

**DECLARATION OF SERVICE EASEMENTS  
(Association Parcel, Idarado Legacy Subdivision)**

**THIS DECLARATION OF SERVICE EASEMENTS** (“**Declaration**” or “**Agreement**”) is made as of this 14<sup>th</sup> day of July, 2005 (“**Effective Date**”) by Idarado Mining Company, a Delaware corporation (“**Declarant**” or “**IMC**”). Idarado Legacy, LLC, a Colorado limited liability company (“**Idarado Legacy**”) and Idarado Legacy Owners Association, Inc. (“**Association**”) each join in and consent to the terms, conditions and provisions stated in this Declaration for the purposes stated herein and their respective agreements to be bound thereby.

**RECITALS**

A. Idarado Legacy is the owner of certain real property interests located in San Miguel County, Colorado, described as Association Parcel (“**Lot**”) according to the Final Record Plat of Idarado Legacy Subdivision recorded February 10, 2004 in Plat Book 1 at Page 3238, Reception No. 364049 in the Office of the Clerk and Recorder of San Miguel County, Colorado (“**Official Records**”) (“**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 Official Records, as amended by the Second Amendment to the Plat (“**Second Plat Amendment**”) recorded on August 18, 2005 in Plat Book 1, at Page 3508, Reception No. 377041 in the Official Records, as may be further amended, 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 Idarado Legacy Subdivision is referred to as the “**Community**”. The Plat, First Plat Amendment, the Second Plat Amendment, the Declaration (as amended) and other documents relating to the Idarado Legacy Subdivision and the Community are referred to as the “**Governing Documents**”. Pursuant to the Governing Documents, Declarant also caused to be created the Association to exist and operate in accordance with the Governing Documents.

B. IMC is the owner of certain real property interests located in San Miguel County, Colorado which is adjacent to the Lot (“**IMC Property**”), a portion of which is burdened by the Service Easement (“**Burdened IMC Property**”).

C. Declarant desires to establish, create, grant, convey and reserve certain easements (“**Service Easement**”) for the owner of the Lot (“**Lot Owner**”) and for the Association and Idarado Legacy to allow the Lot Owner and/or the Association and Idarado Legacy to construct and/or install certain improvements within the Service Easement Areas (defined below), including: (i) a certain “**Driveway**” in accordance with plans and specifications acceptable to the Lot Owner, Declarant and San Miguel County, Colorado, and (ii) certain utility extensions (“**Utilities**”)(collectively, the “**Improvements**”).

D. The Improvements are for the benefit of the Association Parcel, the Association and Idarado Legacy.

E. This Declaration is the Declaration of Service Easement (Association Parcel, Idarado Legacy Subdivision) referred to in the Second Plat Amendment.

F. The portions of the IMC Property that is burdened by the Service Easement (“**Service Easement Area**”) are depicted and legally described on the Second Plat Amendment and is specifically labeled and designated as the Declaration of Service Easement For The Association Parcel.

G. The term “**Parties**” as used herein shall refer to IMC, Idarado Legacy and the Association.

### COVENANTS/AGREEMENTS

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, Declarant hereby declares that the 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.

#### 1. Service Easement.

1.1. **Creation, Reservation and Grant of Use Easement.** Declarant, as the current, fee simple owner of the Burdened IMC Property, does hereby reserve unto itself, for its use and for the use of its successors, transferees, designees and assigns, and Declarant does further hereby create, grant, convey for the use and benefit of each of the Idarado Legacy, and the Association, a perpetual, non-exclusive easement, the Service Easement, over and across the Service Easement Area.

1.2. **Allowed Uses of Easement.** The Service Easement and the Service Easement Area may be used by Declarant, Association and/or Idarado Legacy for each of the following purposes (“**Allowed Uses**”):

1.2.1. To design, install and construct the Improvement to serve existing or future improvements on the Association Parcel.

1.2.2. To enable vehicular and pedestrian ingress and egress to and from the the Association Parcel and East Colorado Avenue by the Association, including its designees, transferees, successors and assigns;

1.2.3. To use, replace, maintain and repair the Improvements;

1.2.4. To allow for construction access to enable the construction of structures on the Association Parcel;

1.3. **Prior Encumbrances.** This Service Easement is granted subject to all prior encumbrances and other matters of record, burdening and affecting the Burdened IMC Property in San Miguel County, Colorado.

1.4. **Reservation of Right.** Declarant maintains the right to use and enjoy the land covered by the Service Easement Area for all lawful purposes that will not unreasonably interfere with the rights hereby granted to Legacy and the Association.

