

**DECLARATION OF TRAIL AND UTILITY EASEMENT
(Lot P-17, Idarado Legacy Subdivision)**

THIS DECLARATION ("Declaration") is made as of this 29th day of October, 2004 ("**Effective Date**") by Idarado Legacy, LLC, a Colorado limited liability company, its successors and assigns ("**Idarado**").

RECITALS

- A. Idarado has established thirty-seven Lots ("**Lots**"), as well as certain Parcels, Tracts and Outlots were created, which were annexed into the Idarado Legacy Subdivision ("**Common Interest Community**") 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 ~~3360~~, 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.
- B. The Plat, the CCR's and other documents relating to the Idarado Legacy Subdivision ("**Common Interest Community**") are referred to as the "**Governing Documents**". The owner of each Lot in the Community is referred to as the "**Lot Owner**".
- C. Idarado has also caused to be created the Idarado Legacy Homeowners Association, a Colorado nonprofit corporation ("**Association**"), evidenced by the filing of its Articles of Incorporation and Bylaws. Certain real property and improvements within the Common Interest Community is anticipated to be owned by the Association ("**Association Property**").
- D. Idarado is the current fee simple owner of Lot P-17, which was established by the Plat and modified by the First Plat Amendment ("**Lot P-17**").
- E. Idarado has caused to be constructed a certain public trail known as the "Idarado Trail" over a portion of its property called the East Colorado Tract. Idarado desires to establish a spur to the Idarado Trail, which will connect the Idarado Trail and Pandora Lane, for use only by the Lot Owners and the Association, which spur will be located over a portion of Lot P-17.
- F. Idarado has established a corridor that would allow for the installation of utilities connecting the Lots in the Common Interest Community with the existing and/or possible future utilities that may be installed within the East Colorado Tract.
- G. Idarado desires to establish certain easements ("**Lot P-17 Trail and Utility Easement**") for the benefit of each of the Lot Owners and the Association to: (a) allow the Association to construct and maintain a certain pedestrian trail ("**Trail**") (as described below) and to allow each Lot Owner to use the Trail for pedestrian access; and (b) to allow for the installation of underground water or sewer utilities, including above ground pedestals and related service facilities if such above ground features are necessary and cannot reasonably be placed elsewhere off P-17 ("**Utilities**") (as described below). Located over and across a portion of Lot P-17 ("**Lot P-17 Trail and Utility**").

Easement Area”), which Lot P-17 Trail and Utility Easement Area is more particularly described on attached **Exhibit “A”** and depicted on attached **Exhibit “B”**.

- H. The term **“Parties”** as used herein shall refer to Idarado and each subsequent and future Lot Owner.

COVENANTS/AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Idarado hereby declares that Lot P-17 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 Easements.

1.1. Grant of Easement.

- 1.1.1. Subject to the right of the Declarant and the owner of Lot P-17 to agree to mutually terminate the Lot P-17 Trail and Utility Easement, with respect to that portion of the Lot P-17 Trail and Utility Easement related to the use of the Trail, Idarado hereby reserves for itself and does hereby create, grant and convey to each Lot Owner (and their guests) and the Association (**“Trail Authorized Users”**), a perpetual, non-exclusive easement, the Lot P-17 Trail and Utility Easement, over and across the Lot P-17 Trail and Utility Easement Area. The general public is not authorized to use the Trail or the Lot P-17 Trail and Utility Easement for pedestrian access or any other access.
- 1.1.2. Subject to the right of the Declarant and the owner of Lot P-17 to agree to mutually terminate the Lot P-17 Trail and Utility Easement, with respect to that portion of the Lot P-17 Trail and Utility Easement related to the use of the Utilities, Idarado hereby reserves for itself and does hereby create, grant and convey to the Association and each Utility Provider (provided that Idarado has specifically approved and consented to the installation of the proposed utility)(**“Utility Authorized Users”**), a perpetual, non-exclusive easement, the Lot P-17 Trail and Utility Easement, over and across the Lot P-17 Trail and Utility Easement Area.

1.2. Allowed, Restricted and Prohibited Uses of Easement.

- 1.2.1. With respect to that portion of the Lot P-17 Trail and Utility Easement related to the use of the Trail, a Trail Authorized User shall be allowed to use the Lot P-17 Trail and Utility Easement for the following purposes (**“Trail Allowed Uses”**): (a) to construct, install, maintain and repair the Trail, which Trail shall be not wider than three-feet wide and shall be constructed with gravel, wood chips or other similar materials; and (b) to use the Trail only for pedestrian, non-motorized access to and from the Idarado Trail and Pandora Lane.

1.2.2. Use of the Trail by a Trail Authorized User shall comply with the following requirements:

- A. The Trail Allowed Uses may only occur within the within the Lot P-17 Trail and Utility Easement Area and not anywhere else on Lot P-17;
- B. The Association shall manage the Trail as Association Property and shall be responsible for maintaining and repairing the Trail, which shall be assessed as a common expense as provided for in the CCR's; and
- C. The Association on behalf of each Lot Owner does hereby for itself and for and on behalf of each Lot Owner agree to indemnify, defend and hold harmless the owner of Lot P-17 and Idarado from and against any and all claims, actions, judgments, liabilities, obligations, penalties, claims, costs, charges and expenses, including, without limitation, 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 persons use of the Trail.
- D. The Association shall include the Trail as part of its insurance policy covering the Association Property and shall cause the owner of Lot P-17 to be named an additional insured thereunder.

