

**DECLARATION OF ACCESS EASEMENT
(East Colorado Tract)**

THIS DECLARATION OF ACCESS EASEMENT ("Declaration") is made effective as of this 29th day of October, 2004 ("**Effective Date**") by Idarado Legacy, LLC, a Colorado limited liability company ("**Idarado Legacy**").

RECITALS

- A. Idarado Legacy is the owner of certain real property interests located in San Miguel County, Colorado, including the East Colorado Tract ("**East Colorado Tract**"), as established, depicted and described on 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 ~~3360~~, Reception No. ~~370139~~ in the Office of the Clerk and Recorder of San Miguel County, Colorado ("**Official Records**").
- B. This First Plat Amendment names, labels and depicts both: (a) the boundaries of the "East Colorado Tract"; and (b) the centerline for an existing paved road historically known as State Highway 145B Spur (East Colorado Avenue) ("**Existing Road**"). The Existing Road is intended to constitute the same interest that was conveyed from the Department of Transportation, State of Colorado ("**CDOT**") to the Town of Telluride ("**Town**") by a certain quitclaim deed dated November 7, 1994 and recorded on November 7, 1994 at Reception No. 295612 in the Official Records of the San Miguel County Clerk and Recorder ("**CDOT Deed**"). The CDOT Deed states that the road being conveyed to the Town is the "width along the entire length of highway [known as State Highway 145B Spur (East Colorado Avenue)] as historically and currently occupied, maintained, and used as a public highway, including its shoulder it being the intent of grantor to abandon and convey all highway and right-of-way as possessed and maintained by the grantor as public highway to the Town of Telluride." Idarado Legacy acknowledges only those rights, claims or interests of the Town in the Existing Road and in the East Colorado Tract, if any, as may have been granted and conveyed by the CDOT Deed.
- C. Idarado Mining Company and Idarado Legacy have granted and conveyed a certain Bus Turn Around Easement to San Miguel County, Colorado evidenced by that certain easement agreement recorded in the Official Records at Reception No. 365092 ("**Bus Turnaround Easement**").
- D. Idarado Legacy owns Employee Housing Parcel A and Employee Housing Parcel B, as established, depicted and described on the Plat and the First Plat Amendment (collectively "**Employee Housing Parcels**").
- E. The owner of the Employee Housing Parcels and the beneficiaries or Grantees under the Bus Turnaround Easement shall each be referred to as a "**Benefited Party**".
- F. Idarado Legacy desires to establish certain "gap" easements that are described hereinbelow that will enable each Benefited Party to have pedestrian and vehicular access to and from respectively, the Employee Housing Parcels and the Bus Turnaround Easement to the Existing Road, subject to the provisions stated herein.

- G. The term "**Parties**" as used herein shall refer to Idarado Legacy and each subsequent and future Benefited Party.

COVENANTS/AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Idarado Legacy hereby declares that the East Colorado Tract, the rights under the Bus Turnaround Easement and the Employee Housing Parcels 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. **Grant of "Gap" Easement for the Benefit of the Employee Housing Parcels.**
 - 1.1. Idarado Legacy hereby creates, grants and conveys to the owner(s) of the Employee Housing Parcels, a non-exclusive, perpetual easement entitled the "**East Colorado Tract Employee Access Easement**" over a portion of the East Colorado Tract ("**East Colorado Tract Employee Access Easement Area**"). The East Colorado Tract Employee Access Easement is established to enable pedestrian and vehicular access over any gap within the East Colorado Tract between the Employee Housing Parcels and the Existing Road.
 - 1.2. The dimensions of the East Colorado Tract Access Easement are established as follows: (a) its length is the east-west length of the portion of the East Colorado Tract which respectively adjoins the Employee Housing Parcels, and (b) its depth is the north-south distance between the Employee Housing Parcels and the Existing Road.
 - 1.3. The East Colorado Tract Employee Access Easement is intended to allow for pedestrian and vehicular access to and from the Employee Housing Parcels and the paved portion of the Existing Road.
 - 1.4. For purposes of this Declaration vehicular access shall also include motorcycles, bicycles, and other non-motorized vehicles.
2. **Addition to the Bus Turnaround Easement.**
 - 2.1. Idarado Legacy hereby creates, grants and conveys to the Grantee or other party benefited by the Bus Turnaround Easement, a non-exclusive, perpetual easement entitled the "**East Colorado Tract Bus Turnaround Access Easement**" over a portion of the East Colorado Tract ("**East Colorado Tract Bus Turnaround Access Easement Area**"). The East Colorado Tract Bus Turnaround Access Easement is established to enable pedestrian and vehicular access over any gap within the East Colorado Tract between the Bus Turnaround Easement and the Existing Road.
 - 2.2. The East Colorado Tract Bus Turnaround Access Easement Area is more particularly defined as that area which is bounded on the east by a line running due north of the easterly boundary of the current Bus Turnaround Easement, on the north by the Existing Road, on the west by a line running due north of the western boundary of the Bus Turnaround Easement, and on the south by the current area of the Bus Turnaround Easement.

