

**DECLARATION OF SERVICE EASEMENTS  
(Lot L-6 and L-8, 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 Legacy, LLC, a Colorado limited liability company (“**Idarado Legacy**”) and Idarado Mining Company, a Delaware corporation (“**IMC**”)(Idarado Legacy and IMC are sometimes collectively referred to as the “**Declarant**” or “**Declarants**”).

**RECITALS**

A. Idarado Legacy is the owner of certain real property interests located in San Miguel County, Colorado, described as Lot L-6 and Lot L-8 (“**Lots**”) 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 10, 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 Idarado Legacy Owners Association, Inc. (“**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 Lots (“**IMC Property**”), a portion of which is burdened by the Service Easement (“**Burdened IMC Property**”).

C. Declarants desire to establish, create, grant, convey and reserve certain easements (“**Service Easement**”) for the owners of the Lots (“**Lot Owner(s)**”) to allow the Lot Owners 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 Owners, Declarant and San Miguel County, Colorado, and (ii) certain utility extensions (“**Utilities**”)(collectively, the “**Improvements**”).

D. The Improvements are deemed to be “shared” between the Benefited Lots and for purposes of this Agreement “sharing” shall mean a Driveway or Utility actually being used by a Benefited Lot.

E. This Declaration is the Declaration of Service Easement (Lot L-6 and Lot L-8, Idarado Legacy Subdivision) referred to in the Second Plat Amendment.

F. The Lots that include an area burdened by the Service Easement are Lot L-6 and Lot L-8, Idarado Legacy Subdivision (collectively, the “**Burdened Lots**”). The portions of the IMC Property and

the Burdened Lots that are 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 Lot L-6 and Lot L-8.

G. The Lots that are benefited by the Service Easement are Lot L-6 and Lot L-8 (collectively, the “**Benefited Lots**”) and also includes the IMC Property.

H. The term “**Lot Owner**” as used herein shall refer to then current fee simple owner of either a Burdened Lot or a Benefited Lot (as the context may provide).

I. The term “**Parties**” as used herein shall refer to IMC, Idarado Legacy, Association and each subsequent and future Lot Owner.

#### 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.** Each Declarant, as the current, fee simple owner of the Burdened IMC Property and the Burdened Lots and the Benefited Lots, does hereby reserve unto itself, for its use and for the use of its successors, transferees, designees and assigns, and each Declarant does further hereby create, grant, convey for the use and benefit of each of the Association and the Lot Owners of the Benefited Lots, 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 or a Lot Owner of a Benefited Lot for each of the following purposes (“**Allowed Uses**”):

1.2.1. To design, install and construct the Driveway and associated retaining walls, drainage facilities, and the like to serve existing or future improvements on each of the Benefited Lots and to undertake associated grading.

1.2.2. To design, install and construct Utilities to serve existing or future improvements on each of the Benefited Lots.

1.2.3. Any Driveway and/or Utilities shall comply with applicable laws, regulations and guidelines of San Miguel County, as determined by the County, and the Governing Documents, as determined by the Design Review Board for the Idarado Legacy Subdivision (as defined by the Governing Documents)(“**DRB**”), which Driveway and Utilities may require, as necessary, the installation of associated lateral support structures, drainage, safety structures, and such landscaping, hardscaping and address monumentation and lighting at the entryway of the Driveway as the same may be approved by San Miguel County and the DRB;

1.2.4. To enable vehicular and pedestrian ingress and egress to and from the Benefited Lots and East Colorado Avenue by each Lot Owner, including their guests and invitees;

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

1.2.6. To allow for construction access to enable the construction of structures on the Benefited Lots;

1.2.7. The Declarants and the Association are specifically authorized to use the that portion of the Service Easement and the Driveway located on Outlot C to gain access to Outlot C to provide occasional access to and from the Rockfall Fence for Liberty Bell to undertake construction, maintenance, repair or replacement of the Rockfall Fence for Liberty Bell or other required work for the benefit of the Community and for Declarant IMC to gain access as necessary to Outlot C to undertake any required work or remediation required by law. Neither Declarants or the Association will be obligated to pay any costs for the construction, maintenance, repair or replacement of the Improvements as a result of its use of the Improvements pursuant to this Section, except that the respective Declarants and Association shall be responsible to repair, at the cost of the Association, any damage caused to the Improvements as a result of its use of the Service Easement pursuant to this Section.

1.3. **Prohibited Uses of Easement.** The use of the Service Easement and the Service Easement Area is restricted and may not be used by a Lot Owner of a Benefited Lot for any of the following purposes ("**Prohibited Uses**");

1.3.1. No Lot Owner of a Benefited Lot may park or allow to be parked or stored any type of vehicles for any duration of time.

