

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

THIS GRANT OF EASEMENT (the "Easement") made this ____ day of _____, 20___, between **Bergen Rock, LLC**, whose address is PO Box 407, Sedalia, Colorado 80135 (hereinafter "**Grantor**"), and the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO**, a political subdivision of the State of Colorado, whose address is 100 Third Street, Castle Rock, Colorado 80104 (hereinafter "**Grantee**"). Grantor and Grantee, and their respective successors and assigns, may be referred to collectively herein as the "Parties" and singularly as a "Party."

WITNESSETH:

THAT GRANTOR, for and in consideration of the sum of FIVE HUNDRED DOLLARS AND NO CENTS (\$500.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and by these presents does hereby grant, sell, bargain, and convey to Grantee, or its successors and assigns, a temporary construction easement all over, upon, across, and under that certain tract of land, situated in the County of Douglas, State of Colorado, described as follows:

See Exhibit "A", attached hereto and incorporated herein by reference (the "Easement Area").

TOGETHER WITH the right of ingress and egress over said Easement Area for the purposes of grading slopes, removing excess soil material, depositing fill material and moving equipment and personnel as may be necessary in the course of constructing certain roadway and drainage improvements associated with the Dakan Road Bridge Project; Douglas County Project No. CI 2007/021 (the "Project"). This Easement shall be subject to the following terms and conditions:

1. Use by Grantee. Grantee shall have the full right and authority to make the improvements delineated in the Project construction plans, incorporated herein by this reference, which includes modifying the existing slopes and performing the excavation and/or embankment related to the Project within the Easement Area.

2. Use by Grantor and Restriction. Grantor shall retain the right to use the surface of the Easement Area for ingress and egress, insofar as such use and occupancy is consistent with and does not impair Grantee's full employment of the rights herein granted; provided however, Grantor shall be prohibited from constructing any structures or fencing within the Easement Area during the term of this Easement.

3. Mutual Use. The Parties agree to use reasonable efforts to minimize any interference with any of the activities of the other Party, its employees, authorized agents and contractors on the Easement Area, and shall not undertake any actions regarding its use of the Easement Area that would endanger the health, safety or welfare of either Party or their employees, agents or contractors, or damage it's equipment, materials or property.

4. No Additional Uses. Grantee, its employees, authorized agents and contractors use of the Easement Area shall be for the sole and exclusive purposes contained herein, and this Easement

shall not be construed as a dedication of the Easement Area or a grant of uses beyond those contemplated herein.

5. Notice. Grantee shall notify Grantor orally or in writing a minimum of twenty-four (24) hours prior to first entering the Easement Area to construct the Project improvements.

6. Removal of Vegetation. Grantee, its authorized agents or contractors, shall have the right to remove, shrubs, woody plants and nursery stock (singularly and collectively the "Vegetation") from within the License Area that may interfere with the Project improvements; provided however, Grantee shall use reasonable efforts to protect Vegetation identified by Grantor as to be protected if possible (and inform Grantor if not possible).

7. Repair and Restoration. Prior to the expiration of this Easement, Grantee shall restore the surface of the Easement Area, and any areas disturbed by Grantee, as nearly as reasonably possible to its original condition, which shall include contouring and stabilizing the surface of the ground, and repairing any depressions, wheel tracks, ruts or other marks left in the ground surface by truck or track-mounted equipment. Grantee shall restore and/or replace any disturbed landscaping improvements. Grantee shall revegetate any disturbed native areas with the seed mixture currently approved by the Douglas County Department of Public Works Engineering.

8. Removal of Equipment. Prior to the expiration of this Easement, Grantee shall promptly remove all materials, debris and equipment utilized to perform the work from the Easement Area, including any construction equipment and materials staged and/or stored within the Easement Area, if any.

9. Permanent Fencing. Any existing permanent fencing located within and/or adjacent to the Easement Area impacted by Grantee's activities shall be reset or replaced by Grantee with like kind materials at its original location (when possible) or at an alternate location to be mutually determined between the Parties upon completion of the work.

