

**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 THESE DEED RESTRICTIONS IS IN THE PUBLIC INTEREST.

THIS DEED OF CONSERVATION EASEMENT is made this \_\_\_ day of \_\_\_, 200\_\_\_, by the TOWN OF TELLURIDE, a Colorado home rule municipality ("Grantor") in favor of \_\_\_\_\_, a Colorado nonprofit corporation qualified to do business in the State of Colorado, having an address at P.O. Box \_\_\_\_\_, Telluride, CO 81435 ("Grantee").

**RECITALS**

- A. Grantor is the sole owner in fee simple of certain real property in San Miguel County, Colorado, 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. **[Note: Exhibit A shall also include any and all water and water rights beneficially used or conditionally decreed]**
- B. The Property possesses open-space values, as defined in C.R.S. Sections 38-30.5-101—111, natural, ecological, educational, riparian, environmentally sensitive areas, significant relatively natural habitat for native plants and wildlife, and scenic vistas of great importance to the Grantor and its citizens, guests and invitees and is worthy of conservation ("Conservation Values").
- C. The State of Colorado has recognized the importance of 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.
- D. 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 and to provide passive recreational opportunities and public park purposes that do not impair the Conservation Values.
- E. The 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.
- F. 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 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 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

## DRAFT 06/06/06

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 ensure recreational and educational uses such as nature walks, trails and areas for hiking, bicycling, running, cross country skiing, hang/para glider and hot air balloon landing; temporary associated uses of a major festival held within the Town of Telluride (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, and other public park purposes not requiring improvement of the land or placement of permanent structures, and that such uses are accessible to the public and 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.

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 does not significantly impair or interfere with the Conservation Values.

2.2 Restoration. Future restoration of the San Miguel River, environmentally sensitive areas, riparian and wildlife habitats are anticipated and restoration work shall be done in accordance with the Management Plan so long as such restoration does not significantly impair or interfere with the Conservation Values.

2.3 Water Rights. The water rights appurtenant to the Property are incorporated herein by this reference. Grantor shall retain the right to file water court actions as necessary to protect the water rights or as otherwise may be necessary to utilize the rights to protect the Conservation Values. [WOULD ANTICIPATE THAT THE ACTUAL LANGUAGE HERE IS LIKELY TO BE MUCH MORE DETAILED TO REFLECT THE WATER RIGHTS NEEDED TO ADVANCE THE CONSERVATION VALUES AND THOSE RIGHTS THAT ARE IN EXCESS OF THIS BASE LEVEL...]

2.4 Utility Systems. The installation of new utilities, or extension or relocation of existing utilities may be permitted for allowed uses under this Easement if construction is underground and is in accordance with the Management Plan, is approved by Grantee and does not significantly impair or interfere with the Conservation Values. The 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 a pre-existing right of way and recognize all rights to same existing under the jurisdiction of San Miguel County.

2.6 Weed Control. Weed control shall be undertaken on the basis of the best management practices commonly used at the time of application. Grantor shall comply with Title 35, Colorado Revised Statutes, regarding weed control. 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.

## DRAFT 06/06/06

2.6.2 For the control of agricultural or forest pests, subject to prior approval by the Grantee.

2.6.3 Use of biological weed and insect control agents, subject to prior approval by the Grantee.

1.7 Limited Private Uses. Grantor and Grantee intend to permit limited private recreational or environmental educational uses of the Property, as will be specifically authorized by Grantor in the Management Plan, some of which may have a limited commercial element, provided these activities do not significantly impair or interfere with the Conservation Values.

1.8 Limited Signage. Limited educational, public information and directional signage is permitted on the Property provided it does not significantly impair or interfere with the Conservation Values.

1.9 Limited Trails. It is anticipated that some improvements to existing trails and some new trail construction will take place on the Property, pursuant to the Management Plan.

3. Management Plan. Grantor and Grantee shall prepare a Management Plan that will identify appropriate land areas for the uses authorized herein as well as program specifics for conducting allowed activities. The Management Plan shall be completed and executed between Grantor and Grantee no later than six (6) months following the effective date of this Conservation Easement. Grantor and Grantee commit to update the Management Plan at least every two (2) years, or sooner if it is determined to be in the best interest of the Conservation Values of the Property.

