

**DECLARATION OF RIVER ACCESS EASEMENT
(Idarado Legacy Subdivision)**

THIS DECLARATION (“Declaration”) is made as of the 29th day of October, 2004 (“Effective Date”) by Idarado Mining Company, a Delaware corporation, its successors and assigns (“IMC”).

RECITALS

- A. IMC is the owner of certain real property interests (“**IMC Property**”) located in San Miguel County, Colorado.
- B. Idarado Legacy, LLC, a Colorado limited liability company (“**Idarado Legacy, LLC**”) has established certain Lots, Parcels, Tracts and Outlot according to the Final Record Plat of Idarado Legacy Subdivision recorded February 10, 2004 in Plat Book 1 at Page 3238, Reception No. 364049 (“**Plat**”), as amended by the First Amendment to the Plat (“**First Plat Amendment**”) recorded on ~~November 1~~, 2004 in Plat Book 1, at Page ~~3368~~, Reception No. 370139 in the Office of the Clerk and Recorder of San Miguel County, Colorado (“**Official Records**”), and according to the Declaration of Covenants, Conditions and Restrictions for Idarado Legacy Subdivision (“**CCR’s**”), recorded in the Official Records at Reception No. 367146, as amended. The Plat, the CCR’s and other documents relating to the Idarado Legacy Subdivision are referred to as the “**Governing Documents**”.
- C. IMC desires to establish certain easements for the owners of some of the Lots (“**Lot Owners**”) to allow those Lot Owners to gain pedestrian access to and from their Lot to the San Miguel River over a portion of the IMC Property (“**River Access Easement Area**”) that is described on attached **Exhibit “A”** and is also depicted and dimensioned on the First Plat Amendment. The nature and extent of the right of each of the Lot Owners to use the River Access Easement Area is limited in the manner provided in Section 1 of this Declaration.
- D. This Declaration and the River Access Easement granted and conveyed herein is the Declaration and the River Access Easement referred to in the First Plat Amendment.
- E. In 1992, IMC agreed with the State of Colorado to implement measures known as the Remedial Action Plan (“**RAP**”) on portions of its property to prevent any further potential contamination from historic mining operations. The RAP was reviewed and approved by the United States District Court, evidenced by a Consent Decree filed with the Court under case captioned Civil Action No. 83-C-2385, which Consent Decree was signed by IMC, the State of Colorado and other parties of interest, of record (“**Consent Decree**”). Copies of the Consent Decree, RAP and related documents are of record and can also be found on the website for the Idarado Legacy Subdivision at www.idaradolegacy.com. Nothing herein shall limit or preclude IMC from complying with its obligations under the RAP or the Consent Decree.
- F. The term “**Parties**” as used herein shall refer to IMC and each subsequent and future Lot Owner.

COVENANTS/AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, IMC hereby declares that the IMC Property shall be held, sold, used and conveyed subject to the following easements and

covenants which are for the purpose of protecting the value and desirability of and which shall run with title to the property subjected to this Declaration.

Section 1.
Grant of Easement.

1.1. Grant of River Access Easement.

- 1.1.1. Subject to the termination rights of IMC as provided below, IMC hereby creates, grants and conveys only to the Owner of each Lot specifically benefited by these easements, a perpetual, non-exclusive easement ("**River Access Easement**") over and across that portion of the IMC Property depicted and described on the First Plat Amendment and titled the River Access Easement Area.
- 1.1.2. The grant of the River Access Easement is intended to benefit only the Lot that adjoins the IMC Property as the same is specifically designated on the First Plat Amendment ("**Benefited Easement**") and may be used only by the Owner of the Lot and the guests and invitees of the Owner ("**Benefited Owner**"). A Benefited Owner shall only have the right to access that portion of the River Access Easement Area that is specifically designated to that particular Lot. For example, only the Owner of Lot P-3 may use the Lot P3 River Access Easement as depicted on the First Plat Amendment and the Owner of Lot P-3 may not use the adjoining Lot P2 River Access Easement or the Lot P4 River Access Easement.
- 1.1.3. The River Access Easement may not be used by the Owner of any of the other Lots, by the Association or by the general public.
- 1.1.4. A Benefited Owner shall not designate or assign its rights in and to the Benefited Easement to any other person or party and any such assignment made by a Benefited Owner shall be invalid and ineffective.

