

**PUBLIC EASEMENT AGREEMENT
(Bus Turnaround)**

THIS PUBLIC EASEMENT AGREEMENT ("Agreement") is made this 9th day of February, 2004 ("**Effective Date**"), by and between **IDARADO MINING COMPANY**, a Delaware corporation ("**Idarado**") and **IDARADO LEGACY, LLC**, a Colorado limited liability company ("**Legacy**") (Idarado and Legacy are collectively referred to as the "**Grantor**") and **SAN MIGUEL COUNTY, COLORADO** ("**Grantee**" or "**County**"), acting by and through **THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO** ("**BOCC**"). Grantor, Grantee and the BOCC are sometimes collectively referred to as the "**Parties**" and sometimes individually referred to as a "**Party**".

I. RECITALS

- A. Grantor is the fee simple owner of certain real property located in San Miguel County, Colorado (the "**Grantor Property**").
- B. Grantor has agreed to grant to Grantee an easement ("**Easement**") over a portion of the Property at such locations and for such uses as stated in this Agreement.
- C. Grantor desires by this instrument (a) to establish and to grant to Grantee the Easement, and (b) to establish certain restrictions with respect to the Easement.
- D. Grantee desires by this instrument (a) to accept said Easement subject to the restrictions set forth herein, and (b) to assume certain responsibilities in connection therewith.

II. AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. **Grant and Use of Easement.**

- 1.1. Grantor hereby grants and conveys to Grantee, its successors, designees and assigns, at no cost, a perpetual nonexclusive easement ("**Easement**") over and across a portion of Grantor Property ("**Easement Area**") as such Easement Area is depicted on attached **Exhibit "A"** and described on **Exhibit "B"**. Grantee, for itself and its successors, designees and assigns, hereby accepts the Easement in an "as is" condition, subject to the restrictions herein contained, and subject to all patent or latent defects, conditions, circumstances or problems of any kind or nature.
- 1.2. Grantor authorizes the Grantee to utilize the Easement Area for the following purposes:
 - 1.2.1. The right to design, install and construct a paved, bus turnaround and a pedestrian bus stop shelter ("**Improvements**") upon the Easement Area, subject to the requirements contained in Section 2;

g.
GC 25
J 0 97345A04 13

- 1.2.2. The right to use the Improvements to enable vehicles to turnaround to and from East Colorado Avenue;
- 1.2.3. The right to repair, maintain, operate and otherwise utilize the Improvements for only purposes consistent with this Easement; and
- 1.2.4. Grantee shall not use the Easement Area for any uses or purposes not allowed by this Easement, including the construction of maintenance facilities or other structures (not specifically allowed by this Easement), snow storage, or for the storage of other materials. Grantee shall not have the right to install any utilities within the Easement Area. Grantee shall not allow parking of vehicles within the Easement Area.
- 1.3. Prior to initiating the Improvements within the Easement Area, Grantee or designee will submit to Grantor for review and approval a site design plan for the improvements (“**Improvement Site Plan**”), which shall be prepared by a qualified person and shall comply with all applicable laws and regulations. At a minimum, the Improvements Site Plan shall depict each of the following elements: (i) the location of the Improvements; (ii) plans and specifications for the Improvements; (iii) grading and disturbance that will occur in connection with the Improvements; (iv) details for pavement locations, depths, materials, landscaping and hardscaping, if any; (v) a schedule for the initiation and completion of the Improvements. The Improvements shall be designed, sized and located to achieve reasonable compatibility of development to occur on Grantor Property.
- 1.4. Grantee agrees that upon the completion of the installation of the Improvements, Grantee shall cause an “As Built” survey of the Improvements to be completed at the cost and expense of Grantee. Thereupon, the Grantor and Grantee agree that the Easement Area shall be modified to reflect the “As Built” location of the Improvements, together with a reasonable area to allow for repair and maintenance of the Improvements (this does not mean that Grantee can construct maintenance facilities or structures or store materials within the Easement Area) and that Grantee shall execute and record its quit claim deed vacating that portion of the original Easement Area no longer intended to be subject to the grant of Easement under this Section 1.4.
- 1.5. This Easement is granted subject to all prior encumbrances and other matters of record, burdening and affecting Grantor Property, in San Miguel County, Colorado.
- 1.6. Grantee is not and shall not be construed as the agent of Grantor in contracting for any improvements to the Easement Area, and shall have no authority to pledge, mortgage, hypothecate or otherwise encumber any interest in the Easement Area or any other property of Grantor, except for Grantee’s easement rights hereunder.
- 1.7. Grantor expressly reserves unto itself, the right to: (A) use and enjoy the land covered by the Easement Area for all lawful purposes that will not unreasonably interfere with the rights hereby granted to Grantee, including, but not limited to, vehicular access to and from Colorado Avenue and an access way to and from a

bridge to be constructed over the San Miguel River; and (B) grant additional easements or rights-of-way upon or across the Easement Area to other persons or entities for the installation, maintenance, repair and replacement of wires, cables, pipes and similar facilities in connection with vehicular or pedestrian ingress and egress;