1.5. **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.

1.6. **Idarado Legacy Consent.** By its execution below, Idarado Legacy does hereby consent to and agree to the terms and conditions stated herein, including each of the specific obligations imposed upon Idarado Legacy by this Declaration.

2. **Costs and Expenses for Design, Construction and Maintenance of the Improvements.** All costs associated with the design, construction and maintenance of the Improvements shall be incurred by the Association.

3. **Miscellaneous.**

3.1. **Heirs, Successors and Assigns.** The easements, duties, benefits and rights 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, contractors, successors and assigns of Legacy and the Association.

3.2. **Run With The Land.** The easements granted herein shall run with and be for the benefit of the Benefited Lot and shall run with and be a burden upon that portion of the Burdened IMC Property defined as the Service Easement Area.

3.3. **Modification.** This Declaration may be amended by written instrument executed by each Declarant and the Association and without any requirement to amend the Plat, or the First Plat Amendment or the Second Plat Amendment.

3.4. **Recordation.** This Declaration shall be recorded by the Declarant in the Official Records.

3.5. **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.

3.6. **Indemnification.** Association agrees to indemnify, defend and hold harmless Declarant from and against all liens or claims for payment for construction, repair or maintenance of the Improvements, and for any liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and other professional fees (if and to the extent permitted by law), incurred by any person or entity in connection with, arising out of or related in any way to the failure to pay for work associated with the Improvements, or any injury to or death of any person, or damage to or loss of any property, or damages which may be imposed upon, incurred by, or asserted against a Party arising, directly or indirectly, out of or in connection with such Party's (including their guests, invitees, employees, representatives, agents, contractors, subcontractors, suppliers and materialmen) use of the Improvements and/or the Service Easement Area or by, through or under such Party's guests, invitees, employees, representatives, agents, contractors, subcontractors, suppliers and materialmen.

3.7. **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 the then current status of performance hereunder, each party bound or benefited by this Declaration 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 Declaration.

3.8. **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 Party's 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, Declarant has executed this Declaration as of the Effective Date.

**DECLARANT:**

Idarado Mining Company,  
a Delaware corporation

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

Date: 7/1/05



MY COMMISSION EXPIRES 4/5/2008

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

Acknowledged, subscribed and sworn to before me this 1<sup>st</sup> day of July, 2005 by William S. Lyle, as the Vice President of Idarado Mining Company.

Witness my hand and official seal.  
*J. Dolan*  
Notary Public

My commission expires: 4/5/08

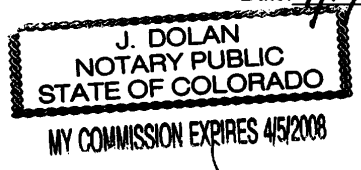


**ASSOCIATION CONSENT:**

Idarado Legacy Homeowners Association,  
a Colorado nonprofit corporation

By: [Signature]  
J. Christopher Chaffin, President

Date: 7/14/05



STATE OF COLORADO )  
COUNTY OF San Miguel ) ss.

Acknowledged, subscribed and sworn to before me this 14<sup>th</sup> day of July, 2005 by J. Christopher Chaffin, President of Idarado Legacy Owners Association.

