

CLOSING AGREEMENT
(Lot P-22, Idarado Legacy Subdivision)

THIS CLOSING AGREEMENT ("Agreement"), dated and made effective as of the 10th day of September, 2004 ("**Effective Date**"), is made by and between Idarado Legacy, LLC, a Colorado limited liability company ("**Seller**") and Diane L. Powell and Edward A. Powell ("**Buyer**"). Seller, IMC and Buyer are sometimes individually referred to herein as a "**Party**" and sometimes collectively as the "**Parties**".

RECITALS

- A. By written agreement dated July 21, 2004 ("**Contract**"), Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller certain unimproved real property, commonly referred to as follows ("**Property**"): Lot P-22, 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**"), and according to the Declaration of Covenants, Conditions and Restrictions for Idarado Legacy Subdivision, recorded at Reception No. 367146 in those records, together with and subject to all easements, rights-of-way reservations, and other encumbrances of record.
- B. Closing under the Contract is scheduled for September 10, 2004, which closing date the Parties desire to maintain as scheduled.
- C. By Resolution of the Board of County Commissioners ("**BOCC**") for San Miguel County, Colorado, which Resolution was captioned Resolution # 2004-4, recorded on February 10, 2004 in Reception No. 364047 in the Official Records, San Miguel County, Colorado ("**County**") approved, subject to conditions, an application by Seller and IMC seeking approval to record a certain Subdivision Exemption Plat and Cluster Development Plan ("**County Cluster Plan Approval**"). Seller and IMC thereupon recorded its Subdivision Exemption Plat and Cluster Development Plan on February 10, 2004 in Reception No. 364049 in the Official Records ("**Subdivision Exemption Plat**").
- D. The Subdivision Exemption Plat created and depicted Lot P-22 and other lots, parcels and tracts, including the Colorado Avenue Tract.
- E. Seller may elect to modify the Subdivision Exemption Plat for various reasons, including for the purpose of modifying the boundaries of the Colorado Avenue Tract, which modification would require the inclusion of a portion of the land currently included in Lot P-22, as platted.
- F. The Parties acknowledge that the Town of Telluride may assert claims relating to the width of the right-of-way for East Colorado Avenue as it specifically related to Lot P-22 ("**Town ROW Claim**").
- G. The Parties wish to address the manner and method by which these matters can and will be addressed.

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AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable considerations, including the aforementioned recitals, which are incorporated herein, the receipt and sufficiency of which consideration is hereby acknowledged, Grantor and Grantee agree as follows:

1. Reconfiguration of Colorado Avenue Tract and Lot P-22.

- 1.1. At any time commencing from the Effective Date and continuing through December 31, 2005, Seller may notify Buyer of Seller's election to amend the Subdivision Exemption Plat ("**Plat Amendment**") to, among other things, adjust the boundaries of the Colorado Avenue Tract and Lot P-22 ("**Adjustment Area**"). The Parties agree that the Adjustment Area which may be removed from Lot P-22 and included within the Colorado Avenue Tract will consist of the area depicted on attached **Exhibit "A"** and not any additional land, unless agreed to in writing by Seller and Buyer.
- 1.2. Buyer agrees to execute and deliver their quitclaim deed ("**Reconveyance Deed**") conveying the Adjustment Area to Seller, which Reconveyance Deed shall be held in escrow with Security Title Guaranty Company ("**Title Company**"). The Reconveyance Deed shall be in substantially the same form as the sample deed attached as **Exhibit "B"**.
- 1.3. Seller shall send written notice to Title Company, with a copy to Buyer, indicating that Seller has elected to complete the Plat Amendment. Title Company, without any requirement for further consent by Buyer, shall immediately record the Reconveyance Deed. Buyer agrees that no consideration is due or shall be paid for the Reconveyance Deed.
- 1.4. Seller shall pay for the cost of preparing and recording the Reconveyance Deed and the Plat Amendment.
- 1.5. Seller may provide a copy of this Agreement to the County to evidence the consent of Buyer to allowing Seller and the County to review, execute and record the Plat. Buyer will cooperate with Seller by providing any such additional or further written consent, if any, which may be required by San Miguel County to enable the Plat Amendment to be reviewed by San Miguel County.

2. Colorado Avenue.

- 2.1. **Background of Town ROW Claim.**
 - 2.1.1. By quitclaim deed dated November 7, 1994 ("**CDOT Deed**") from the Department of Transportation, State of Colorado ("**CDOT**"), to the Town of Telluride ("**Town**"), recorded on November 7, 1994 in Reception No. 295612 in the Official Records, the Town was quitclaimed a specific interest in the State Highway 145B Spur (East Colorado Avenue). The CDOT Deed provides as follows:

"[i]t is the intent of the grantor herein to abandon that portion of S.H. 145B and highway right-of-way commencing at the eastern

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limit of the Town of Telluride (M.P. 4.201) to the end of the Non-Federal Aid section of the highway (M.P. 5.534) at the Idarado Mine at Pandora, the width of which is that width along the entire length of highway as historically and currently occupied, maintained, and used as a public highway, including shoulder, it being the intent of the 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.