- 1.8. Grantees' use shall be nonexclusive, and as such shall not interfere with Grantor's or its designee's concurrent use of the Property for all lawful purposes for which Grantor may use the Property. Without limiting the generality of the foregoing, Grantor hereby reserves unto itself, its designees, successors and assigns, the continued right of access to and from the Property, by any means legally available to Grantor, over and across the Easement Area. In connection therewith (but not as a limitation on the general nature of such reserved right of access), Grantor, its agents and contractors, and the State of Colorado, shall have unrestricted access to the Property over the Easement Area so as to ensure the continued, unimpeded operation and maintenance of all components of and all structures and improvements resulting from or related to all remedial, mitigative, corrective, and other actions, schedules, plans, terms, and conditions prescribed by or described in the Consent Decree and RAP (as defined below). Grantee and any users of the Easement Area shall take no action upon or with respect to the Easement Area that would, in any way, interfere with Grantor's or its successors' or assigns' continuing ability to perform in compliance with and to meet Grantor's obligations under the Consent Decree and RAP. For purposes hereof, the "**Consent Decree**" shall mean the Consent Decree, Order, Judgment and Reference to Special Master entered in Colorado v. Idarado Mining Co., Case No. 83-C-2385 (D.Colo. July 6, 1992), and any amendments or modification thereto, and the "**RAP**" shall mean the Remedial Action Plan, and any amendments or modification thereto, which is an exhibit to and a part of

2. **Construction and Installation of the Improvements.**

- 2.1. **Construction of the Improvements.** Upon an election by Grantee to construct the Improvements, Grantee shall undertake construction in accordance with the following requirements:
- 2.1.1. The Improvements shall be constructed in accordance with the approved Improvement Site Plan;
- 2.1.2. Construction, operation, repair and maintenance of the Improvements within the Easement Area shall be undertaken in a manner that reasonably causes the least amount of disturbance to the Easement Area, and any disturbance to the Easement Area shall be reseeded and recontoured to the original natural condition, to the extent reasonably possible at the cost of Grantee;
- 2.1.3. Appropriate and suitable landscaping to screen the Improvements shall be installed in accordance with a landscape plan approved in writing by Grantor prior to construction of the Improvements;
- 2.1.4. Appropriate safety measures and devices, including signage, shall be installed at appropriate locations;

- 2.1.5. All work will be done in a professional workmanlike manner; and
- 2.1.6. Grantee shall comply with all applicable federal, state and local laws, rules, regulations and safety standards in connection with Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair, replacement and service of Grantee's equipment and appurtenances hereunder.
- 2.2. **Cost of Construction of the Improvements.** Grantee agrees that Grantee is responsible to pay for the cost and expense of designing, constructing, manufacturing, delivering and installing the Improvements, including equipment rental and labor. Grantee shall not allow any liens to be placed on any portion of the Grantor Property and shall indemnify and hold harmless Grantor from and against any claims for payments due in connection with the installation of the Improvements.
3. **Maintenance of the Improvements.** Upon completion of the Improvements by Grantee, Grantee shall undertake all necessary maintenance and repair of the Improvements to keep the Improvements in a good, clean and safe condition.
4. **Miscellaneous.**
- 4.1. **Run With The Land. Heirs, Successors and Assigns.** The easements, benefits and rights granted and agreed to herein and the burdens, duties and obligations imposed and agreed to herein shall run with the Easement Area. Further, the easements, benefits and rights granted and agreed to herein and the burdens, duties and obligations imposed and agreed to herein shall be binding upon and shall inure to the benefit of, and be a burden upon, the heirs, designees, successors and assigns of the Parties.
- 4.2. **Recordation.** This Agreement is intended to be recorded by the Parties in the office of the Clerk and Recorder of San Miguel County, Colorado.
- 4.3. **Effective Upon Execution.** This Agreement shall not be binding or effective on any party until executed on its behalf. The Parties acknowledge and agree that all obligations of Grantee herein and hereunder shall apply to Grantee with equal force and effect to, and Grantee shall be responsible for the actions or inactions of Grantee's employees, representatives, agents, contractors, subcontractors, suppliers and materialmen.
- 4.4. **Counterparts.** This Agreement may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission of a signed copy of this Agreement shall be considered valid and constitute a signed original. A signed "hard copy" of the document shall be executed by the Parties and delivered to Grantee for recordation.
- 4.5. **Further Rights; No Third Party Rights.** Except as expressly set forth herein, nothing contained herein shall be construed as creating any rights in any third persons or parties. Nothing contained herein shall be interpreted or construed to

create a public dedication of the Easement. It is understood and agreed that this Agreement is an easement only and in no way grants or conveys any part of the underlying fee simple estate of any lands owned by Grantor.

