

DECLARATION OF UTILITY EASEMENT II
(Powerline Facilities)

THIS DECLARATION OF UTILITY EASEMENT II ("Declaration") is made as of this ~~14~~ day of ~~July~~, 2005 ("Effective Date") by Idarado Legacy, LLC, a Colorado limited liability company ("Declarant"). Idarado Legacy, LLC, a Colorado limited liability company ("Legacy") has joined in this Declaration acknowledging its consent to the terms, conditions, provisions, rights, duties and obligations as stated herein and its agreement to be bound thereby.

RECITALS

A. Declarant is the owner of certain Lots, Parcels and Tracts located in San Miguel County, Colorado ("Property") 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 Idarado Legacy Owners Association, Inc. ("Association"), to exist and operate in accordance with the Governing Documents.

B. Declarant has agreed to grant to establish and create that certain Utility Easement (defined below), as further described and provided for herein, to enable the installation, construction, use, operation and maintenance of certain utility facilities for electric/power ("Utility") by a utility company ("Utility Provider"), authorized to use to and actually using the Utility Easement for the distribution of its Utility to the Common Interest Community.

C. This Declaration is the Declaration of Utility Easement II (Powerline Facilities) referred to in the Second Plat Amendment.

D. By approving and/or undertaking the installation of Utilities made in furtherance of this Declaration, each Utility Provider agrees to be bound by the terms and conditions stated herein. Declarant may, but need not obtain a separate written consent from the Utility Providers acknowledging the respective rights, duties, obligations and restrictions arising from this Declaration.

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. Utility Easement.

1.1. **Creation, Reservation and Grant of Utility Easement.**

1.1.1. Declarant, as the current, fee simple owner of the Property, does hereby establish and create those certain perpetual, non-exclusive easements (collectively the "**Utility Easement**"), over and across each portion of the Property designated as the "**Utility Easement Area**", as the same are depicted on attached **Exhibit "A"** and are described on attached **Exhibit "B"** ("**Utility Easement Area**").

1.1.2. Subject to the terms and conditions stated herein, Declarant does hereby: (A) reserve the beneficial rights to use and enjoy the Utility Easement for itself and for Declarant's successors, transferees, designees and assigns the Utility Easement; and (B) does further grant and convey the beneficial rights to use and enjoy the Utility Easement to each respective Utility Provider.

1.2. **Allowed Uses of Utility Easement.** The Utility Easement and the Utility Easement Area may be used by Declarant and/or a Utility Provider only for each of the following purposes ("**Allowed Uses**"):

1.2.1. To design, install and construct the Utility and related facilities.

1.2.2. To use and operate the Utility.

1.2.3. To upgrade the Utility to meet changing needs.

1.2.4. To repair, replace and/or maintain the Utility.

1.2.5. To enable reasonable vehicular access to allow Declarant and/or a Utility Provider to undertake the Authorized Uses.

1.2.6. The Utility shall be placed underground, except for such vaults and pedestals, if any, that may be required for the project and must be located above-ground. In such instance the above ground features shall be located, designed and screened to be as unobtrusive as possible and shall not be located in a manner that will interfere with the safe and convenient use of any roads or trails.

1.3. **Reservation of Rights.** Declarant expressly reserves unto itself and its successors, transferees, designees and assigns, the Association and any Lot Owner whose lot is burdened by the Utility Easement, the right to: (A) use and enjoy the land covered by the Utility Easement Area for all lawful purposes, including the construction of improvements thereupon; and (B) grant other and additional easements or rights-of-way upon or across the Utility Easement Area to other persons or entities for the installation, maintenance, repair and replacement of wires, cables, pipes and similar facilities in connection with the provision of other utility services.

1.4. **Restrictions Governing the Use of the Utility Easement.** In undertaking an Allowed Uses of the Utility and of the Utility Easement, Declarant and/or the Utility Provider shall comply with each of the following requirements and limitations:

1.4.1. The Utility shall be constructed in accordance with plans and specifications reasonably approved by Declarant and the pertinent Utility Provider.