1.3.2. No Lot Owner of a Benefited Lot may stage construction or store materials or equipment for any duration of time.

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

1.5. **Reservation of Right.** Declarants and each Lot Owner of a Burdened Lot 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 each of the Lot Owners of the Benefited Lots.

1.6. **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.

2. **Construction of the Driveway, Utilities and Other Improvements.** Construction of the Improvements shall occur in accordance with the following provisions:

2.1. Any Lot Owner of a Benefited Lot may elect to initiate the process for constructing the Improvements ("**Initiating Owner**"). Upon such election, the Initiating Owner shall cause to be prepared a site design plan for the Improvements ("**Easement Area Site Plan**") and an

application for review and approval by the DRB, made in accordance with the Governing Documents and the Design Guidelines. The Easement Area Site Plan and any application to construct an Improvement shall only be made in connection with the submission of plans for residences on a Benefited Lot. The DRB shall grant final approval of the Improvements.

2.2. The Easement Area Site Plan shall be prepared by a qualified person and shall comply with all applicable laws and regulations of San Miguel County and shall meet the requirements of the Governing Documents.

2.3. At a minimum, the Easement Area Site Plan shall depict, describe or summarize each of the following elements: (a) the location of the Improvements; (b) plans and specifications for the Improvements; (c) grading and disturbance that will occur in connection with the Improvements; (d) details for landscaping, hardscaping and lighting; (e) a schedule for the initiation and completion of the Improvements; and (f) a budget for the Improvements.

2.4. If the Improvements are to be "shared" by more than one Benefited Lot, the initiating Lot Owner of the Benefited Lot ("**Initiating Owner**") shall obtain not less than two written bids from a qualified contractor to install the Improvements ("**Written Bid**"), which the Lot Owners will review and will mutually agree upon the preferred bid. In designing a Driveway, the Initiating Owner shall design and locate it such that scenic, environmental and visual impacts, including headlights, to other Lots are sensitively considered and addressed as well as allowing for reasonably adequate and appropriate access to the other Benefited Lots which are going to use the Driveway. Prior to submission of the Easement Area Site Plan to the DRB, the Initiating Owner shall send a copy of the Easement Area Site Plan and Written Bid to any other Lot Owner of a Benefited Lot ("**Receiving Owner**"). The Receiving Owner shall review and provide written comments to the Initiating Owner and the DRB within 30 days of the sending date. If the Receiving Owner is not satisfied with the proposals, the parties will meet and confer and endeavor to resolve their disagreements. If unsuccessful, the parties shall notify the DRB and the DRB shall thereupon be authorized to resolve the disagreement and the decision of the DRB will be final in this regard.

2.5. In all instances, a copy of the Easement Area Site Plan shall be sent to the Lot Owner of each Burdened Lot for review and comment, which comments shall be sent to the DRB. The Receiving Owner shall review and provide written comments to the Initiating Owner and DRB within 30 days of the sending date.

2.6. The Initiating Owner shall obtain review and approval by San Miguel County of any element shown in the Easement Area Site Plan that requires County approval and shall make any modifications to the Easement Area Site Plan required by San Miguel County.

2.7. Construction of the Improvements shall be completed no later than twelve months after approval of the Easement Area Site Plan is granted by the DRB. The Improvements shall be constructed in accordance with the Easement Area Site Plan approved by the DRB.

2.8. The cost of the design, permitting, construction and the maintenance and repair of the Improvements included in the Easement Area Site Plan ("**Improvement Costs**") will be shared by each Lot Owner of the Benefited Lot in accordance with the shares allocated to each of the Benefited Lot(s) ("**Allocated Share**") as stated on attached Exhibit "A" and shall be paid as provided for in Section 4, below. Neither the Declarant, the Association nor the Lot Owner of other Lots in the Idarado Legacy

Subdivision, not benefited by the Service Easement, will have any obligation to pay for any of the Improvement Costs.

2.9. In the event that either Declarant or the Association elects to undertake any Improvements hereunder, Declarants and/or the Association are exempt from the requirements of Section 2.

3. **Costs and Expenses for Design and Construction of the Improvements.**

3.1. **Reimbursement For Design and Construction.** When the Improvements are to be shared by more than one Benefited Lot, the Lot Owners of each of the other Benefited Lots ("**Reimbursing Owner**") each agree to reimburse the Initiating Owner for its Allocated Share of Eligible Expenses on or before the date that the Reimbursing Owner has applied for a building permit to undertake construction of a residence on that Reimbursing Owner's Benefited Lot. If the Improvements are to be used by only one Benefited Lot, the Lot Owner of that Benefited Lot shall have sole responsibility to pay for the construction of the Improvements. If agreed to be Parties being asked to reimburse the Lot Owner of a Benefited Lot, the Improvements may include additional features and components such as additional landscaping, entry features and the like.