1.2.3. With respect to that portion of the Lot P-17 Trail and Utility Easement related to the use of the Utility, a Trail Authorized User shall be allowed to use the Lot P-17 Trail and Utility Easement for the following purposes ("**Utility Allowed Uses**"): (a) to construct, install, maintain and repair the Utility, which Utility shall be constructed underground, except for such minimal surface features as are required to be located above ground, such as manholes; and (b) to use the Utilities for the distribution of utility services to Utility Authorized Users, including their customers, which may include property owners outside the Common Interest Community. Should a Utility Authorized User install a Utility, the Utility Authorized User shall comply with the following requirements:

- A. The Utility shall only be installed within the Lot P-17 Trail and Utility Easement Area and not anywhere else on Lot P-17;
- B. Construction, installation, operation, repair and maintenance of the Utility shall be undertaken in a manner that reasonably causes the least amount of disturbance to Lot P-17, and any disturbance to Lot P-17 shall be reseeded and recontoured to the original natural condition of Lot P-17 and appropriate bushes and boulders will be placed in the disturbed area, at the cost of the Utility Authorized User;
- C. Appropriate safety measures and devices, including temporary signage, shall be installed;
- D. All work will be done in a professional workmanlike manner;

- E. The Utility Authorized User shall comply with all applicable federal, state and local laws, rules, regulations and safety standards in connection with the Utility Authorized User activities hereunder;
 - F. Prior to commencing the installation and construction of the Utility, the Utility Authorized User agrees to obtain and maintain at its expense at all times during to the installation and construction of the Utility, a comprehensive general liability insurance policy and property damage insurance policy, or other such policy as may be required to insure the owner of Lot P-17, Idarado and the Association against liability for bodily injury and property damage in the minimum amount of \$1,000,000.00 combined single limit for bodily injury and property damage;
 - G. The Utility Authorized User is solely responsible to pay for the cost and expense of designing, constructing, manufacturing, delivering and installing the Improvements, including equipment rental and labor. The Utility Authorized User shall not allow any liens to be placed on any portion of Lot P-17 and shall indemnify and hold harmless the owner of Lot P-17 from and against any claims for payments due in connection with the installation of the Improvements; and
 - H. Upon completion of the Improvements by the Utility Authorized User, the Utility Authorized User shall be responsible for necessary maintenance and repair of the Improvements to keep the Utility in a good, clean and safe condition.
- 1.3. The Lot P-17 Trail and Utility Easement is granted subject to all prior encumbrances and other matters of record, burdening and affecting Lot P-17 in San Miguel County, Colorado.
 - 1.4. No Authorized Party shall be construed as the agent of Lot P-17 in contracting for any improvements to the Lot P-17 Trail and Utility Easement Area, and shall have no authority to pledge, mortgage, hypothecate or otherwise encumber any interest in the Lot P-17 Trail and Utility Easement Area.
 - 1.5. Idarado declares that the owner of Lot P-17 expressly reserves unto itself, the right to: (A) use and enjoy the land covered by the Lot P-17 Trail and Utility Easement Area 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 Lot P-17 Trail and Utility Easement Area to other persons or entities.
 - 1.6. 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 Idarado Property defined as the Trail and Utility Easement Area.
- 2.3. **Modification.** This Declaration may be amended by written instrument executed by Declarant and the Owner of Lot P-17 and without any requirement to amend the Plat or the First Plat Amendment.
- 2.4. **Recordation.** This Declaration is intended to be recorded by the Idarado 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. **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. The Association may suspend or terminate the rights of a Lot Owner to use the Trail if it determines that the Lot Owner has repeatedly used the Trail in a manner that violates this Declaration. The Association shall make this determination in the manner provided for in the CCR's. 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, Idarado 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: William R. Hegberg
William R. Hegberg, President

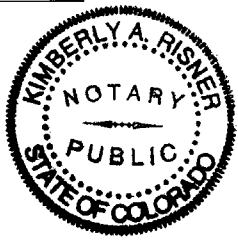
Date: 10/28/04

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

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

Witness my hand and official seal.
Kimberly A. Risner
Notary Public

My commission expires: 10/14/2006



ASSOCIATION CONSENT:

Idarado Legacy Homeowners Association,
a Colorado nonprofit corporation

By: *J. Christopher Chaffin*
J. Christopher Chaffin, 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 J. Christopher Chaffin, President of Idarado Legacy Homeowners Association.

Witness my hand and official seal.

Kimberly A. Risner
Notary Public

My commission expires: 10/16/2006.



EXHIBIT "A"
(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 Lot P17, 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~~, County of San Miguel, State of Colorado, described as follows:

Commencing at the northwest corner of said Lot P17, thence S81°30'48"E, along the north line of said Lot P17, a distance of 44.35 feet; thence continuing along said north line, N78°08'36"E, a distance of 24.14 feet to the POINT OF BEGINNING; thence continue easterly along said line, a distance of 22.34 feet; thence S14°36'35"W, a distance of 80.77 feet; thence S04°24'10"W, a distance of 88.24 feet; thence S03°54'44"W, a distance of 196.75 feet to a point on the south line of said Lot P17, said point being a point of non-tangent curvature; thence westerly, along said south line and along the arc of a 611.00 foot radius curve to the right, through a central angle of 01°54'53", an arc length of 20.42 feet, the chord of which bears S82°18'32"W, a distance of 20.42 feet; thence N03°54'44"E, a distance of 200.95 feet; thence N04°24'10"E, a distance of 90.11 feet; thence N14°36'35"E, a distance of 72.60 feet to the POINT OF BEGINNING.

Warren L. Ruby
 Warren L. Ruby,



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EXHIBIT "B"
(Depiction of Easement Area)