1.4.2. Construction, operation, repair and maintenance of the Utility within the Utility Easement Area shall be undertaken in a manner that reasonably causes the least amount of disturbance to the Property. Any disturbance to the Property shall be restored to the original condition, to the extent reasonably possible at the cost of the Party having undertaken the construction and created the disturbance.

1.4.3. Appropriate safety measures and devices shall be installed at appropriate locations.

1.4.4. All work will be done in a professional workmanlike manner.

1.4.5. All work including, without limitation, the construction, use, operation, maintenance, repair, replacement of devices associated with the Utility shall comply with all applicable federal, state and local laws, rules, regulations and safety standards.

1.4.6. Prior to commencement of installation of the Utility or undertaking any repair or maintenance within the Utility Easement Area, each Declarant shall be provided with written notice ten (10) days prior to the commencement of such work, unless emergency circumstances prevent or preclude such notice.

1.5. **Cost of Construction of the Improvement.**

1.5.1. Legacy agrees to assume the cost and expense associated with the initial design, construction and installation of the Utility to the extent indicated on the Construction Plans and Specifications and only in those instances where Legacy has agreed to undertake the construction of such Utility in the Subdivision Improvement Agreement for the Common Interest Community entered into with San Miguel County, Colorado or otherwise agreed to by Legacy in written documentation specifically assuming such obligation.

1.5.2. The Association, and not Legacy, shall be responsible for any subsequent modifications, alterations, upgrades and replacement of the Utility.

1.6. **Maintenance of the Utility.** Upon completion of the Utility, each respective Utility Provider agrees to accept the Utility and to undertake modifications, maintenance, repair, replacement and/or upgrades of the Utility. Declarant shall have no obligation to undertake any such modifications, maintenance, repair, replacement and/or upgrades of the Utility

1.7. **Relocation of Utility Easement Area.**

1.7.1. Declarant, for itself and its successors, transferees, designees and assigns, reserves the right to relocate the Utility, any portion of the separate the Utility Easement and/or the Utility Easement Area to a location determined by Declarant, provided that the new location is reasonable similar to the prior location. The foregoing notwithstanding, Declarant shall not have the right to relocate the Utility Easement Area on Property not then owned by Declarant without the written consent of the person or party then owning the affected portion of the Property intended to be burdened by the Utility Easement.

1.7.2. In the event that the Utility has already been installed in the Easement Area, Declarant shall pay to have the Utility relocated to the revised easement area.

1.7.3. Utility Provider agrees to reasonably cooperate and assist Declarant should Declarant elect to relocate the Utility Easement, Utility Easement Area and/or Utility. Declarant shall prepare and record any documentation required for this relocation without cost to Utility Provider. Utility Provider agrees to sign and deliver to Declarant such reasonable documents as may be necessary to enable this relocation to occur.

1.8. **Ownership of the Utility.** All facilities associated with a particular Utility installed within the Utility Easement Area shall remain the property of particular Utility Provider providing the particular utility service and may be removable at the option of Utility Provider, subject to the requirements of this Declaration. The foregoing shall not be construed as a grant of ownership to any portion of the Property.

1.9. **Expansion of Rights.** Declarant, for itself and its successors, transferees, designees and assigns, reserves the right to expand the scope of the Utility Easement to allow other persons or parties to use the Utility Easement and to allow other Utilities to be undertaken within the Utility Easement Area subject to the terms and conditions stated in this Declaration. The foregoing notwithstanding, Declarant shall not have the right to expand the Utility Easement Area on Property not owned by Declarant without the written consent of the person or party then owning the affected portion of the Property intended to be burdened by the Utility Easement.