3.2. **Declarants and Association Exempt from Cost Reimbursement Requirements.** Should either Declarant and/or the Association elect to use the Improvements, they are deemed exempt from the obligation to make cost reimbursements hereunder.

3.3. **Eligible Expenses.** "**Eligible Expenses**" shall include costs, expenses and fees for engineering, design, surveying, legal fees, regulatory permit processing and permit fees, insurance, actual construction costs (labor and materials), taxes, construction inspection/management fees and other similar costs and fees actually incurred in connection with the Improvements.

3.4. **Election Not to Use Improvements.** If a Lot Owner of a Benefited Lot elects to use other means of providing access other than the Driveway or extending Utilities (acceptable to the DRB), the Lot Owner of that Benefited Lot will not be obligated to share in the cost of designing or constructing the Improvements as provided for herein. The shares attributable to the Lot Owner electing not to use the Improvements will be reallocated to the remaining Benefited Lots in a manner that is proportional to their allocated shares. In the event the Lot Owner of that Benefited Lot subsequently reverses their election and seeks to use the established Improvements, as a precondition to their ability to use the Improvements, the Lot Owner will then be responsible for making the required reimbursement, as calculated herein, together with interest at the prime rate on the share attributable to the Benefited Lot, which interest shall accrued from the date that reimbursement was due.

4. **Costs and Expenses for Maintenance and Repair of the Improvements.**

4.1. The Association shall undertake maintenance, repair and replacement of the following described portion of the Improvements: the retaining wall and drainage facilities. The costs associated with such work shall be assessed by the Association in the manner provided for in the Governing Documents.

4.2. After the Improvements are installed and in those instances where the Improvements are to be shared by more than one Benefited Lot, the Lot Owners of the Benefited Lots

shall meet, confer and agree on the manner, form, method and frequency by which the Improvements are to be maintained by each of the Lot Owners ("**Maintenance Plan**"). Thereafter, the Lot Owners shall meet and confer annually or more or less frequently as may be necessary, to discuss issues concerning the maintenance, repair and replacement of the Improvements and at that annual meeting, the Lot Owners shall establish and approve a budget for the Improvements ("**Maintenance Budget**") for the maintenance and repairs that are believed to be incurred in the upcoming year. If the Improvements are to be used by only one Benefited Lot, the Lot Owner of that Benefited Lot shall have sole responsibility to pay for the required maintenance and need not prepare a Maintenance Plan or a Maintenance Budget.

4.3. A copy of the Maintenance Plan and the Maintenance Budget shall be sent to the Association for review and comment.

4.4. Should either Declarant and/or the Association elect to use the Improvements, they are deemed exempt from the obligation to make cost reimbursements for maintenance hereunder.

4.5. If a Lot Owner of a Benefited Lot elects to use other means of access or extending Utilities, the Lot Owner of that Benefited Lot will not be obligated to share in the cost of maintaining or repairing the Improvements as provided for herein. The shares attributable to the Lot Owner electing not to use the Improvements will be reallocated to the remaining Benefited Lots in a manner that is proportional to their allocated shares. In the event the Lot Owner of that Benefited Lot subsequently reverses their election and seeks to use the established Improvements, as a precondition to their ability to use the Improvements, the Lot Owner will then be responsible for making the required reimbursement, as calculated herein, together with interest at the prime rate on the share attributable to the Benefited Lot, which interest shall accrued from the date that reimbursement was due.

4.6. Within thirty days of the approval of the Maintenance Plan, each Lot Owner of a Benefited Lot shall pay their portion of the Maintenance Budget in accordance with the Lot Owner's Allocated Share.

4.7. The payment of an Lot Owner's share of the Improvement Costs shall be paid to a person or party designated by the Lot Owners to collect, manage and disburse funds for the implementation of the Maintenance Plan.

4.8. Should the cost of the maintenance and/or repair of the Improvement exceed the Maintenance Budget, each Lot Owner shall be responsible for paying the additional cost in accordance with their Allocated Share of the overage.

4.9. The Lot Owners shall annually alternate responsibility for contracting and coordinating payments for maintenance and repair of the Improvements, commencing with the Lot Owner of Lot L-6 and then the Lot Owner of Lot L-8.