10. Temporary Fencing. Grantee shall install temporary fencing along the boundary of the Easement Area to isolate the Easement Area from the remaining tract of land. Grantee shall be allowed to leave said temporary fencing in place until the expiration of this Easement, at which time Grantee shall remove said fencing at its sole cost. If the Parties mutually desire to leave any temporary fencing in place beyond the expiration of this Easement to help establish any revegetation areas, Grantor shall take ownership of the temporary fencing materials and shall be responsible for removing any temporary fencing at its discretion.

11. Driveways. Any driveways, street entrances and curb cuts located within the Easement Area, which are disturbed by Grantee's construction activities, shall be replaced with like kind materials by Grantee and configured to tie into the roadway profile improvements associated with the Project.

12. Mechanic's and Materialmen's Liens. Grantee covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Easement Area or on Grantor's property with respect to work or services claimed to have been performed for, or materials claimed to have been furnished to, Grantee or its agents pursuant to this Easement.

13. Compliance with Laws. Grantee shall cause all activities and work on the Easement Area to be performed in compliance with all applicable laws, rules, regulations, orders and other governmental requirements, including all stormwater management laws and regulations. Grantee acknowledges and agrees that it shall ensure that its contractors obtain and maintain all necessary federal, state and local permits relating to water quality, erosion, drainage, sediment control, grading and stormwater discharge for the performance of maintenance and/or repair work.

14. Release. Grantee, for itself and those claiming through Grantee, hereby releases Grantor, its beneficiaries, and its respective officers, directors, partners, employees, agents, mortgagees, licensees, contractors, guests, and invitees from any and all liability, loss, claims, demands, damages, penalties, fines, interest, costs, and expenses for damage that may arise from the Use of the Easement Area by Grantee and its agents.

15. Endangered Species Act. The Easement Area may contain habitat for listed “threatened” or “endangered” species under the Endangered Species Act (ESA). Grantee shall be responsible for determining the presence of such habitat and taking measures to comply with the ESA and all other applicable federal laws.

16. Environmental. Grantee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Easement Area by Grantee, its agents, employees or contractors, except those customarily used in typical amounts with regard to the equipment required to construct the Project. Without limiting the foregoing, if the presence of any Hazardous Material on the Easement Area caused or permitted by Grantee results in any contamination of the Easement Area, Grantee shall promptly take all actions, at no expense to Grantor, as are necessary to return the Easement Area to the condition existing prior to the introduction of any such Hazardous Material to the Easement Area, provided that Grantor’s approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse effect on the Easement Area. As used in this Easement, the term “Hazardous Material” means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of Colorado or the United States.

17. Warranties and Disclaimers. Grantor makes no warranties or representations with respect to the Easement Area, including, without limitation, the condition and state of repair of the Easement Area, the suitability of the Easement Area for Grantee’s intended use, or with respect to any rights which other parties may have, or claim to have, to enter upon the Easement Area by reason of access easements granted by Grantor or otherwise.

18. Term. The duration of this Easement, for purposes of roadway construction, becomes effective upon the date of entry for construction, remains in effect during construction, and terminates ten (10) days after the conclusion of construction, and in any event, the term of the Easement shall not exceed twelve months (12) months from the date of execution of the Easement. The Grantee, at its sole discretion, shall have the option to extend the Easement for one additional 12-month term by providing a minimum of 30 days’ written notice to the Grantor of the Grantee’s intent to extend the term of the Easement and tendering payment of five hundred fifty dollars and 00/100 (\$550.00) to Grantor prior to the expiration of the term of the Easement. In the event the Grantor’s Property has been conveyed by Grantor during the term of the Easement, the successor in title to Grantor’s Property, subject to this Easement, will provide the Grantee with an executed IRS Form W-9, Request for Taxpayers Identification Number and Certification (“W-9”) to facilitate payment of consideration for the Easement extension. If

receipt of a W-9 from successor in title to Grantor's Property delays payment processing by the Grantee beyond the expiration date of the original term of the Easement, such condition shall not serve to invalidate the Grantee's option or extension of the Easement.