- 2.3. Any improvements required to allow this vehicular connection shall be reviewed in the manner provided for in the Bus Turnaround Easement.
- 2.4. This Declaration does not broaden or enlarge the easement area for the Bus Turnaround Easement; rather it is only intended to authorize a pedestrian and vehicular connection over any gap that may exist, if any, directly between the easement area for the Bus Turnaround Easement and the Existing Road.
3. **Limitations on the Use of the East Colorado Tract Access Easements.**
 - 3.1. No improvements shall be constructed, installed or placed within the East Colorado Tract Employee Access Easement or the East Colorado Tract Bus Turnaround Access Easement (together, the "East Colorado Tract Access Easements") unless approved by Idarado Legacy in the manner provided for in the grant of title to the Employee Housing Parcels by Idarado Legacy and/or pursuant to the terms of the Bus Turnaround Easement, as applicable.
 - 3.2. The same terms, conditions and restrictions established in the Bus Turnaround Easement shall apply to the within grant of the East Colorado Tract Access Easements.
 - 3.3. The uses and activities provided for herein are subject to applicable requirements and limitations present under the San Miguel County land use code and any other applicable restrictions contained under other county, state or federal law.
4. **No Dedication.** Nothing in this Declaration is intended by Idarado Legacy to constitute a dedication or conveyance of Idarado Legacy's interest in the land associated with the either the East Colorado Tract or the Existing Road to any person, party or entity. The only rights which are being created, granted and conveyed are the rights stated hereunder. Nothing contained herein shall be interpreted or construed to create a public dedication of the rights and easements established hereunder. It is understood and agreed that this Declaration is a non-exclusive easement for access purposes only and in no way grants or conveys any part of the underlying fee simple estate of any lands owned by Idarado Legacy.
5. **Prior Encumbrances.** The East Colorado Tract Access Easements are granted subject to all prior encumbrances and other matters of record, burdening and affecting the East Colorado Tract in San Miguel County, Colorado.
6. **Reserved Rights.** Idarado Legacy expressly reserves unto itself the right to: (A) use and enjoy the East Colorado Tract for all lawful purposes that will not unreasonably interfere with the rights hereby granted hereunder; and (B) grant additional easements or rights-of-way upon or across the East Colorado Tract Access Easement Areas to other persons or entities.

7. **Miscellaneous.**

- 7.1. **Heirs, Successors and Assigns.** The easements and covenants, together with rights, duties and benefits granted 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 Idarado Legacy and each Benefited Party.
- 7.2. **Run With The Land.** The easements and covenants granted and created herein shall run with and be a burden upon only that portion of the East Colorado Tract that directly adjoins the Bus Turnaround Easement and the Employee Housing Parcels.
- 7.3. **Modification.** This Declaration may be amended by written instrument executed by Idarado Legacy and each Benefited Party and without any requirement to amend the Plat or the First Plat Amendment.
- 7.4. **Recordation.** This Declaration is intended to be recorded by Idarado Legacy in the Official Records of San Miguel County.
- 7.5. **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.
- 7.6. **Termination of Easement.** Idarado Legacy may terminate the East Colorado Tract Access Easements or any portion thereof if it reasonably determines that a Benefited Party has materially breached the terms, conditions and limitations contained in this Declaration. Prior to terminating the East Colorado Tract Access Easement as it relates to a Benefited Party, Idarado Legacy 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 this Declaration and establish a reasonable period of time, of not less than thirty days (unless emergency circumstances require a shorter period of time), within which such cure shall occur. Should Idarado Legacy reasonably determine that the defaulting Benefited Party has failed to cure the alleged default to the satisfaction of Idarado Legacy within the cure period stated in the notice of default, Idarado Legacy may thereupon record its notice of termination in the Official Records and the rights of the Benefited Party to the applicable East Colorado Tract Access Easement shall thereafter immediately terminate.
- 7.7. **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 its 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.

- 7.8. **Indemnification.** By accepting the rights established under this Declaration, each Benefited Party hereby agrees to defend and hold harmless Idarado Legacy and its successors and assigns in the record ownership of the East Colorado Tract, 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 use of the East Colorado Tract Access Easements established by this Declaration 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 Idarado Legacy, its agents or employees. Any Benefited Party which is a public entity may satisfy this obligation by maintaining comprehensive public entity liability insurance coverage under which Idarado Legacy is named as an additional insured.
- 7.9. **Association Consent.** By its execution below, the Association does hereby acknowledge, consent to and agree to the terms and conditions stated herein, including any specific obligations imposed upon the Association by this Declaration.

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

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: [Signature]
William R. Hegberg, President

Date: 10/28/04

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

Acknowledged, subscribed and sworn to before me this 28 day of October, 2004 by William R. Hegberg, President of Wildcat Land Company.

Witness (my hand and official seal.

[Signature]
Notary Public

My commission expires: 4/5/08.

**J. DOLAN
NOTARY PUBLIC
STATE OF COLORADO**
MY COMMISSION EXPIRES 4/5/2008