Witness my hand and official seal.  
[Signature]  
Notary Public

My commission expires: 2/15/08

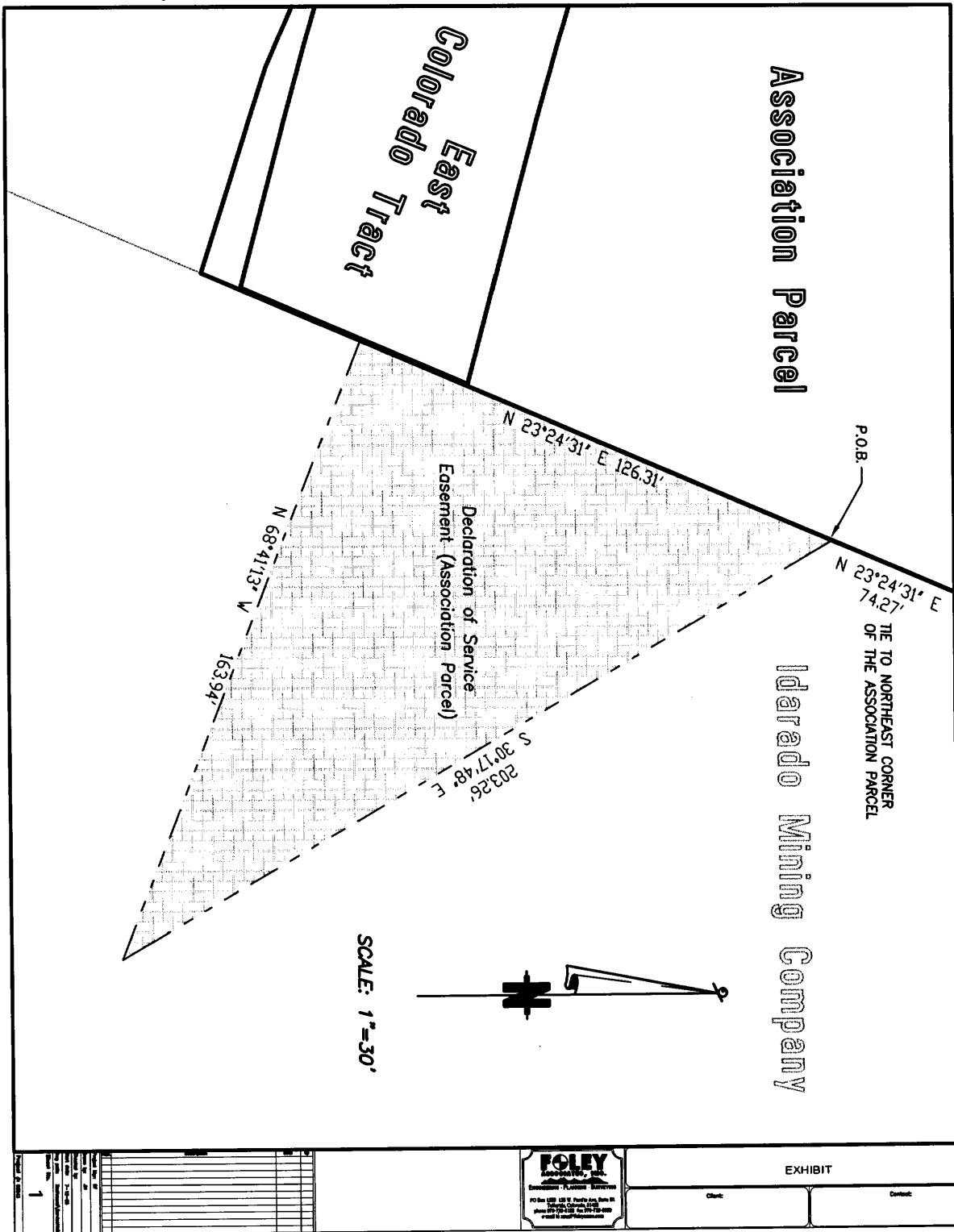
**EXHIBIT "A"**  
**DECLARATION OF EASEMENT**  
**(Allocated Interests)**

<b>Lot Designation</b>	<b>Allocated Share of Expenses</b>
Association Parcel	100%



**(DEPICTION OF EASEMENT AREA)**

This depiction is appended for reference purposes. The depiction of the Service Easement Area is as depicted on the Second Plat Amendment.



NO.	DATE	DESCRIPTION
1		

**FOLEY**  
 Surveyors & Engineers, Inc.  
 1000 E. 10th St., Suite 100  
 Denver, CO 80202  
 Phone: (303) 733-1100  
 Fax: (303) 733-1101

EXHIBIT	
Sheet	Sheet

**(DESCRIPTION OF EASEMENT AREA)**

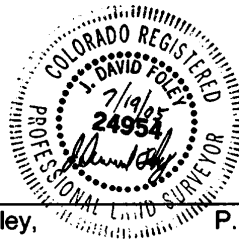
This description is appended for reference purposes. The description of the Service Easement Area is as described on the Second Plat Amendment.

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

PROPERTY DESCRIPTION

A part of the P&O Placer, MS 2346, Upper San Miguel Mining District, San Miguel County, Colorado, described as follows:

Beginning at a point on the easterly boundary of the Association Parcel as shown on the Second Amendment to the Final Idarado Subdivision Exemption Plat and Plan for Cluster Development Lots recorded in the office of the Clerk and Recorder in Plat Book 1 at page \_\_\_\_\_, from which the northeast corner of said Association Parcel bears N 23°24'31" E a distance of 74.27 feet; thence S 30°17'48" E a distance of 203.26 feet; thence N 68°41'13" W a distance of 163.94 feet to the east boundary of said Association Parcel; thence N 23°24'31" E a distance of 126.31 feet to the POINT OF BEGINNING.



J. David Foley, P.L.S. #24954