- 2.1.2. The Official Records contain no documentation evidencing either a deed or dedication by IMC or its predecessors in title to the County, CDOT, the Town or any other public body of this portion of S.H. 145B. Rather, it appears that CDOT held only an easement for a public highway acquired by prescription or other implied rights of usage pursuant to Colorado law.
- 2.2. **Acknowledgments.** The Parties acknowledge that the Town has asserted a claim relating to the use, ownership and/or width of the right-of-way for East Colorado Avenue ("**Town ROW Claim**"), notwithstanding the apparent limitations contained in the CDOT Deed.
- 2.3. **Seller's Agreements.**
- 2.3.1. Seller will complete the Plat Amendment in the form and manner as provided for in Section 1.
- 2.3.2. Seller is not currently aware of other portions of the Property, other than those to be transferred into the Colorado Avenue Tract by the Plat Amendment that would be subject to any Town ROW Claim arising from the CDOT Deed. If necessary as a result of the Plat Amendment, Seller will grant and convey access rights to the Owner of the Property to gain access over the replatted Colorado Avenue Tract to the right of way of way for East Colorado Avenue.
- 2.3.3. The Plat Amendment will not result in any modification to the Purchase Price stated in the Contract.
- 2.3.4. After Closing, Seller may, but shall not be obligated to convey title to the Colorado Avenue Tract to the Idarado Legacy Homeowners Association, but if Seller decides to make such conveyance, it shall not be made unless and until such time as Seller reasonably determines that the Town ROW Claim is resolved or is no longer an issue.
- 2.4. **Seller's Indemnification Relating to the Town ROW Claim.**
- 2.4.1. Seller agrees to indemnify, hold harmless and defend Buyer from and against a claim raised in a properly filed legal action, commenced by the Town, which meets each of the following criteria ("**Qualifying Claim**"):

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- A. The Town specifically asserts a claim for usage or ownership of a portion of the Property;
 - B. The Town names and serves Buyer as a party in such a proceeding; and
 - C. The claim for usage or ownership by the Town of a portion of the Property is based upon the Town ROW Claim and the CDOT Deed.
- 2.4.2. This indemnification shall not extend to any other claims that the Town may bring concerning the usage or ownership of the Property for any reasons unrelated to the Town ROW Claim and the CDOT Deed, which may include by way of illustration and not exclusion, an action by the Town to condemn all or any portion of the Property or an action by the Town to annex the Property, whether those claims are made in the same action as the Qualifying Claim or in a separate action.
- 2.4.3. Seller will not be obligated to indemnify Buyer for any counterclaims that Buyer may raise or wish to raise in any ensuing action with the Town, and any such counterclaims must be prosecuted by separate counsel retained by Buyer in connection with such suit.
- 2.4.4. In the event that a Qualifying Claim is made by the Town, Buyer shall immediately tender all pleadings served upon Buyer to Seller. Seller shall defend the Qualifying Claim in the manner deemed appropriate by Seller, engaging counsel of Seller's choosing, and Seller shall have the ability to defend, file counterclaims, and negotiate or settle such Qualifying Claim, all in Seller's sole discretion. By its execution of this Agreement, Buyer consents to Seller's control over the method and manner in which Seller elects to defend the Qualifying Claim. Buyer shall cooperate and assist Seller in the defense of the Qualifying Claim.
3. **Closing.** Closing shall occur on September 10, 2004 or such later date which may be agreed upon by the Parties.
4. **Post Closing Agreements.** In the event that Seller enters into agreements with other purchasers of Lots within the Idarado Legacy Subdivision which are general in nature and address matters relating to environmental conditions concerning the Idarado Legacy Subdivision or other matters that affect the Property, including the Colorado Avenue Tract and the Town ROW Claim, Seller will offer to provide Buyer with substantially the same document, which Buyer shall have ten days to review and either accept or reject. It is acknowledged that portions of such agreements may propose to amend or supersede provisions contained in this Agreement. The foregoing does not in anyway obligate Seller to enter into any such agreement with Buyer or any other Lot purchaser.
5. **Miscellaneous.**

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- 5.1. Nothing herein is intended nor shall it modify the terms and conditions as stated in the Contract, unless specifically altered by this Agreement.
- 5.2. Each Party agrees to be bound by all covenants, terms, conditions, restrictions and limitations expressed herein.
- 5.3. The rights, duties and obligations established in this Agreement and all provisions of this Agreement shall run with the land and shall be applicable to, binding upon and inure to the benefit of the Parties, their respective transferees, representatives, successors and assigns.
- 5.4. This Agreement contains the entire understanding of the Parties. There are no other representations, warranties, covenants or undertakings other than those expressly set forth herein or in the Contract.
- 5.5. This Agreement may not be modified or amended except in writing signed by all the Parties hereto.
- 5.6. In the event of an alleged default hereunder, the Party alleging the default shall send written notice to the Party allegedly in default stating the grounds for the alleged default and the specific steps that the defaulting party must take to cure the alleged default. A Party shall have not less than 30 days to cure the default. A Party may pursue all remedies provided for under Colorado law in the event of a default under this Agreement.
- 5.7. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Venue is limited to the District or County Court for San Miguel County, Colorado. In the event of litigation arising from a dispute under this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney fees.

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