1.2. Allowed, Restricted and Prohibited Uses of Easement.

- 1.2.1. A Benefited Owner shall be allowed to use the Benefited Easement for ("**Allowed Uses**"): (a) pedestrian, non-motorized access to and from the Lot and the San Miguel River; and (b) passive recreational uses and activities. Allowed Uses may only occur within the River Access Easement Area and not anywhere else on any other property owned by IMC.
- 1.2.2. The uses and activities stated below are allowed ("**Restricted Uses**") within the River Access Easement Area only when specifically approved in advance in writing by IMC, which approval will not be unreasonably withheld, provided that such undertakings do not unreasonably affect IMC's rights, duties and obligations under the RAP and/or the Consent Decree. If IMC authorizes an activity, the Benefited Owner may only undertake the activity after obtaining and complying with required governmental approvals, including, without limitation, county approvals, state approvals and federal approvals, if any, necessary for the use and activity ("**Required Governmental Approvals**"):

- A. Construction or installation of low impact outdoor, non-habitable improvements or structures ("**Permitted Improvements**"), which comply with the Idarado Legacy Subdivision Design Guidelines, including excavation related to the Permitted Improvements. The Permitted Improvements may not be constructed below or south of the Elevated Area as indicated on the Plat and the First Plat Amendment;
 - B. Landscaping, grassing and tree planting in areas above the "Elevated Area" as depicted and defined in the Plat, subject to the requirements of the County Weed Ordinance; and
 - C. Landscaping, grassing and tree planting in areas below the "Elevated Area" as depicted and defined in the Plat, subject to the requirements of the County Weed Ordinance, with the permission of IMC and San Miguel County.
- 1.2.3. The uses and activities stated below are strictly prohibited anywhere within the River Access Easement Area ("**Prohibited Uses**");
- A. Spraying of chemicals or distribution of fertilizers below the "Elevated Area" as depicted and defined in the Plat;
 - B. Activities which will damage or impair the San Miguel River or its riparian area; and
 - C. Other activities which in the reasonable judgment of IMC could expose IMC to additional liability, obligations or costs in connection with its requirements under the Consent Decree or RAP.
- 1.2.4. The uses and activities provided for herein are subject to applicable requirements and limitations present under the San Miguel County land use code, the County Approvals which are defined in the First Plat Amendment and applicable restrictions contained under other county, state or federal law. No representation is made that the uses allowed hereunder will be allowed after the completion of the Required Governmental Approvals.
- 1.3. **Association Consent.** By its execution below, the Association does hereby consent to and agree to the terms and conditions stated herein, including each of the specific obligations imposed upon the Association by this Declaration.

Section 2.
Miscellaneous.

- 2.1. **Heirs, Successors and Assigns.** The easements and covenants, together with rights, duties and benefits granted and agreed to herein, and the burdens and obligations imposed and agreed to herein, shall be binding upon and shall inure to the benefit of and shall be a burden upon the heirs, designees, guests, successors and assigns of each Benefited Owner then owning the Lot benefited by the Benefited Easement.

- 2.2. **Run With The Land.** The easements and covenants granted and created herein shall run with and be for the benefit of the Lot benefited by the Benefited Easement and shall run with and be a burden upon only that portion of the IMC Property defined as the River Access Easement Area.
- 2.3. **Modification.** This Declaration may be amended by written instrument executed by IMC and each affected Benefited Owner and without any requirement to amend the Plat or the First Plat Amendment.
- 2.4. **Recordation.** This Declaration shall be recorded by IMC in the Official Records.
- 2.5. **No 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 easements. It is understood and agreed that this Declaration is an easement only and in no way grants or conveys any part of the underlying fee simple estate of any lands owned by an Owner.
- 2.6. **Indemnification.** Each Benefited Owner, in using the Benefited Easement, does hereby for themselves (and for and on behalf of their guests, invitees, employees, representatives, agents and the like) agree to indemnify, defend and hold harmless IMC and Idarado Legacy, LLC from and against any and all claims, actions, judgments, liabilities, obligations, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and other professional fees (if and to the extent permitted by law), affecting any person or property, arising directly or indirectly to out of or in connection with such Benefited Owner (their guests, invitees, employees, representatives, agents and the like) use of the River Access Easement.
- 2.7. **Termination of Easement.** IMC may terminate the River Access Easement or any portion thereof if it reasonably determines, after notice and an opportunity for cure, that a Benefited Owner has materially breached the terms, conditions and limitations contained in this Easement. Prior to terminating the River Access Easement as it relates to a Benefited Owner, IMC shall send written notice to the address that appears in the records of the County Assessor. The Notice shall state the nature and extent of the alleged default, indicate the steps that the defaulting party must undertake to come into compliance with the Easement and establish the period of time within which cure must occur. Should IMC reasonably determine that the defaulting party has failed to cure the alleged default to the satisfaction of IMC within the cure period stated in the notice of default, IMC may thereupon record its notice of termination in the Official Records and the rights of the Benefited Owner to the Benefited Easement shall thereafter immediately terminate.
- 2.8. **Enforcement and Remedies.** This Declaration 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. Venue is restricted to San Miguel County, Colorado. A Party may pursue any and all available rights and remedies in enforcing their rights hereunder. A Party has a right to 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.

