

**UTILITY EASEMENT AGREEMENT**

**THIS UTILITY EASEMENT AGREEMENT (“Agreement”)** is made this 15 day of September, 2004 (“**Effective Date**”), by and between Thomas Mortell, Jr. and Ken Grodberg (“**Grantor**”) and Idarado Legacy, LLC, a Colorado limited liability company (“**Grantee**”). Grantor and Grantee are sometimes collectively referred to as the “**Parties**” and sometimes individually referred to as a “**Party**”.

**RECITALS**

- A. Grantor is the fee simple owner of certain real property described as Lot 15 and Lot 16, Block B, Royer Creek Placer, as per plat recorded in Plat Book 28, page 20, located in San Miguel County, Colorado (the “**Grantor Property**”).
- B. Grantee is the owner and developer of property generally and commonly referred to as the Idarado Legacy Subdivision (“**Idarado Subdivision**”).
- C. 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 to serve the Idarado Subdivision.
- D. 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.
- E. 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.

**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 [including utility companies and utility providers (“**Utility Provider**”)] and assigns, at no cost, a perpetual, nonexclusive easement (“**Easement**”) over and across a portion of the Grantor Property (“**Easement Area**”) as such Easement Area is depicted on attached **Exhibit “A”** and described on attached **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 only the following purposes:
  - 1.2.1. The right to design, install and construct an underground line (“**Work**”) to provide and distribute natural gas to serve the Idarado Subdivision and other properties in the vicinity, including Grantor’s Property

(“**Improvements**”) over, upon and under the Easement Area, subject to the requirements contained in Section 2. This Easement does not authorize the installation of any other utilities, nor the construction of any other improvements or facilities. The Improvements shall be constructed substantially in accordance with the plans attached as **Exhibit “C” (“Improvement Plans”)**; and

- 1.2.2. The right to repair, maintain, operate and otherwise utilize the Improvements for only purposes consistent with this Easement. Where possible, Grantee or Utility Provider shall provide reasonably, advance notice to Grantor or any repair or maintenance work to the Improvements that occur within the Easement Area.
- 1.3. This Easement is granted subject to all prior encumbrances and other matters of record, burdening and affecting Grantor Property, in San Miguel County, Colorado.
- 1.4. 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.
- 1.5. 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; (B) grant additional easements or rights-of-way upon or across the Easement Area to other persons or entities; and (C) to relocate the Improvements within the Easement Area at Grantor’s sole cost and expense as may be necessary or convenient for the installation of additional utilities to serve or extend through Grantor’s Property or to install a driveway into Grantor’s Property, provided that Grantor shall tie the Improvements into natural gas service distribution connection points along the boundary of the Grantor’s Property as approved by the Grantee’s designated natural gas Utility Provider.

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. Construction of Improvements, including the trench details shall comply with the Improvement Plans;
  - 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 of the Easement Area at the cost of Grantee;

- 2.1.3. Appropriate safety measures and devices, including temporary signage, shall be installed at appropriate locations;
- 2.1.4. All work will be done in a professional workmanlike manner;
- 2.1.5. 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 the Improvements; and
- 2.1.6. Prior to commencing the installation and construction of the underground line, Grantee agrees to obtain and maintain at its expense at all times during to the installation and construction of the underground line, a comprehensive general liability insurance policy and property damage insurance policy, or other such policy as may be required to insure Grantor against liability for bodily injury and property damage, and to compensate Grantor for any damage to the Grantor Property and residential and other improvements located thereon which may arise out of or result from Grantee's use of the Easement and the Improvements, in the minimum amount of \$1,000,000.00 combined single limit for bodily injury and property damage. Grantor shall be named as an additional insured party thereon. The insurance carrier name and form and substance of Grantee's policy shall be promptly provided to Grantor upon request by Grantor. Grantee shall deliver to Grantor an initial certificate of such insurance and subsequently upon request by Grantor.
- 2.2. **Cost of Construction of the Improvements.** Grantee is solely 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 and its designated Utility Provider shall be responsible for 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. **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 fullest 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 design, installation and construction of the underground line installation and/or the use of the Easement by Grantee, excepting any such claims or losses which are directly caused by the willful, intentional, reckless, and grossly negligent acts of Grantor, its agents or employees.
- 4.6. **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.
- 4.7. **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.
- 4.8. **Modification.** This Agreement may not be modified, except in writing signed by the Parties.

