmental entity exempt from taxes and assessments and no taxes will be imposed upon, or incurred by Grantee as a result of this Easement.

16. Hold Harmless. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Grantor agrees to the extent permitted by law to indemnify and hold harmless Grantee, its officers, directors, employees, agents, and insurers from and against all liability, claims, and demands on account of injury, loss or damage, including, without limitation (a) claims arising from bodily injury, personal injury, sickness, disease, weather, property loss or damage, natural

resource loss or damage, (b) the presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by Grantee, or (c) any other loss of any kind whatsoever, asserted against Grantee as the holder of this Easement and any public recreational uses which occur on the Easement pursuant to this Easement agreement. Grantor agrees to investigate, handle, respond to, provide defense for, and defend against any such liability, claims, or demands at the sole expense of Grantor. Grantor also agrees to bear all other costs and expenses related thereto, including court costs and attorneys' fees, whether or not any such liability, claims or demands are groundless, false, or fraudulent. The obligations under this paragraph shall not extend to any injury, loss or damage which is caused solely by the act, omission, or other fault of Grantee or its employees or agents, and nothing herein shall be construed to abrogate or diminish any protections and limitations as afforded to Grantor or Grantee under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et. Seq., or the Owners of Recreational Areas statute, C.R.S. §33-41-101, et. seq., as amended, or other law. In accordance with the foregoing standard, and in the event Grantor and Grantee may be held jointly and severally liable under any statute, decision, or other law providing for such joint and several liability for their respective activities on the Property, the obligations of each to respond in damages shall be apportioned, as between Grantor and Grantee in proportion to the contributions of each as measured by the acts and omissions of each which, in fact, caused such legal injury, damage, or harm, and Grantor and Grantee each shall indemnify the other to the extent necessary to assure such apportionment.

17. Insurance. Grantor agrees to name Grantee as a named insured on Grantor's property insurance policy(ies) covering the Property, and to annually provide to Grantee an insurance certificate evidencing Grantee as a named insured under said policy(ies).

18. Assignment. Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, (b) authorized to acquire and hold conservation easements under Colorado law, and (c) approved as a transferee by the Grantor. As a condition of such transfer, Grantee shall require that any assignment will continue to carry out the conservation purposes that this Conservation Easement is intended to advance. The Grantor shall have the right to require Grantee to assign its rights and obligations under this Easement to a different organization if Grantee ceases to exist or for any reason fails or refuses to enforce the terms and provisions of this Easement. If Grantee ceases to exist prior to an assignment of this Easement, then the Easement shall automatically revert to an organization designated by the Grantor that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder; (b) authorized to acquire and hold conservation easements under Colorado law; and approved as a transferee by the Grantor.

19. Change in Circumstances. The fact that a use of the Property that is prohibited by this Easement, or any other uses as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than the uses permitted by this Easement, or that neighboring property may in the future be put entirely to uses that are not

permitted hereunder, has been considered by Grantor in granting the Easement. It is Grantor's belief that any such changes will increase the benefits of the continuation of this Easement, and it is the intent of both Grantor and Grantee that any changes should not be assumed to be circumstances justifying the extinguishment or termination of this Easement. In addition, the inability to carry on any or all of the permitted uses, or the unprofitably of doing so, shall not impair the validity of this Easement or be considered ground for its termination or extinguishments. The total loss of all the Conservation Values on the Property is the only grounds under which this Easement can be terminated.

20. Grantor's Representations and Warranties. Grantor represents and warrants that it is the owner of the Property, pursuant to that certain Rule and Order of the San Miguel County District Court in case number 04 CV 22, dated June 20, 2008 and recorded in the real property records of San Miguel County on June 23, 2008, subject to the exceptions to title contained in the Rule and Order. Grantor further represents that the Property has not been and will not be used as collateral or security for any public bonds or other financing mechanism. Grantor further represents that it has not granted or conveyed any property interest in the Property to any third party subsequent to acquiring ownership of the Property. Grantor hereby promises to defend title to the Property against all claims that may be made against Grantee by any person claiming by, through, or under Grantor. Should the Grantor be issued a title insurance policy for the Property, Grantee shall be named as an additional insured on such title insurance policy.

21. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, and in the event a written approval or consent is required of Grantor, at least sixty (60) days prior to the date any such approval is desired, to the following addresses:

To Grantor:

Town of Telluride
c/o Town Manager
P.O. Box 397
113 W. Columbia Avenue
Telluride, Colorado 81435

To Grantee:

San Miguel Conservation Foundation
P.O. Box 2466
Telluride, CO 81435

Or to such other address as either party from time to time shall designate by written notice to the other.

22. Recordation. Grantee shall record this instrument in a timely fashion in the official records of the County of San Miguel and the Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

23. General Provisions.

- 23.1 Controlling Law. The laws of the State of Colorado shall govern the interpretation and performance of this Easement.
- 23.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of C.R.S. Section 38-30.5-101 et. seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions of the state or county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. This Easement shall be interpreted in accordance with the laws of the State of Colorado. No remedy or election given by any provision in this Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement.
- 23.3 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 23.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 23.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 23.6 Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Property.
- 23.7 Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the

Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.

23.8 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

23.9 Amendment. Any amendment must be consistent with the conservation purposes of this instrument and may not affect its perpetual duration. Any amendment must be in writing, agreed to and signed by both parties and recorded in the records of the Clerk and Recorder of San Miguel County.

23.10 No Third Party Beneficiaries. This Easement is entered into by and between Grantor and Grantee and does not create enforcement rights or responsibilities in any third parties, including the public.

23.11 Development Rights. Grantor hereby grants to Grantee all development rights on the Property. The parties further agree that such development rights on the Property are forever released, terminated and extinguished.

23.12 Termination Proceeds. This Easement constitutes a real property interest immediately vested in Grantee which has a proportionate share of the value of the Property expressed as a fraction, with a numerator of the value of the Easement and a denominator of the value of the Property without regard to the Easement. In the event of a termination of the Easement in whole or in part, the Grantee shall be paid its proportionate share of the proceeds from the sale or other disposition of the Property, or any portion thereof, following termination. For the purposes of this Section, the value of this Easement shall be determined by appraisal in accordance with the foregoing formula at the time of the termination of the Easement.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW]*

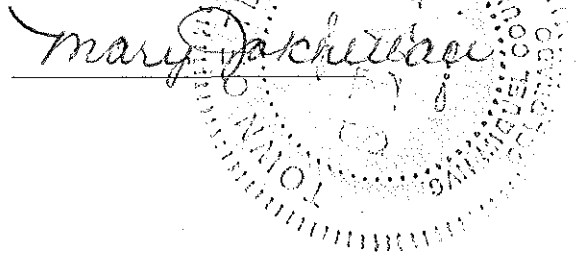
TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have executed this Deed of Conservation Easement on the day and year first above written.

GRANTOR
Town of Telluride
a Colorado home rule municipality

ATTEST

By: Stuart Fraser
Stuart Fraser, Town of Telluride Mayor



STATE OF COLORADO)
) ss.
County of San Miguel)

The foregoing was acknowledged before me on the 4 day of August, 2009, by Stuart Fraser, Mayor, and MJ Schillaci, Town Clerk, on behalf of the Town of Telluride, a home rule municipality. WITNESS my hand and official seal. My commission expires:

Yvette M. Sylvia-Booth
Notary Public

YVETTE M. SYLVIA-BOOTH
Notary Public
State of Colorado
My Commission Expires May 21, 2011

APPROVED AS TO FORM:

[Signature]
Kevin J. Geiger, Town Attorney

GRANTEE

By: Gary Hickcox
Its: Executive Director

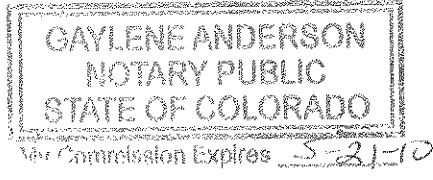
By: _____
Its: _____

STATE OF COLORADO)
) ss.
County of San Miguel)