- 4.6. **Indemnification.** By accepting the Easement granted herein, Grantee hereby agrees to defend and hold harmless Grantor and its successors and assigns in the record ownership of the Grantor Property, or any part thereof, to the full extent allowed under Colorado law, from and against any and all claims, demands, causes of action, damages, losses, liabilities, costs and expenses of any kind or nature (including those involving death, personal injury or property damage and including reasonable attorney's fees) arising from or incurred in any way in connection with the construction of the Improvements and/or the use of the Easement and the Improvements by anyone, including members of the general public, excepting any such claims or losses which may arise directly from the willful, intentional, reckless, and grossly negligent acts of Grantor, its agents or employees. Grantee may satisfy this obligation by maintaining comprehensive public entity liability insurance coverage to which the Grantor is named as an additional insured.
- 4.7. **Insurance.** Grantee shall obtain and maintain insurance and name Grantor and its identified agents as an additional insured on its general liability insurance policy, which shall cover those claims and liabilities arising in connection with any and all use of the Easement by Grantee, its citizens, residents, visitors, licensees and invitees and any other person. Grantee shall also require its contractors and subcontractors to obtain and provide the same coverages and name Grantor as an insured thereunder. The limits of such insurance coverage must meet or exceed liability limits allowed from time to time under the Colorado Governmental Immunities Act ("**Insurance Coverage**"). Annually and sooner upon reasonable demand, Grantee shall cause to be obtained and forwarded to Grantor a certificate of insurance showing Grantor named as an additional insured thereunder. The insurance certificate must provide that Grantor shall receive notice of cancellation of Grantee's policy at least 30 days prior to its termination. Without limiting Grantee's obligation to obtain and maintain the Insurance Coverage, Grantor may, but need not, obtain its own insurance coverage.
- 4.8. **Relocation of Easement.** Unless the Easement is otherwise terminated as provided for hereunder, Grantor reserves the right to relocate some or all of the Easement Area and/or any improvements within the Easement Area in the event that Grantor, in its sole and exclusive discretion, determines that the presence of the Easement and associated Improvements interfere or could interfere with its use, development and/or remediation of the Grantor Property. Grantor shall pay for the cost of relocating any improvements that have been installed by Grantee pursuant to this Agreement. Grantor shall identify an alternative location for the affected Easement Area in a reasonably similar location. Grantor shall send notice to Grantee advising of Grantor's determination that it will relocate some or all of the Easement. In such event, Grantor shall be authorized to record a modification/supplement to this Agreement which Grantee shall promptly execute and deliver to evidence such relocation, which consent and delivery shall not be unreasonably withheld, delayed or otherwise conditioned. Nothing herein shall limit or preclude the ability of Grantor to develop the Grantor

Property and the Easement Area, provided Grantor has identified an alternative location for the Easement in a reasonably similar size and location.

- 4.9. **Further Assurances.** Recognizing that the Parties hereto may find it necessary from time to time to establish to lenders, mortgagees, accountants or other persons or parties of the then current status of performance hereunder, each party bound or benefited by this Agreement agrees, upon written request, that it will from time to time, with reasonable promptness, furnish a written statement in recordable form on the status of any matter relating to this Agreement.
- 4.10. **Governing Law. Enforcement.** This Agreement and the rights and obligations of the Parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of Colorado. In the event of any interference or threatened interference with the Easement herein granted or with the other rights and obligations of the Parties hereunder, a party may pursue all available remedies, including, without limitation, injunctive relief or specific performance to ensure performance of another Parties obligations hereunder. In any action for enforcement of rights hereunder, the prevailing party shall be entitled to an award for recovery of their costs and fees, including reasonable attorney fees. Except as may be expressly otherwise stated or provided, with respect to all required acts of the Parties, time is of the essence.
- 4.11. **Modification.** This Agreement may not be modified, except in writing signed by the Parties.
- 4.12. **Captions.** Captions are for convenience only and are not to be construed as defining or limiting in any way the scope of intent of the provisions of such sections.
- 4.13. **Notices.** All notices or other documents required or authorized to be sent by one party to the other shall be in writing and shall be deemed given to a party when personally delivered, or when deposited in the United States mail, sufficient postage prepaid, certified and return receipt requested, addressed as follows:

If to Grantor:

Idarado Mining Company
1700 Lincoln Street, 28th Floor
Denver, CO 80203
Attn: David A. Baker, President
Facsimile: (303) 837-6130

With a copy to:

Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202
Attn: Elizabeth Sharrer
Facsimile: (303) 295-8261

If to Grantee or the BOCC:

San Miguel County Board of County Commissioners
333 W. Colorado Ave.
P.O. Box 1170
Telluride, CO 81435
Facsimile: (970) 728-3718

With a copy to:

Office of the County Attorney
333 W. Colorado Ave.
P.O. Box 791
Telluride, CO 81435
Facsimile: (970) 728-3718

A Party shall notify the other party if their address changes from time to time.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GRANTOR:

IDARADO MINING COMPANY

By: *DABL*
David A. Baker, President

Date: 02-09-2004

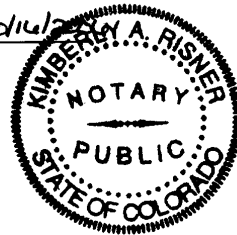
STATE OF COLORADO)
) ss.
COUNTY OF San Miguel)

Acknowledged, subscribed and sworn to before me this 9th day of February, 2004 by David A. Baker, President of Idarado Mining Company, Inc.

Witness my hand and official seal.

Kimberly A. Risner
Notary Public

My commission expires: 10/14/2004



IDARADO LEGACY, LLC,
a Colorado limited liability company

By: IDARADO MINING COMPANY, Its Manager

By: *DABL*
David A. Baker, President

Date: 02-09-2004

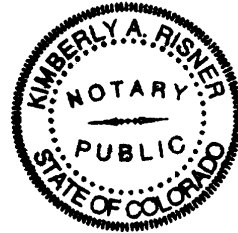
STATE OF COLORADO)
) ss.
COUNTY OF San Miguel)

Acknowledged, subscribed and sworn to before me this 9th day of February, 2004 by David A. Baker, President of Idarado Mining Company, Inc.

Witness my hand and official seal.

Kimberly A. Risner
Notary Public

My commission expires: 10/14/2004



GRANTEE:

SAN MIGUEL COUNTY, COLORADO, ACTING BY AND THROUGH
THE BOARD OF COUNTY COMMISSIONERS
OF SAN MIGUEL COUNTY, COLORADO

By: *Vern Ebert*
Vern Ebert, Chair

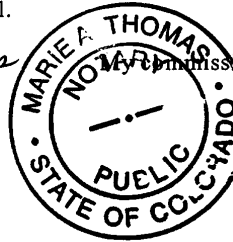
Date: 2-10-04

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

ACKNOWLEDGED before me this 10th day of February 2004, by Vern Ebert who
acknowledged himself to be the Chair of the Board of County Commissioners of San Miguel
County, Colorado.

Witness my hand and official seal.

Marie A. Thomas
Notary Public



My commission expires: 2-5-05

Exhibit "A"
PUBLIC EASEMENT AGREEMENT
(Depiction of Bus Turnaround Easement)