- 4.9. **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.



**GRANTEE:**

**IDARADO LEGACY, LLC,**  
a Colorado limited liability company

By: CLH-Telluride Associates, LLC,  
a Colorado limited liability company,  
Member of Idarado Legacy, LLC

By: Wildcat Land Company, its Manager

By: William R. Hegberg  
William R. Hegberg, President

Date: 9/15/04

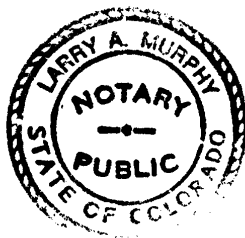
STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF Pitkin    )

Acknowledged, subscribed and sworn to before me this 15<sup>th</sup> day of September, 2004 by  
William R. Hegberg, President of Wildcat Land Company.

Witness my hand and official seal.

Larry A. Murphy  
Notary Public

My commission expires: July 2, 2005



**Exhibit "A"**  
**UTILITY EASEMENT AGREEMENT**  
**(Depiction of Easement Area)**





**Exhibit "B"**  
**UTILITY EASEMENT AGREEMENT**  
**(Legal Description of Easement Area)**


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

PROPERTY DESCRIPTION

A part of Lots 15 and 16, Block B and a part of Smuggler Street, Royer Creek Placer Townsite, according to the plat filed in the office of the Clerk and Recorder in Plat Book 28 at page 20, County of San Miguel, State of Colorado, described as follows:

Commencing at the intersection of the westerly extension of the centerline of the Alley in Block B of said Royer Creek Placer Townsite with the westerly line of said Royer Creek Placer Townsite, said line being also the easterly line of Lot 2, The Falls at Telluride, according to the plat recorded in Plat Book 1 at Pages 1403-1404, thence N20°01'01"E, along said westerly line of the Royer Creek Placer Townsite, a distance of 18.04 feet to a point lying 1.50 feet northerly of the existing northerly edge of pavement for East Colorado Avenue (2004), said point being the POINT OF BEGINNING; thence continuing northerly along said westerly line, a distance of 5.00 feet; thence S70°37'44"E, a distance of 80.82 feet to a point on the easterly line of said Lot 16, said line being also the westerly line of Lot BV1 of the Idarado Subdivision 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 Plat Book 1 at Pages 3238-3246; thence S14°51'46"W, along said easterly line of the Royer Creek Placer Townsite, a distance of 5.02 feet to a point lying 1.50 feet northerly of said edge of pavement for East Colorado Avenue; thence N70°37'44"W, parallel with and 1.50 feet northerly of said edge of pavement, a distance of 81.27 feet to the POINT OF BEGINNING.

The basis of bearings for this legal description is Geodetic North based on World Geodetic System of 1984 (WGS84) and measured by Realtime Kinematic Global Positioning System with a Base Station set at HARN monument "Foley" a 3 1/4" brass cap set in a boulder, with an approximate Latitude of North 37°56'07" and Longitude of West 107°48'00". The bearing from HARN monument "Foley" to Corner 8 of the Newport Placer, Mineral Survey No. 2167, Upper San Miguel Mining District, being a 3 1/4" brass cap set in rock LS 24954, is measured as S55°49'37"E as described on the Idarado Subdivision Exemption Plat And Plan For Cluster Development Lots, Subdivision Exemption Plat For Employee Housing Parcel And Subdivision Exemption Plat For Association Parcel.


  
 Warren L. Ruby, #24966

**Exhibit "C"**  
**UTILITY EASEMENT AGREEMENT**  
**(Depiction of Improvements)**

EXHIBIT C

UTILITY EASEMENT  
SECTION DETAIL

