

IMC
DECLARATION OF USE EASEMENT – II
(Outlot C – General Usage)

THIS DECLARATION OF USE EASEMENT - II (“Declaration”) is made as of this ~~14th~~ day of July, 2005 (“Effective Date”) by Idarado Mining Company, a Delaware corporation (“Declarant”), Idarado Legacy, LLC, a Colorado limited liability company (“Legacy”) and Idarado Legacy Homeowners Association, a Colorado nonprofit corporation (“Association”) have joined in this Declaration acknowledging their respective consents to the terms, conditions, provisions, rights, duties and obligations as stated herein and their respective agreements to be bound thereby.

RECITALS

A. Legacy is the developer of certain Lots, Parcels, Outlots and Tracts located in San Miguel County, Colorado (“**Idarado Lots, Parcels, Outlots and Tracts**”) that were: (1) established by the Declaration of Covenants, Conditions and Restrictions for Idarado Legacy Subdivision recorded on June 17, 2004 at Reception No. 367146 in the Office of the Clerk and Recorder of San Miguel County, Colorado (“**Official Records**”), and the First Amendment to the Declaration recorded on September 17, 2004 in Reception No. 369142, the Second Amendment to the Declaration recorded on November 1, 2004 in Reception No. 370144; the Third Amendment to the Declaration recorded on November 1, 2004 in Reception No. 370145; the Fourth Amendment to the Declaration recorded on January 27, 2005 in Reception No. 372009; and the Fifth Amendment to the Declaration recorded on August 18, 2005 in Reception No. 377044, as may be further amended from time to time (collectively “**Community Declaration**”); and (2) depicted on 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, as amended by the First Amendment to the Final Plat recorded on November 1, 2004 in Plat Book 1 at Page 3368, Reception No. 370139 and as amended by the Second Amendment to the Final Plat recorded on August 18, 2005 in Plat Book 1 at Page 3508, Reception No. 377041 (“**Second Plat Amendment**”), as such plats may be further amended from time to time (collectively, the plats are referred to as the “**Community Plat**”).

B. The Idarado Lots, Parcels, Outlots and Tracts were annexed into the Idarado Legacy Subdivision (“**Common Interest Community**”). The Idarado Lots are intended to be owned by various owners (“**Lot Owners**”) as provided for in the Agreement. The Idarado Parcels, Outlots and Tracts initially will be owned by the Declarant and, thereafter, its designees.

C. The Association was duly formed in furtherance of the purposes stated in the Community Declaration, 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. Declarant is the owner of certain real property known and described as Outlot C on the Second Plat Amendment (“**Property**”) located in San Miguel County, Colorado.

E. Declarant desires to establish and create an easement (“**Use Easement**”), as further described and provided for herein, to allow the various uses and activities established herein and for the installation, use and preservation of certain structures and facilities consisting of, without limitation, the following: Construction of a permanent Rockfall Fence for Liberty Bell, construction of an access road or drive to allow access to the Liberty Bell Rockfall Fence, construction of other related features, facilities

and activities ("**Improvements**") as the same are depicted or described in the Second Plat Amendment and/or on the construction and engineering plans and specifications for such improvements on file with San Miguel County, Colorado ("**Construction Plans and Specifications**") by Legacy, the Association and/or one, some or all of the Lot Owners ("**Authorized Users**").

F. This Declaration is the IMC Declaration of Use Easement - II referred to in the Second Plat Amendment.

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. Use Easement.

1.1. Creation, Reservation and Grant of Use Easement.

1.1.1. Declarant, as the current, fee simple owner of the Property, does hereby establish and create a certain perpetual, non-exclusive easement, the Use Easement, over and across the Property ("**Use 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 Use Easement for itself and for Declarant's successors, transferees, designees and assigns the Use Easement; and (B) does further grant and convey the beneficial rights to use and enjoy the Use Easement to each of the respective Authorized Users.

1.1.3. The Use Easement Area is intended by Declarant to be depicted on the Second Plat Amendment, but such depiction is not required for the proper vesting of the Use Easement.

1.2. Allowed Uses of Use Easement. The Use Easement and the Use Easement Area may be used by Declarant and by an Authorized User only for each of the following purposes ("**Allowed Uses**"):

1.2.1. To design, install and construct the Improvement and related facilities, including the Rockfall Fence for Liberty Bell.