1.10. **Limitations on Grant of Easements.** Nothing herein shall be construed:

1.10.1. as the grant of an easement for uses and activities not specifically authorized by this Declaration and it is the intent of the Declarant that this Declaration be narrowly construed;

1.10.2. as a broad grant of easements rights to allow for the installation of other utilities not specifically authorized;

1.10.3. as the grant of an easement to allow pipes, lines, facilities, stations and the like for water or sewer services, in the absence of the written authorization of Declarant.

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

2. **Miscellaneous.**

2.1. **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 the Declarant, the Association and each of the Lot Owners.

2.2. **Run With The Land.** The easements granted herein shall run with and be a burden upon those portions of the Property burdened by the Utility Easement.

2.3. **Modification.** This Declaration may be amended only by the unanimous written consent of the Declarant, each of the affected Utility Providers and the Association and without any requirement to amend the Plat, or the First Plat Amendment or the Second Plat Amendment.

2.4. **Recordation.** This Agreement is intended to be recorded by the Declarant in the Official Records.

2.5. **Indemnification.** Utility Provider agrees to indemnify, defend and hold harmless Declarant, the Association and the owner of property burdened by the Utility Easement, from and against all liens or claims for payment for construction, repair or maintenance of the particular Utility being installed by that Utility Provider, 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 particular Utility, 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 particular Utility and/or the Utility Easement Area or by, through or under such Party's guests, invitees, employees, representatives, agents, contractors, subcontractors, suppliers and materialmen.

2.6. **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 Agreement is an easement only and in no way grants or conveys any part of the underlying fee simple estate of portion of the Property.

2.7. **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 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.

THE UNDERSIGNED HEREBY CONSENTS TO AND AGREES TO BE BOUND BY EACH OF THE TERMS, CONDITIONS AND PROVISIONS STATED HEREIN.

LEGACY CONSENT:

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: WR Hegberg
William R. Hegberg, 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 14th day of July, 2005 by William R. Hegberg, President of Wildcat Land Company.

Witness my hand and official seal.

J. Dolan
Notary Public

My commission expires: 4/5/08

EXHIBIT "A"
(DEPICTION OF EASEMENT AREA)