The foregoing was acknowledged before me on the 5th day of August, 2009, by Gary Hickcox, Executive Director and _____, Secretary, on behalf of San Miguel Conservation Foundation, a Colorado nonprofit corporation.
WITNESS my hand and official seal. My commission expires:

[Signature]

Notary Public



**EXHIBIT A
PROPERTY DESCRIPTION
VALLEY FLOOR DEED OF CONSERVATION EASEMENT**

A tract of land located within portions of Sections 33, 34 and 35 of Township 43 North, Range 9 West, New Mexico Principal Meridian, County of San Miguel, State of Colorado, more fully described as follows:

That portion of the Denver Placer, Mineral Survey No. 12119, Upper San Miguel Mining District lying south of the southerly right-of-way of former Colorado State Highway 145B, Federal Aid Project No. S0150(3), now known as West Colorado Avenue, and lying east of the easterly right-of-way of Colorado State Highway 145, Federal Aid Project No. S0153(13), also containing portions of Tracts 1,3,7 and 8 as described in Reception No. 332079 and Reception No. 332080 both recorded in the office of the Clerk and Recorder of San Miguel County on January 25, 2000;

That portion of the Missouri Placer, Mineral Survey No. 5210, Upper San Miguel Mining District lying south of the southerly right-of-way of former Colorado State Highway 145B, Federal Aid Project No. S0150(3), now known as West Colorado Avenue, also containing portions of Tracts 1,3,5,6,7 and 8 as described in Reception No. 332079 and Reception No. 332080 both recorded in the office of the Clerk and Recorder of San Miguel County on January 25, 2000;

That portion of the Kokomo Placer, Mineral Survey No. 1560, Upper San Miguel Mining District lying south of the southerly right-of-way of former Colorado State Highway 145B, Federal Aid Project No. S0150(3), now known as West Colorado Avenue,
LESS AND EXCEPT the following described property:

Beginning at corner No. 1 of said Placer;

Thence South 10° West along the East line of said Placer a distance of 461.7 feet;

Thence North 80°50' West a distance of 638.3 feet;

Thence North 16°30' West a distance of 37.0 feet;

Thence North 23° East a distance of 467.0 feet to the North line of said Placer;

Thence Easterly along the North line of said Placer a distance of 550.0 feet to corner No. 1 and the Point of Beginning;

AND LESS AND EXCEPT the following described property:

Beginning at corner No. 3 of the above described parcel;

Thence Northwest along the Southerly line of the former County Road a distance of 1386.0 feet to corner No. 2 on the North line of said Placer;

Thence Easterly along the North line of said Placer a distance of 1323.0 feet to corner No. 5 of the above described tract;

Thence South 23° West a distance of 467.0 feet;

Thence South 16° 30' East a distance of 37.0 feet to the Point Of Beginning,

also containing portions of Tracts 1,3,5,6,7,8 and 10 as described in Reception No. 332079 and Reception No. 332080 both recorded in the office of the Clerk and Recorder of San Miguel County on January 25, 2000;

That portion of the Ohio Placer, Mineral Survey No. 194, Upper San Miguel Mining District TOGETHER WITH that portion of the Townsite of San Miguel according to the plat filed in the office of the Clerk and Recorder of San Miguel County in Plat Book 28 at page 27, lying south of the southerly right-of-way of former Colorado State Highway 145B, Federal Aid Project No. S0150(3), now known as West Colorado Avenue, LESS AND EXCEPT Lots 1 through 7, Inclusive, Block 14 of said Townsite of San Miguel, AND LESS AND EXCEPT the following described property:

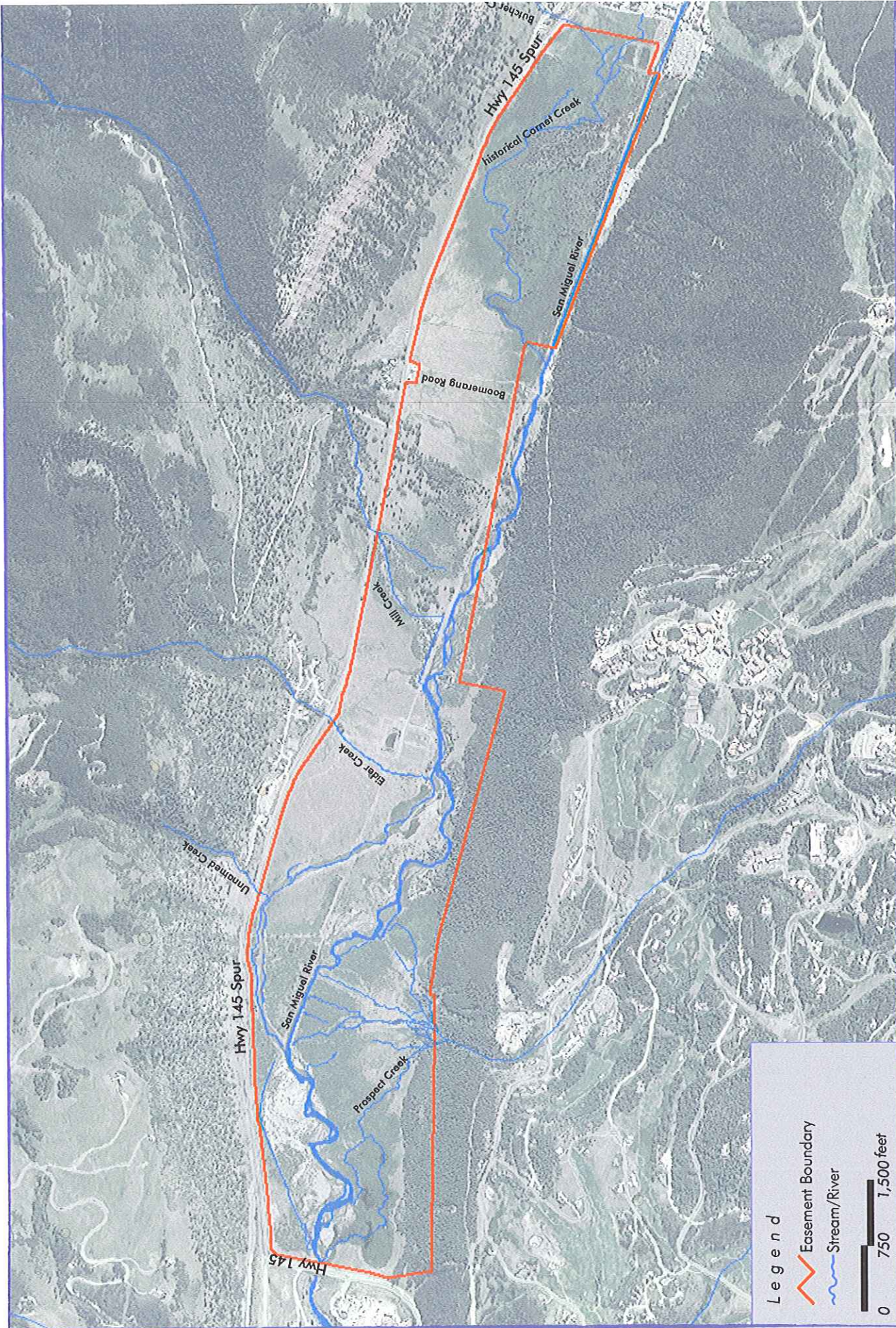
Beginning at the Northwest corner of Lot 1, Block 14, San Miguel Townsite, according to the amended Plat thereof on file in the records of the San Miguel Clerk and Recorder; Thence North 79°48' West a distance of 172.22 feet to a point whence the Northwest corner of Lot 7 in Block 14 bears North 79°48'00" West a distance of 2.78 feet; Thence South 08°38'42" West a distance of 111.54 feet along the existing fence line; Thence South 78°03'23" East a distance of 119.25 feet; Thence South 10°12' West a distance of 7.49 feet; Thence South 78°03'23" East a distance of 58.62 feet; Thence North 02°58'01" East a distance of 5.45 feet; Thence North 78°03'23" West a distance of 7.90 feet; Thence North 10°12'00" East a distance of 119 feet to the Point Of Beginning, also containing portions of Tracts 7,8,10,11,13 and 15 as described in Reception No. 332079 and Reception No. 332080 both recorded in the office of the Clerk and Recorder of San Miguel County on January 25, 2000;

