

## 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 \_\_\_ day of \_\_\_\_\_, 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 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,

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 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 may be 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 is undertaken in a manner that minimizes significant impairment or interference with the Conservation Values. Grantor shall submit a remediation plan prepared by its remediation contractor(s) (the "Remediation Plan") to Grantee prior to approval by the Telluride Town Council of any remediation activities. 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 The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

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 B** 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 \_\_\_\_\_, 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 enjoin 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 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.

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.

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 unprofitability 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, Town of Telluride Mayor

\_\_\_\_\_

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

The foregoing was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 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:

\_\_\_\_\_  
Notary Public

APPROVED AS TO FORM:

\_\_\_\_\_  
Kevin J. Geiger, Town Attorney

GRANTEE

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

The foregoing was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, President and \_\_\_\_\_, Secretary, on behalf \_\_\_\_\_, a Colorado nonprofit corporation. WITNESS my hand and official seal. My commission expires:

\_\_\_\_\_  
Notary Public