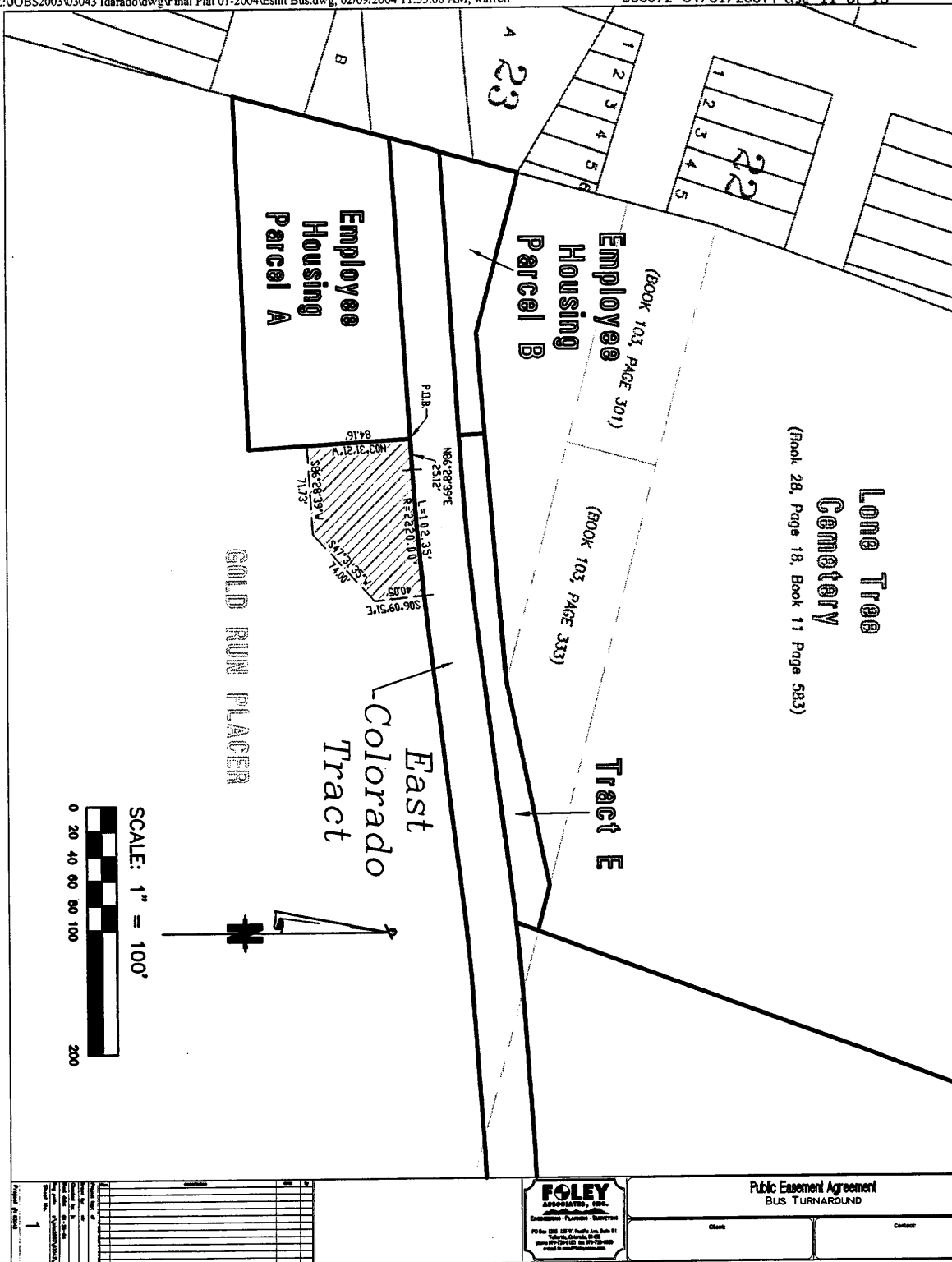


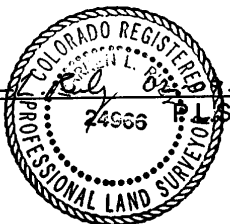
Exhibit "B"
PUBLIC EASEMENT AGREEMENT
(Legal Description of Bus Turnaround Easement)

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385
TELLURIDE, CO 81435
970-728-6153

PROPERTY DESCRIPTION

A part of the Gold Run Placer MS 554, Upper San Miguel Mining District, County of San Miguel, State of Colorado, described as follows:

Beginning at the northeast corner of Employee Housing Parcel A of the Idarado Exemption Plat and Plan for Cluster Development Lots, Subdivision Exemption Plat for Employee Housing Parcel and Subdivision Exemption Plat for Association Parcel, according to the plat recorded in the office of the Clerk and Recorder in Plat Book 1 at page _____, said point being on the southerly line of East Colorado Tract of said Idarado Exemption Plat and Plan for Cluster Development Lots, Subdivision Exemption Plat for Employee Housing Parcel and Subdivision Exemption Plat for Association Parcel, thence running easterly along said southerly line the next two (2) courses: 1) N86°28'39"E, a distance of 25.12 feet to a point of curvature; 2) along the arc of a 2,220.00 feet radius curve to the left, through a central angle of 02°38'30", an arc length of 102.35 feet; thence S06°09'51"E, a distance of 40.05 feet; thence S47°31'35"W, a distance of 74.00 feet; thence S86°28'39"W, a distance of 71.73 feet to a point on the easterly line of said Employee Housing Parcel A; thence N03°31'21"W, along said easterly line, a distance of 84.16 feet to the POINT OF BEGINNING.



 Warren L. Ruby, *Warren L. Ruby* 04
 #24966 P.L.S. #24966