4.10. In the event that the Lot Owners fail to undertake necessary maintenance, repair and replacement of the Improvements, the Association may, but is not specifically obligated to do so, undertake the required maintenance, repair and replacement of the Improvements and shall assess the Lot Owner of Lot L-6 and the Lot Owner of Lot L-8 for such costs incurred by the Association in the manner provided for in the Governing Documents.

5. **General Provisions Concerning Cost Reimbursements.**

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5.1. All requests for reimbursement of Improvement Costs shall be submitted in writing and sent to the address on file with the Association for the other Lot Owner of Benefited Lots from whom reimbursement is sought. Each written submission shall be supported by adequate documentation and shall be due and payable within thirty days that the statement is sent.

5.2. The Lot Owner of Benefited Lots shall have the right to inspect, copy and audit documentation relating to the Improvement Costs.

5.3. Failure to pay a share of the Improvement Costs when due shall constitute a default. The defaulting Lot Owner shall be obligated to pay the other Lot Owner a late fee of five percent of the amount due, together with attorney fees, collection fees and default interest on the outstanding amount at the rate of eighteen percent per annum. A collecting Lot Owner shall have the right to file a notice of lien against the property owned by the defaulting Lot Owner.

5.4. In the event of any dispute in the interpretation of the matters addressed in this Agreement between Lot Owners, the dispute shall be referred to the Association's Executive Board for resolution.

6. **Miscellaneous.**

6.1. **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 each Lot Owner then owning the Lot.

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

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

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

6.5. **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 a Lot Owner of each Benefited Lot and Burdened Lot.

6.6. **Indemnification.** Each Lot Owner of each Benefited Lot agrees to indemnify, defend and hold harmless Declarant, the Association and the Lot Owner of each a Burdened Lot (except to the extent that such Lot Owner has an obligation to make payments under this Agreement in their capacity as a Lot Owner of a Benefited Lot), 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.

6.7. **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.

6.8. **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.





Idarado Mining Company,  
a Delaware corporation

By:   
William S. Lyle, Vice President

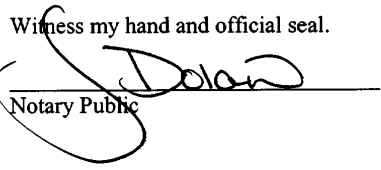
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MY COMMISSION EXPIRES 4/5/2008

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

Acknowledged, subscribed and sworn to before me this 14<sup>th</sup> day of July, 2005 by William S. Lyle, as the Vice President of Idarado Mining Company.

Witness my hand and official seal.  
  
Notary Public

My commission expires: 4/5/08.

**ASSOCIATION CONSENT:**

Idarado Legacy Homeowners Association,  
a Colorado nonprofit corporation

By: *J. Christopher Chaffin*  
J. Christopher Chaffin, President

Date: *7/14/05*



MY COMMISSION EXPIRES *4/5/2008*

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

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.  
*J. Dolan*  
Notary Public