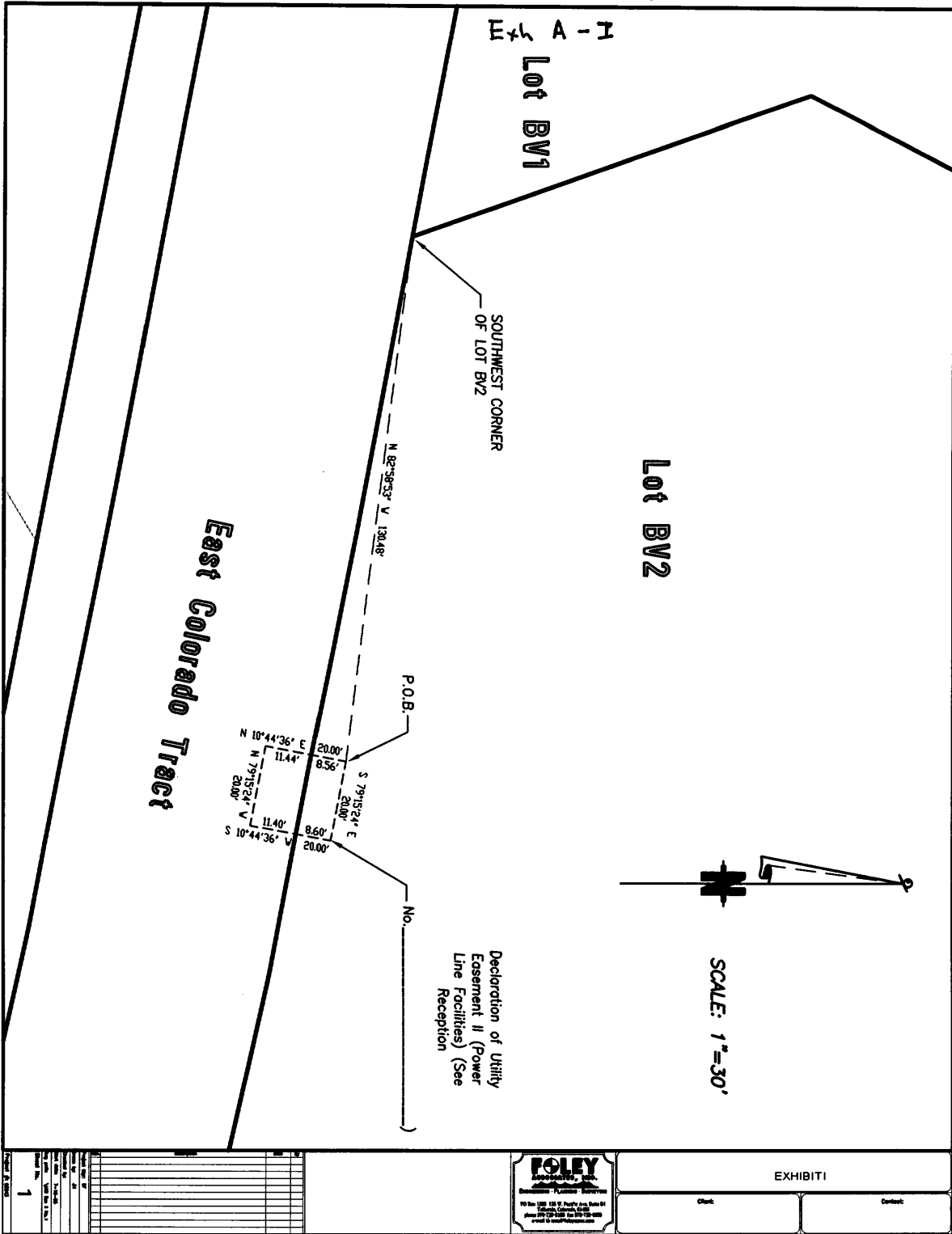


EXHIBIT "B"
(DESCRIPTION OF EASEMENT AREA)

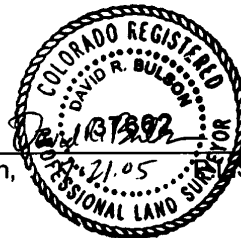
Exh B-I

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

PROPERTY DESCRIPTION

A part of Lot BV2 and the East Colorado Tract 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 San Miguel County Clerk and Recorder in Plat Book 1 at page _____, described as follows:

Beginning at a point located within said Lot BV2 from which the southwest corner of said Lot BV2 bears N 82°58'53" W a distance of 130.48 feet, thence S 79°15'24" E a distance of 20.00 feet; thence S 10°44'36" W a distance of 8.60 feet to a point on the southerly boundary of said Lot BV2; thence S 10°44'36" W a distance of 11.40 feet; thence N 79°15'24" W a distance of 20.00 feet; thence N 10°44'36" E a distance of 11.44 feet to a point on the southerly boundary of said Lot BV2; thence N 10°44'36" E a distance of 8.56 feet to the POINT OF BEGINNING.



David R. Bulson, S. #37662

Exh B- II

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

PROPERTY DESCRIPTION

A part of Lot BV3 and the East Colorado Tract 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 San Miguel County Clerk and Recorder in Plat Book 1 at page _____, described as follows:

Beginning at a point located within said Lot BV3, from which the southeast corner of Lot BV2 according to 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 _____ bears S 84°38'44" E a distance of 58.80 feet; thence S 28°56'08" W a distance of 11.20 feet to a point on the southerly boundary of said Lot BV3; thence S 28°56'08" W a distance of 8.79 feet; thence N 61°03'52" W a distance of 20.00 feet; thence N 28°56'08" E a distance of 9.02 feet to a point on the southerly boundary of said Lot BV3; thence N 28°56'08" E a distance of 10.98 feet; thence S 61°03'52" E a distance of 20.00 feet to the POINT OF BEGINNING.

David R. Bulson, _____ S. #37662