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 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 use;
- 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 that may compromise the Conservation Values of the Property.
- 4.5 To enjoin any activity on or any use of the Property that is inconsistent with the 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 Improvements. The construction or reconstruction of any structure is prohibited, except those identified in the Management Plan which are limited to temporary uses (as identified in Section 1), such as public sanitation facilities, parking and camping, and other public park purposes not requiring improvement of the land or placement of permanent structures. Continuing use of any pre-existing structures identified in the Baseline Report shall be in accordance with the Management Plan.

## DRAFT 06/06/06

- 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 areas on the Property, those required for temporary restoration of the Property and repair of authorized improvements. New access gates and fences, if any, may be constructed only in accordance with the Management Plan.
- 5.3 Livestock. Grazing of livestock is prohibited unless provided for in the Management Plan for range improvement.
- 5.4 Subdivision. 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.
- 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, and to prevent personal injury and property damage.
- 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 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 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 advance written permission 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 commercial or industrial uses shall be allowed on the Property, except those limited activities recognized in Section 1.7 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, 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 1.5, 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 for any allowed temporary use.

5.12 Erosion and Pollution. Any uses or activity that causes 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.

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. Excepting emergency situations, any proposed changes which may adversely affect the Conservation Values of the Property shall be subject to prior written notice to, and prior written approval of Grantee, pursuant to Paragraph 7 of this Easement, if, in the opinion of the Grantee, the exercise of such rights presents a risk of damage to the Conservation Values.

7. Baseline Report. Competent naturalists familiar with the Property have prepared a collection of baseline data on the Property and its resources that have been compiled into a Baseline Report. The Baseline Report will be kept on file at the offices of Grantee with a copy to Grantor and by this reference made a part hereof.

8. Grantee's Approval. Where Grantee's approval is required Grantee shall grant or withhold its approval in writing and any supporting documentation within sixty (60) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Failure of Grantee to timely respond will be deemed approval. [ACTUAL LANGUAGE WILL DEPEND ON NOTIFICATION REQUIREMENTS OF GRANTEE PURSUANT TO ITS TEMPLATE]

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 irreversibly 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 level 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 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. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's reasonable costs of suit, including without limitation, attorney's fees, shall be borne by Grantee.

11. 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

## DRAFT 06/06/06

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.

12. 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 reasonable 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.

13. Access. The general public shall have access to the Property; subject however to the provisions of the Management Plan.

14. Taxes. Grantor is a governmental entity exempt from taxes taxes and assessments and not taxes will be imposed upon, or incurred as a result of this Easement.

15. Hold Harmless. Grantor agrees to the extent permitted by law to indemnify and hold harmless Grantee, its officers, employees, agents, and insurers from and against all liability, claims, and demands on account of injury, loss or damage, including, without limitation claims arising from bodily injury, personal injury, sickness, disease, weather, property loss or damage, natural resource loss or damage, or any other loss of any kind whatsoever, which arise out of the grant of the 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 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.

16. Insurance. Grantor warrants that Grantee is a named insured on Grantor's property insurance policies covering the Property. The inclusion of the Grantee as an additional insured shall be an annual appropriation. Failure of Grantor to annually designate Grantee as an additional insured on the insurance policy will be cause for a breach of this Easement, and the Grantee has the right to seek legal compensations.

17. 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 1954, 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

## DRAFT 06/06/06

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 1954, 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.

18. Change in Circumstances. The fact that the 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 permitted uses, 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 benefit to the public 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.

19. 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 first class mail, postage prepaid, addressed as follows:

To Grantor:

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

To Grantee:

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

20. 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.

21. General Provisions.

21.1 Controlling Law. The laws of the State of Colorado shall govern the interpretation and performance of this Easement.

21.2 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. § 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

## DRAFT 06/06/06

with the laws of the state in which the Property is located. 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.

- 21.3 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.
- 21.4 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.
- 21.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 21.6 Joint Obligation. The obligations imposed by this Easement upon Grantor and Grantee shall be joint and several.
- 21.7 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 personal representatives, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.
- 21.8 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.
- 21.9 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.
- 21.10 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.

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: \_\_\_\_\_

\_\_\_\_\_



# DRAFT 06/06/06

GRANTEE

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

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

The foregoing was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Mayor, and \_\_\_\_\_, Town Clerk, on behalf of the Town of Telluride, a home rule municipality. WITNESS my hand and official seal.  
My commission expires:

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

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

The foregoing was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, President and \_\_\_\_\_, Secretary, on behalf \_\_\_\_\_, a Colorado nonprofit corporation. WITNESS my hand and official seal. My commission expires:

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