That portion of the Virginia Placer, Mineral Survey No. 658, Upper San Miguel Mining District lying south of the southerly right-of-way of former Colorado State Highway 145B, Federal Aid Project No. S0150(3), now known as West Colorado Avenue, LESS AND EXCEPT those portions conveyed by Deeds recorded in the office of the Clerk and Recorder of San Miguel County on June 30, 1987 in Book 437 at page 100 and in Book 437 at page 102, also containing portions of Tracts 13 and 15 as described in Reception No. 332079 and Reception No. 332080 both recorded in the office of the Clerk and Recorder of San Miguel County on January 25, 2000;

LESS AND EXCEPT that portion described as San Miguel Valley Corporation Employee Housing Tract Annexation, recorded in the Office of the San Miguel County Clerk and Recorder in Plat Book 1 at Page 1046 containing 12.9570 acres of land, more or less.

That portion of the Dakota Placer, Mineral Survey No. 2238, Upper San Miguel Mining District more fully described as follows:
Beginning at a Point on the West line of said Placer whence corner No. 7 of said Placer bears North 10° East a distance of 938.8 feet;
Thence South 10° West a distance of 1222.5 feet;
Thence South 70°06' East a distance of 344;
Thence North 10°15' East a distance of 1122.4 feet;
Thence North 56° West a distance of 395 feet to the Point of Beginning, lying south of the southerly right-of-way of former Colorado State Highway 145B, Federal Aid Project No. S0150(3), now known as West Colorado Avenue, also containing portions of Tract 15 as described in Reception No. 332080 recorded in the office of the Clerk and Recorder of San Miguel County on January 25, 2000;

TOTAL ACREAGE of all the above described tracts contains 560 acres, more or less.



Conservation Easement Exhibit B

EXHIBIT C**WATER RIGHTS TO BE ACQUIRED BY THE TOWN OF TELLURIDE**

This condemnation includes all water and water rights, ditch and ditch rights and related interests in the ditches, headgates, pipelines, and related structures that were historically used on or in connection with the land described in Exhibit A to the Petition in Condemnation (Exhibit "A"), as well as return flows from the use of water under the ditches described below and any surplus water diverted by such ditches to the extent such return flows or surplus water historically contributed to the supply for irrigation of the lands described on Exhibit A after diversion by the ditches described below or first use of such water for irrigation of lands on the north side of Highway 145 lying north of the lands described on Exhibit A. The intent of this description is to include all water rights and related property interests necessary to continue the historical irrigation practices and related water delivery, distribution and use on the lands described on Exhibit A, including, without limitation, the following described water rights:

1. A 45.5% interest in the 1.25 cubic feet of water per second of time (cfs) adjudicated to the Ohio and Kokomo Flood and Waste Ditch for diversion from Mill Creek, a tributary of the San Miguel River, under Priority No. 106 with an appropriation date of June 1, 1903 by decree of the District Court in and for Montrose County in Case No. 1627 dated June 9, 1911, as well as the right to the continuation of any return flow and surplus water from the remaining 54.5% interest in said Priority No. 106 to the extent such return flow or surplus water historically contributed to the supply of irrigation water for the lands described on Exhibit A. Said 45.5% interest amounts to 0.569 cfs and is based on the proportion of the land on Exhibit A that was historically irrigated by the Ohio and Kokomo Flood and Waste Ditch to the total acreage historically irrigated by such ditch.
2. A 45.5% interest in the 3.0 cfs adjudicated to the Ohio and Kokomo Flood and Waste Ditch for diversion from Mill Creek, a tributary of the San Miguel River, under Priority No. 252 with an appropriation date of June 2, 1903 by decree of the District Court in and for Montrose County in Case No. 4641 dated November 1, 1939, as well as the right to the continuation of any return flow and surplus water from the remaining 54.5% in said Priority No. 252 to the extent such return flow or surplus water historically contributed to the supply of irrigation water for the lands described on Exhibit A. Said 45.5% interest amounts to 1.365 cfs and is based on the proportion of the land on Exhibit A that was historically irrigated by the Ohio and Kokomo Flood and Waste Ditch to the total acreage historically irrigated by such ditch.
3. An 84.9% interest in the 1.25 cfs adjudicated to the House Flood and Waste Ditch for diversion from Mill Creek, a tributary of the San Miguel River, under Priority No. 107 with an appropriation date of June 1, 1903 by decree of the District Court in and for Montrose County in Case No. 1627 dated June 9, 1911, as well as the right to the