19. General Provisions:

- a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.
- b. Severability. In the event any of the provisions of this Easement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected. Should either Party fail to enforce a specific term of this Easement, it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.
- c. Entire Agreement. This Easement sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.
- d. No Third Party Beneficiaries. This Easement is entered into by and between Grantor and Grantee, is solely for the benefit of Grantor and Grantee and their respective successors and assigns for the purposes set forth herein and does not create rights or responsibilities in any third parties beyond Grantor and Grantee.
- e. Amendment. Any amendment shall be in writing and signed by both Parties.
- f. No Waiver of Governmental Immunity. Grantee, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provision of this Easement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as amended.
- g. Appropriations. Any financial obligations of Grantee shall extend only to monies duly and lawfully appropriated and budgeted by Grantee and encumbered for the purpose of this Easement, pursuant to § 29-1-110, C.R.S., as amended.
- h. Venue. Venue for any action hereunder shall be in the district court of the County of Douglas, State of Colorado.
- i. Counterparts. This Easement may be executed in two (2) or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.
- j. Recitals. All recitals are hereby incorporated into the Easement.
- k. Successors and Assigns. This Easement shall extend to and be binding upon the heirs, successors and assigns of the Parties hereto and shall run with the land.

EXHIBIT "A"
TEMPORARY EASEMENT NUMBER: TE-102
DOUGLAS COUNTY PROJECT NO. CI 2007-021

DATE: FEBRUARY 16, 2024

A Temporary Easement parcel located within a parcel of land as described by Special Warranty Deed, Reception Number 01071722 (Book 2103 Page 2253), in the Douglas County Clerk and Recorder's office and located in the Northwest 1/4 of Section 2, Township 9 South, Range 68 West of the 6th Principal Meridian, County of Douglas, State of Colorado, described as follows:

COMMENCING at a 2.5" Aluminum Cap stamped "Archer LS 6935" at the Southwest corner of Section 35, Township 8 South, Range 68 West of the 6th Principal Meridian; Thence S 86°56'31" E, a distance of 758.02 feet, to a point on said south of right-of-way line of Dakan Road, and the **POINT OF BEGINNING**;