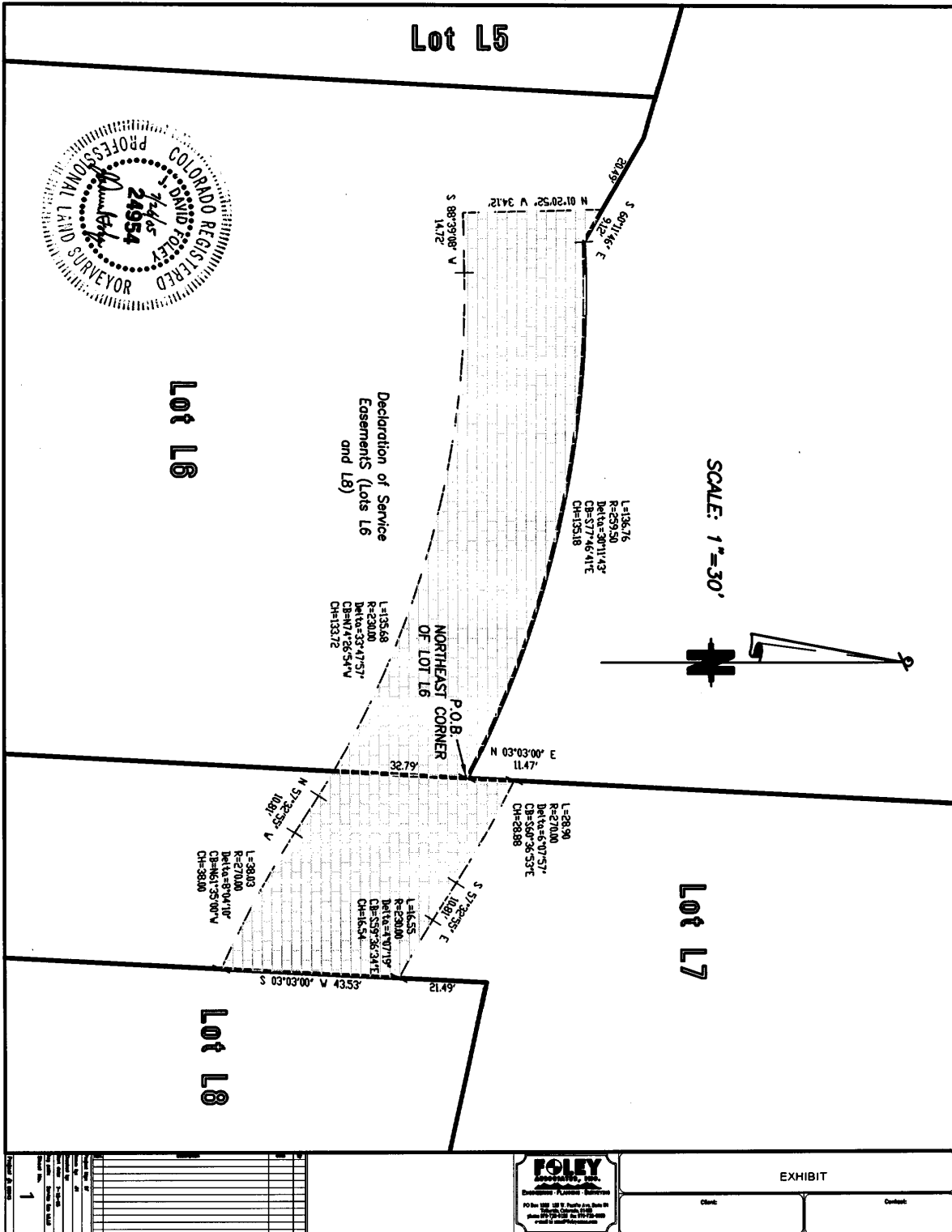
My commission expires: *4/5/08*

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

<b>Lot Designation</b>	<b>Allocated Share of Expenses</b>
Lot L-6	50%
Lot L-8	50%

**(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.



**(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**

PROPERTY DESCRIPTION

A part of Lot L6 and Lot L7 of the Second Amendment to the Final Idarado Subdivision Exemption Plat and Plan for Cluster Development Lots recorded in the office of the San Miguel County Clerk and Recorder in Plat Book 1 at page \_\_\_\_\_, further described as follows:

BEGINNING at the Northeast corner of said Lot L6;  
Thence N03°03'00"E, a distance of 11.47 feet along the westerly line of said Lot L7 to a point of non-tangent curvature;  
Thence southeasterly along the arc of a 270.00 feet radius curve to the right through a central angle of 6°07'57", an arc length of 28.90 feet, the chord of which bears S60°36'53"E for a chord distance of 28.88 feet;  
Thence S57°32'55"E, a distance of 10.81 feet to a point of curvature;  
Thence southeasterly along the arc of a 230.00 feet radius curve to the left through a central angle of 4°07'19", an arc length of 16.55 feet, the chord of which bears S59°36'34"E for a chord distance of 16.54 feet to the easterly line of said Lot L7;  
Thence S 03°03'00"W, a distance of 43.53 feet along the easterly line of said Lot L7 to a point of non-tangent curvature;  
Thence northwesterly along the arc of a 270.00 feet radius curve to the right through a central angle of 8°04'10", an arc length of 38.03 feet, the chord of which bears N61°35'00"W for a chord distance of 38.00 feet;  
Thence N57°32'55"W, a distance of 10.81 feet to a point of curvature;  
Thence northwesterly along the arc of a 230.00 feet radius curve to the left through a central angle of 33°47'57", an arc length of 135.68 feet, the chord of which bears N74°26'54"W for a chord distance of 133.72 feet;  
Thence S88°39'08"W, a distance of 14.72 feet;  
Thence N01°20'52"W, a distance of 34.12 feet to the northerly line of said Lot L6;  
Thence S60°11'46"E, a distance of 9.12 feet to an angle point on the northerly line of said Lot L6;  
Thence southeasterly along the arc of a 259.50 feet radius curve to the right through a central angle of 30°11'43", an arc length of 136.76 feet, the chord of which bears S77°46'41"E for a chord distance of 135.18 feet to the POINT OF BEGINNING, County of San Miguel, State of Colorado.

J. David Foley  S. #24954