IN WITNESS WHEREOF, IMC has executed this Declaration as of the Effective Date.

Idarado Mining Company,
a Delaware corporation

By: *William S. Lyle*
William S. Lyle, Vice President

Date: 10/28/04

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

Acknowledged, subscribed and sworn to before me this 28th day of October, 2004 by William S. Lyle, as the Vice President of Idarado Mining Company.

Witness my hand and official seal.

Kimberly A. Risner
Notary Public

My commission expires: 10/16/2006




EXHIBIT "A"

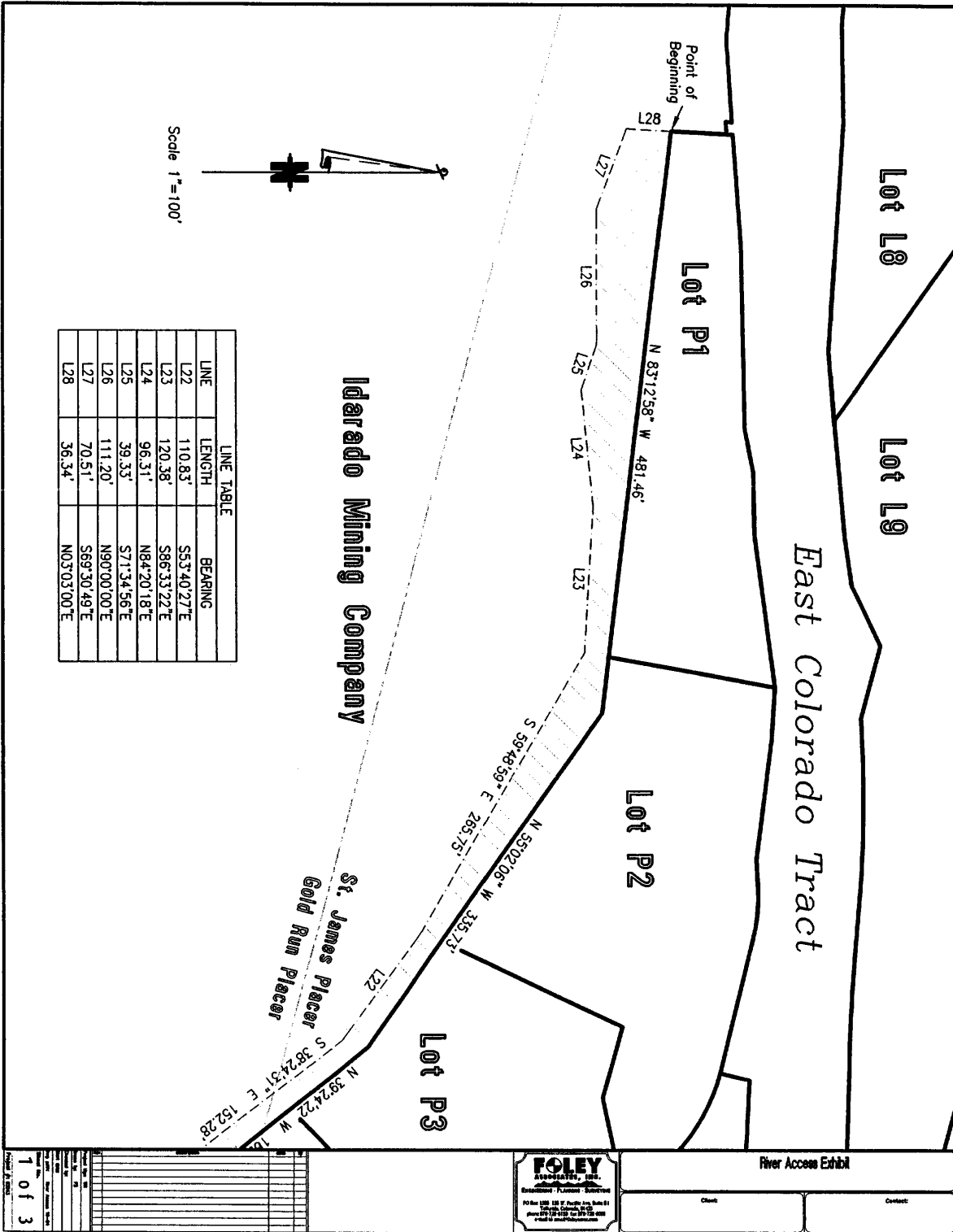
FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385
TELLURIDE, CO 81435
970-728-6153