continuation of any return flow and surplus water from the remaining 15.1% interest in said Priority No. 107 to the extent such return flow or surplus water historically contributed to the supply of irrigation water to the lands described on Exhibit A. Said 84.9% interest amounts to 1.061 cfs and is based on the proportion of the land on Exhibit A that was historically irrigated by the House Flood and Waste Ditch to the total acreage historically irrigated by such ditch.

4. An 84.9% interest in the 1.25 cfs adjudicated to the Mill Creek Ditch No. 1 for diversion from Mill Creek, a tributary of the San Miguel River, under Priority No. 219 with an appropriation date of July 1, 1889 by decree of the District Court in and for Montrose County in Case No. 4641 dated November 1, 1939, as well as the right to the continuation of any return flow and surplus water from the remaining 15.1% interest in said Priority No. 219 to the extent such return flow or surplus water historically contributed to the supply of irrigation water for the lands described on Exhibit A. Said 84.9% interest amounts to 1.061 cfs and is based on the proportion of the land on Exhibit A that was historically irrigated by the Mill Creek Ditch No. 1 to the total amount of acreage historically irrigated by such ditch.

5. An 84.9% interest in the 1.5 cfs adjudicated to the Mill Creek Ditch No. 1 Enlargement for diversion from Mill Creek, a tributary of the San Miguel River, under Priority No. 228 with an appropriation date of July 2, 1894 by decree of the District Court in and for Montrose County in Case No. 4641 dated November 1, 1939, as well as the right to the continuation of any return flow and surplus water from the remaining 15.1% interest in said Priority No. 228 to the extent such return flow or surplus water historically contributed to the supply of irrigation water for the lands described on Exhibit A. Said 84.9% interest amounts to 1.274 cfs and is based on the proportion of the land on Exhibit A that was historically irrigated by the Mill Creek Ditch No. 1 Enlargement to the total amount of acreage historically irrigated by such ditch.

6. An 84.9% interest in the 0.50 cfs adjudicated to the Mill Creek Ditch No. 1, Boyer Enlargement for diversion from Mill Creek, a tributary of the San Miguel River, under Priority No. 247 with an appropriation date of June 15, 1901 by decree of the District Court in and for Montrose County in Case No. 4641 dated November 1, 1939, as well as the right to the continuation of any return flow and surplus water from the remaining 15.1% interest in said Priority No. 247 to the extent such return flow or surplus water historically contributed to the supply of irrigation water for the lands described on Exhibit A. Said 84.9% interest amounts to 0.426 cfs and is based on the proportion of the land on Exhibit A that was historically irrigated by the Mill Creek Ditch No. 1, Boyer Enlargement to the total amount of acreage historically irrigated by such ditch.

7. All of the 1.25 cfs adjudicated to the Missouri Ditch for diversion from Prospect Creek, a tributary of the San Miguel River, under Priority No. 220 with an appropriation date of July 1, 1889 by decree of the District Court in and for Montrose County in Case No. 4641 dated November 1, 1939.

8. All of the 1.25 cfs adjudicated to the Prospect Ditch No. 2 for diversion from Prospect Creek, a tributary of the San Miguel River, under Priority No. 221 with an appropriation date of July 1, 1889 by decree of the District Court in and for Montrose County in Case No. 4641 dated November 1, 1939.

9. All of the 3.0 cfs adjudicated to the Eder Creek Ditch for diversion from Eder Creek, a tributary of the San Miguel River, under Priority No. 226 with an appropriation date of July 1, 1891 by decree of the District Court in and for Montrose County in Case No. 4641 dated November 1, 1939.