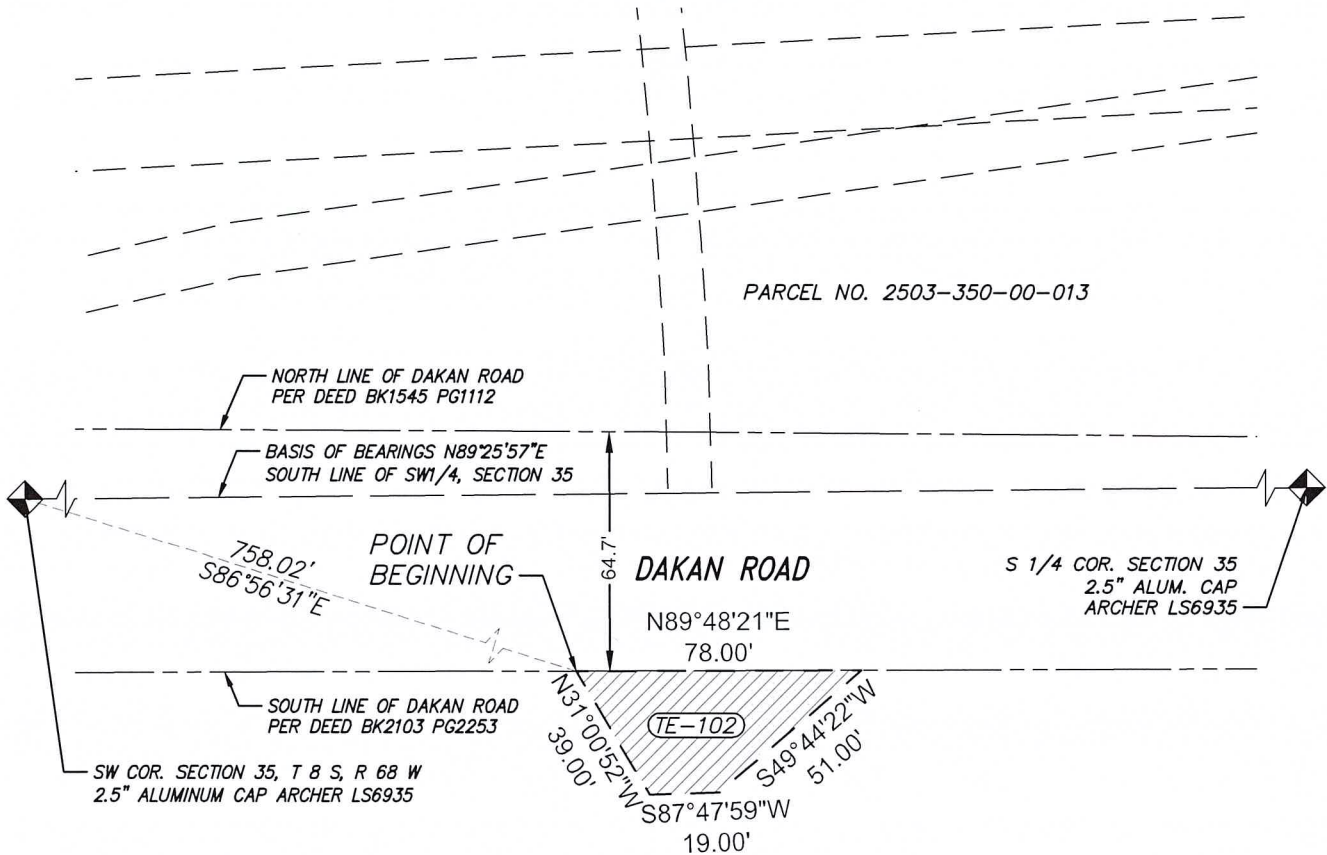
1. Thence N 89°48'21" E, along said south right-of-way line of Dakan Road, a distance of 78.00 feet;
2. Thence S 49°44'22" W, a distance of 51.00 feet;
3. Thence S 87°47'59" W, a distance of 19.00 feet;
4. Thence N 31°00'52" W, a distance of 39.00 feet to a point on said south right-of-way line of Dakan Road, and the **POINT OF BEGINNING**;

Containing an area of 1,605 square feet or 0.037 acres, more or less.

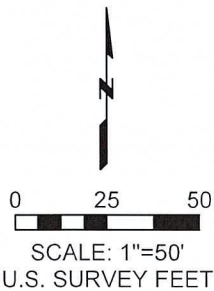
Basis of Bearings: Commencing at a 2.5" Aluminum Cap stamped "Archer LS 6935" at the Southwest corner of Section 35, Township 8 South, Range 68 West of the 6th Principal Meridian thence N89°25'57"E a distance of 2622.27 feet to a found 2.5" Aluminum Cap stamped "Archer LS 6935" at the South quarter corner of said Section 35 with all bearings herein relative thereto.

Prepared for and on behalf of
Douglas County, Colorado.
Lorelei A. Ward, PLS 34982
5775 Mark Dabling Boulevard, Suite 190
Colorado Springs, CO 80919
(719) 590-9194

ILLUSTRATION
FOR
EXHIBIT A
PAGE 2 OF 2



OWNER:
BERGEN ROCK, LLC
PARCEL NO. 2609-022-00-005
Rec. No. 01071722
(TE-102) AREA 1,605 SF (0.037 AC)
POB to SW1/4 Section 35
758.02 N86°56'31"W



THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY.
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.



5775 MARK DABLING BLVD., SUITE 190
COLORADO SPRINGS, COLORADO 80919
(719) 590-9194 / info@f-w.com

DOUGLAS COUNTY
DAKAN ROAD
DOUGLAS COUNTY PROJECT NO. CI 2007-021
TE-102 - TEMPORARY EASEMENT
NW 1/4 SECTION 2, T 9 S, R 68 W OF THE 6TH P.M.,
COUNTY OF DOUGLAS, STATE OF COLORADO

PROJECT NO.: 0171012.00
DRAWN: MF
REVIEWED: LAW
DATE: 3-12-2024

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