PROPERTY DESCRIPTION

A part of the Gold Run Placer MS 554 together with a part of the St. James Placer MS 1005, Upper San Miguel Mining District, County of San Miguel, State of Colorado, described as follows:

Beginning at the southwest corner of Lot P1 of the First Amendment to the Final Idarado Subdivision Exemption Plat and Plan for Cluster Development Lots and First Amendment to the Subdivision Exemption Plat for Association Parcel, according to the plat recorded in the office of the Clerk and Recorder in Plat Book 1 at pages ~~336~~ - ~~337~~, thence running along the southerly line of said First Amendment to the Final Idarado Subdivision Exemption Plat and Plan for Cluster Development Lots and First Amendment to the Subdivision Exemption Plat for Association Parcel the next eighteen (18) courses: 1) S83°12'58"E, a distance of 481.46 feet; 2) S55°02'06"E, a distance of 335.73 feet; 3) S39°24'22"E, a distance of 169.77 feet; 4) S26°58'45"E, a distance of 90.78 feet; 5) S44°38'10"E, a distance of 89.25 feet; 6) S43°27'49"E, a distance of 178.04 feet; 7) S77°45'11"E, a distance of 46.76 feet; 8) S18°20'46"E, a distance of 54.79 feet; 9) S43°36'34"E, a distance of 110.95 feet; 10) S33°32'23"E, a distance of 71.50 feet; 11) S40°59'42"E, a distance of 186.07 feet; 12) S87°14'47"E, a distance of 213.42 feet; 13) S42°57'29"E, a distance of 69.60 feet; 14) S61°13'14"E, a distance of 90.53 feet; 15) S87°13'57"E, a distance of 5.40 feet; 16) N82°04'45"E, a distance of 52.17 feet; 17) N74°34'07"E, a distance of 32.51 feet; 18) N15°24'14"E, a distance of 51.81 feet to a point on the east line of Lot P8 of said First Amendment to the Final Idarado Subdivision Exemption Plat and Plan for Cluster Development Lots and First Amendment to the Subdivision Exemption Plat for Association Parcel; thence running along the next twenty two (22) courses: 1) N56°48'24"W, a distance of 115.83 feet; 2) N63°18'23"W, a distance of 141.18 feet; 3) N69°08'00"W, a distance of 67.94 feet; 4) N56°19'25"W, a distance of 70.56 feet; 5) N60°10'39"W, a distance of 81.45 feet; 6) N73°26'30"W, a distance of 106.58 feet; 7) N37°17'38"W, a distance of 70.25 feet; 8) N25°08'13"W, a distance of 42.94 feet; 9) N31°17'52"W, a distance of 54.32 feet; 10) N44°02'51"W, a distance of 203.93 feet; 11) N41°26'41"W, a distance of 220.76 feet; 12) N32°55'53"W, a distance of 95.55 feet; 13) N25°39'48"W, a distance of 99.03 feet; 14) N38°24'31"W, a distance of 152.28 feet; 15) N53°40'27"W, a distance of 110.83 feet; 16) N59°48'59"W, a distance of 265.75 feet; 17) N86°33'22"W, a distance of 120.38 feet; 18) S84°20'18"W, a distance of 96.31 feet; 19) N71°34'56"W, a distance of 39.33 feet; 20) S90°00'00"W, a distance of 111.20 feet; 21) N69°30'49"W, a distance of 70.51 feet; 22) N03°03'00"E, a distance of 36.34 feet to the POINT OF BEGINNING.