1.2.2. To use and operate the Improvement.

1.2.3. To upgrade the Improvement to meet changing needs.

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

1.2.5. To enable reasonable vehicular access to allow an Authorized User to undertake the Allowed Uses, including roads or trails to gain access to the Rockfall Fence for Liberty Bell for its construction, maintenance, repair and replacement.

1.2.6. To allow Legacy, the Association and the Lot Owners to undertake those certain passive recreational uses and activities allowed by San Miguel County in Outlot C as specified in the Second Plat Amendment, subject to the prior authorization and approval of Association and Declarant. This may include the construction of a sitting area with benches and landscaping.

1.3. **Reservation of Rights.** Declarant expressly reserves unto itself and its successors, transferees, designees and assigns, the right to: (A) use and enjoy the land covered by the Use 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 Use Easement Area to other persons or entities.

1.4. **Integration Into Community Declaration.** The Improvements shall be considered Common Elements within the meaning of the Community Declaration.

1.5. **Restrictions Governing the Use of the Use Easement.** In undertaking an Allowed Uses of the Improvement and of the Use Easement, each Authorized User shall comply with each of the following requirements and limitations:

1.5.1. The Improvement shall be constructed in accordance with plans and specifications reasonably approved by Declarant.

1.5.2. Construction, operation, repair and maintenance of the Improvement within the Use 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.

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

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

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

1.5.6. Prior to commencement of installation of the Improvement or undertaking any repair or maintenance within the Use 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.

1.6. **Cost of Construction of the Improvement.**

1.6.1. Legacy agrees to assume the cost and expense associated with the initial design, construction and installation of the Improvement 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 Improvements 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.

1.6.2. The Association, and not Legacy, shall be responsible for any subsequent modifications, alterations, upgrades and/or replacement of the Improvements.

1.7. **Maintenance of the Improvement.** Upon completion of the Improvement, Association agrees to accept the Improvement and to undertake all necessary maintenance and repair of the Improvement. The costs of maintenance shall be allocated by the Association as either a General Common Expense or a Limited Common Expense among its users as provided for in the Community Declaration.

1.8. **Relocation of Use Easement Area.**

1.8.1. Declarant, for itself and its successors, transferees, designees and assigns, reserves the right to relocate the Improvement, Use Easement and/or the Use 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 Use 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 Use Easement.

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

1.8.3. Authorized User agrees to reasonably cooperate and assist Declarant should Declarant elect to relocate the Use Easement, Use Easement Area and/or Improvement.

1.9. **Ownership of the Improvement.** All facilities associated with a particular Improvement installed within the Use Easement Area shall be the property of the Association. The foregoing shall not be construed as a grant of ownership to any portion of the Property.

1.10. **Expansion of Rights.** Declarant, for itself and its successors, transferees, designees and assigns, reserves the right to expand the scope of the Use Easement to allow other persons or parties to use the Use Easement and to allow other Improvements to be undertaken within the Use Easement Area subject to the terms and conditions stated in this Declaration. The foregoing notwithstanding, Declarant shall not have the right to expand the Use 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 Use Easement.

1.11. **Prior Encumbrances.** This Use 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 and the Authorized User.

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

2.3. **Modification.** This Declaration may be amended only by the unanimous written consent of the Declarant, Legacy 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.** Legacy and Association each agrees to indemnify, defend and hold harmless Declarant, from and against all liens or claims for payment for construction, repair or maintenance of the particular Improvement and other uses and activities allowed by this Use Easement, 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 Improvement, 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 Improvement and/or the Use 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.

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

DECLARANT:

Idarado Mining Company,
a Delaware corporation

By: [Signature]
William S. Lyle, Vice 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 S. Lyle, as the Vice President of Idarado Mining Company.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 4/5/08.

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: *William R. Hegberg*
William R. Hegberg, President

Date: 7/14/05



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

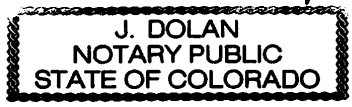
My commission expires: 4/5/08

ASSOCIATION CONSENT:

Idarado Legacy Homeowners Association,
a Colorado nonprofit corporation

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

Date: 7/14/05



STATE OF COLORADO)
COUNTY OF San Miguel) ss.

MY COMMISSION EXPIRES 4/5/2008

Acknowledged, subscribed and sworn to before me this 14th 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.