Together with such historical easements or rights of way as reasonably necessary for the operation, maintenance and repair of the above described ditches and for the diversion, measurement and delivery of water through such ditches and related structures in the amounts described above, as well as historical easements or rights of way for access across any public or private land as reasonably necessary and customarily used to access the headgates, ditches and related structures for the purposes of operation, maintenance and repair of the above described ditches. Such easements for the operation, maintenance or repair of the above-described ditches shall extend from the point of diversion from the stream or other water course described below and shall extend along the course of such ditches to the point that they enter the land described on Exhibit A and shall include the use of so much land on either side of such ditches as is reasonably necessary for the operation, maintenance and repair of such ditches, including, without limitation, use for the placement of material removed from the ditches during cleaning. The easements shall include the right to travel over private roadways, trails or other access as is reasonable and customary to access such ditches and related structures and to use such equipment as is reasonably and customarily used in the operation, maintenance and repair of such ditches.

The decreed locations of the headgates of the ditches that are located on lands other than those described on Exhibit A are as follows:

Ohio and Kokomo Flood and Waste Ditch: In Civil Action 4641 described as on the west bank of Mill Creek at a point whence the southeast corner of the Mineto Placer, U.S. Survey No. 5418 U.S.M.D. bears south 4° west 250 feet and said ditch runs southerly. Also described in Civil Action No. 1627 as located on Mill Creek about 200 feet below the mouth of Mill Creek Canon and at a point whence witness corner to the southwest corner of Section 34, Township 43 North, Range 9 West N.M.P.M. bears south $58^{\circ} 12'$ west 7,770 feet;

House Flood and Waste Ditch: At a point in a valley about 200 feet below the mouth of Mill Creek Canon whence the witness corner of the southwest corner of Section 34, Township 43 North, Range 9 West, N.M.P.M. bears south $58^{\circ} 30'$; west 7,781.5 feet;

Mill Creek Ditch No. 1, Mill Creek Ditch No. 1 Enlargement, and Mill Creek Ditch No. 1, Boyer Enlargement: On Mill Creek at a point whence the southeast corner of the Mineto Placer, U.S. Survey No. 5418, U.S.M.D., bears S 8° 55' W. 695 feet;

EXCLUSION:

The description of water rights above is specifically intended to exclude (1) the Carr and Waddle Ditch water rights, (2) that portion of the Ohio and Kokomo Flood and Waste Ditch water right that was historically consumed in the irrigation of the 12.0 acres of irrigated land under said ditch lying north of State Highway 145, and (3) that portion of the House Flood and Waste Ditch, the Mill Creek Ditch, the Mill Creek Ditch Enlargement, and the Mill Creek Ditch Boyer Enlargement water rights that was historically consumed in the irrigation of 10.4 acres of irrigated land under said ditches lying north of State Highway 145, in accordance with the October 29, 2002 Stipulation and Settlement Agreement among the Town of Telluride, San Miguel Valley Corporation and others in Case No. 96CW313, District Court for Water Division No. 4, State of Colorado.

OWNER ACKNOWLEDGEMENT STATEMENT

Property Name: Telluride Valley Floor Conservation Easement

Grantor: Town of Telluride, Colorado

Grantee: San Miguel Conservation Foundation


Conservation Easement Summary

The Telluride Valley Floor conservation easement (hereafter, the property) comprises approximately 560 acres. The property occupies the valley floor of the San Miguel River immediately west of Telluride, in unincorporated San Miguel County, Colorado.

The conservation easement will protect the following conservation values on the property: natural and ecological values including sensitive riparian areas, wetlands, and aquatic habitats, forests, and meadows, together comprising significant relatively natural habitat for native plants and wildlife; outstanding scenic values.

This Baseline Documentation Report is an accurate representation of the property at the time of the conservation easement donation.

GRANTORS:



 Representative, Town of Telluride

 12/3/08

 Date

GRANTEE:

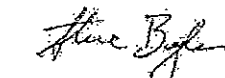


 Gary Hickox, San Miguel Conservation Foundation

 12/3/08

 Date

REPORT PREPARER:



 Steve Boyle, BIO-Logic, Inc.

 Date