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




LINE	LENGTH	BEARING
L22	110.83'	S53°40'27"E
L23	120.38'	S86°33'22"E
L24	96.31'	N84°20'18"E
L25	39.33'	S71°34'56"E
L26	111.20'	N90°00'00"E
L27	70.51'	S69°30'49"E
L28	36.34'	N03°03'00"E

Idarado Mining Company

St. James Placer
Gold Run Placer

East Colorado Tract

Lot L8

Lot L9

Point of Beginning

Lot P1

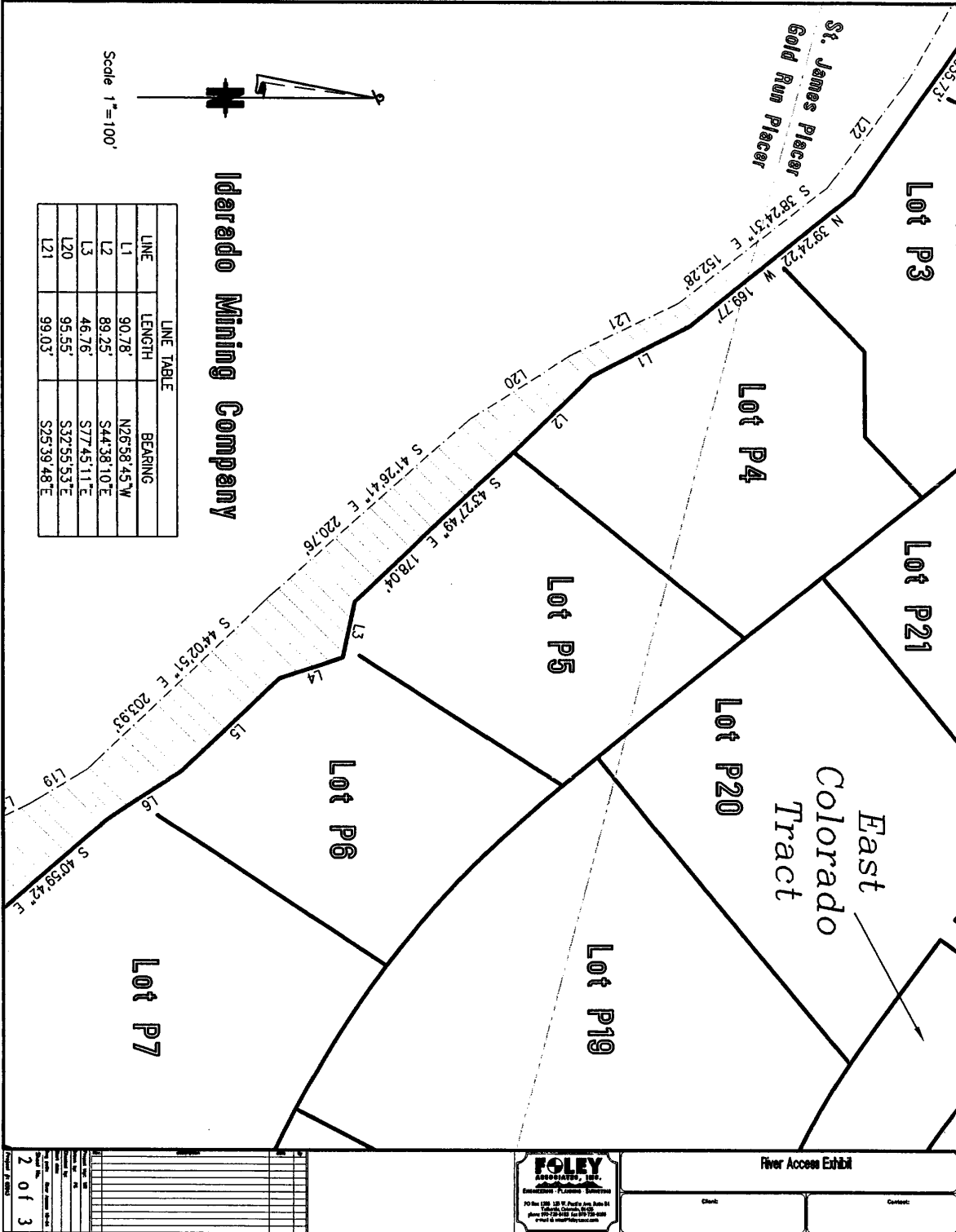
Lot P2

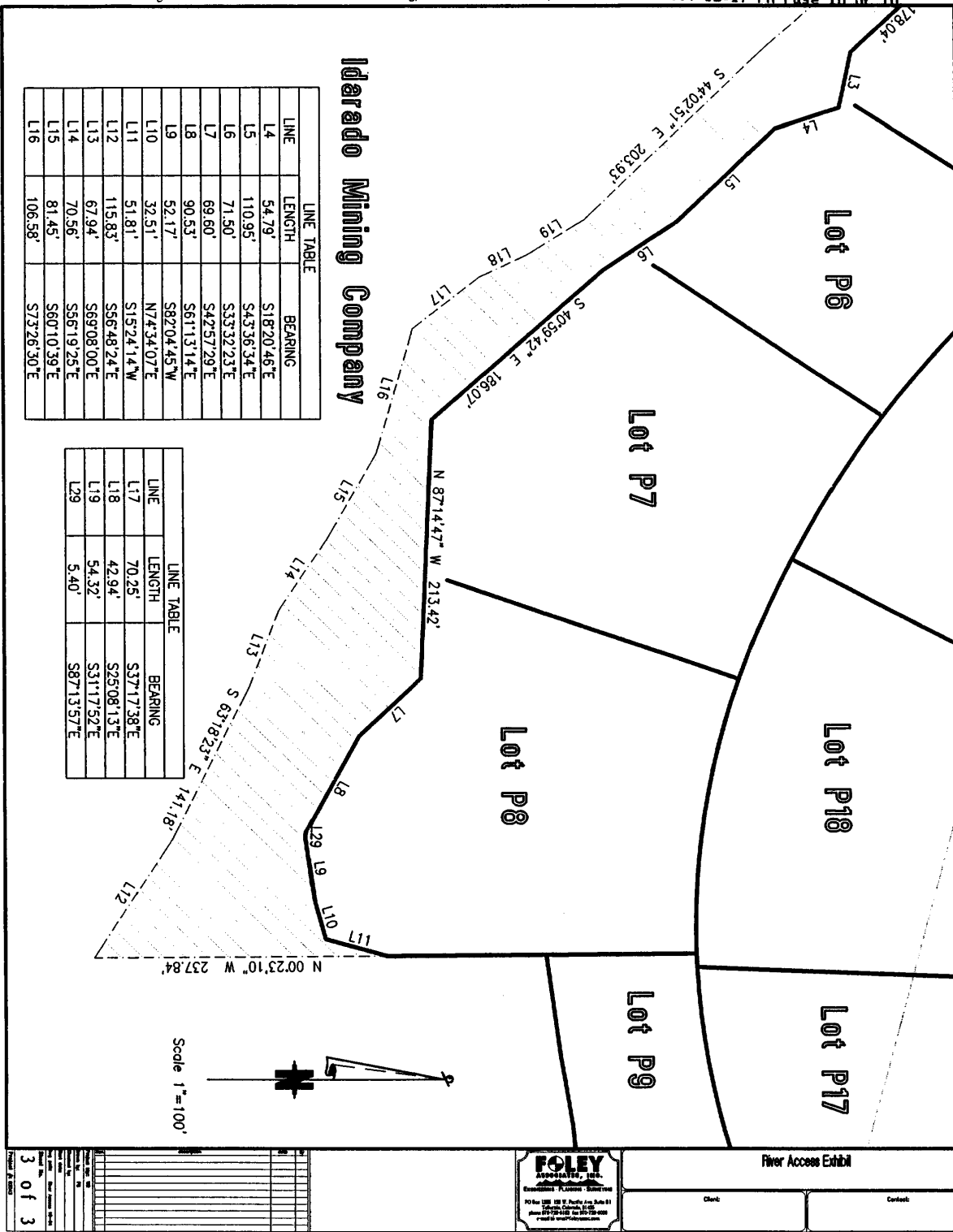
Lot P3

River Access Exhibit

FOLEY
SURVEYING, INC.
Professional Surveyors
1000 10th St. N. Suite 101
Fargo, ND 58103
Phone: 701.785.1234
Fax: 701.785.1235
www.foley-surveying.com

Client: _____ Contact: _____





FOLEY ASSOCIATES, INC.
 Registered Professional Surveyors
 101 West 12th Street, Suite 811
 Omaha, Nebraska 68102
 Phone: 402-552-1212 Fax: 402-552-1211
 e-mail: fo@foleyassociates.com

River Access Exhibit

Client: _____

Contact: _____

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