

RESOLUTION NO. 2006 -095

A RESOLUTION APPROVING AND CONFIRMING THE APPORTIONMENT TO EACH LOT OR TRACT OF LAND IN THE EAGLE HILL RANCH LOCAL IMPROVEMENT DISTRICT, IN OURAY COUNTY, COLORADO OF THE COST OF IMPROVEMENTS MADE WITHIN THE DISTRICT; ASSESSING A SHARE OF THE COST AGAINST EACH LOT OR TRACT OF LAND; AND PRESCRIBING THE MANNER FOR THE COLLECTION AND PAYMENT OF THE ASSESSMENTS

WHEREAS, pursuant to Resolution No. 2005-033, adopted and approved on June 13, 2005, the Board of County Commissioners (the "Board") of Ouray County, Colorado (the "County"), has created the Eagle Hill Ranch Local Improvement District (the "District") within the County for the purpose of constructing road improvements, including necessary and convenient facilities, properties and equipment incident thereto (the "Project"); and

WHEREAS, at an election held on November 7, 2006, the electors of the District approved the borrowing by the District of funds in a principal amount up to \$433,000, with a maximum repayment cost of up to \$625,898.40, for the purpose of financing the costs of paving and constructing improvements to roads within the District, including costs necessary or incidental thereto, by the signing of a promissory note payable from special assessments imposed against benefited properties located within the District and from other funds which may be lawfully pledged to the payment of such Bonds; and

WHEREAS, pursuant to Section 30-20-604, C.R.S., the cost of the Project may be assessed against the property specially benefited, without regard to lot or land lines, on a frontage, zone, or other equitable basis, in accordance with benefits, as the same may be determined by the Board; and

WHEREAS, the term "benefit" for purposes of assessing a particular property, pursuant to Section 30-20-606, C.R.S., and as considered by the Board, includes, but is not limited to: increases in the market value of the property; reductions in the maintenance costs of particular property or accruing to public property in the District; and an increase in convenience or a reduction in inconvenience accruing to particular property owners, including the facilitation of access to and travel over roads; and

WHEREAS, the total cost of the Project has been reasonably ascertained, and pursuant to §30-20-607, C.R.S., the Board has caused to be prepared a statement showing the whole cost of the improvements, including the costs of inspection and collection, capitalized interest, and all other incidental costs, the portion thereof, if any, to be paid by the County, and the portion thereof to be assessed upon each lot or tract of land to be assessed, and has caused such statement to be filed in the office of the County Clerk and Recorder; and

WHEREAS, pursuant to § 30-20-608, C.R.S., the County Clerk and Recorder has given notice of apportionment and of the assessment hearing by publication in one issue of the Ouray Plain Dealer, a newspaper of general circulation in the County, such publication being at least twenty (20) days prior to the date of hearing (the "Notice"); in addition, the County Clerk and

Recorder has caused said notice to be mailed, by first-class mail, to the last known address of each property owner to be assessed for the cost of the Project; and

WHEREAS, at the time and place set forth in the notice, the Board met in open session for the purpose of hearing any complaints or objections that might be made; and

WHEREAS, all complaints and objections having been heard, the Board has determined, based on the evidence submitted at the hearing, to approve and confirm the assessment roll at set forth in the appendix to this Resolution and, in accordance with Section 30-20-609, C.R.S., the passage of this Resolution shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments and that such assessments have been lawfully levied;

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO:

Section 1. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the County and the members of the Board, not inconsistent with the provisions of this Resolution, relating to the creation of the District and the authorization of the improvements therein are hereby ratified, approved and confirmed.

Section 2. Approval of Final Assessment Roll. The Board held a public hearing pursuant to the Notice and part 6 of article 20 of title 30, Colorado Revised Statutes. The whole cost of the Project and apportionment of the same, as set forth in the assessment roll, attached hereto as Exhibit A, is hereby approved and confirmed. Said apportionment is hereby found and declared to be fair and equitable and consistent with the special benefits which the real property in the District will receive by reason of the construction of the Project. A share of said cost is hereby assessed to and upon each lot or tract of land within the District in the proportions and amounts set forth in the assessment roll.

The County Clerk and Recorder is hereby directed to prepare a local assessment roll in book form showing, in suitable columns, each piece of land assessed, the total amount of assessment, the amount of each installment of principal and interest if the same is payable in installments, and the date when each installment will become due, with suitable columns for use, in case of payment of the whole amount or of any installment or penalty, and she shall deliver the same, duly certified, under the county seal, to the County Treasurer for collection.

Section 3. Payment of Assessments. The assessments shall be due and payable at the office of the Ouray County Treasurer within 30 days after the effective date of this Resolution, without demand; provided however, that all such assessments may be paid, at the election of the property owner, in installments, with interest as hereinafter set forth.

Failure to pay the whole assessment within 30 days after the effective date of this Resolution shall be conclusively considered and held to be an election on the part of all persons interested, whether under disability or otherwise, to pay in installments. All persons so electing to pay in installments shall be conclusively held and considered as consenting to the Project and the assessments. Such election shall be conclusively held and considered as a waiver of any right to question the power or jurisdiction of the County to construct the improvements, the

quality of the work, the regularity or sufficiency of the proceedings, the validity or the correctness of the assessments, or the validity of the lien thereof.

The owner of any divided or undivided interest in the property assessed may pay his or her share of any assessment, upon producing evidence of the extent of his or her interest, satisfactory to the treasurer having the assessment roll in charge; but the assessment lien shall remain on the entire property assessed until the entire assessment is paid, except as otherwise provided in §30-20-610, C.R.S.

Section 4. County Treasurer and Clerk Procedures upon Payment of Assessments in Full. The owner of any property to be assessed may pay his or her assessment in full to the County Treasurer at any time within thirty (30) days after the effective date of this resolution. At the expiration of said thirty (30) day period, the County Treasurer shall return the assessment roll to the County Clerk and Recorder, therein showing all payments made thereon, with the date of each payment. Said roll shall be certified by the County Clerk and Recorder under the seal of the County and by her delivered to the County Treasurer, with her warrant for the collection of the same. The County Treasurer shall receipt for the same, and all such rolls shall be numbered for convenient reference.

Section 5. Payment of Assessments in Installments. In the case of an election to pay in installments, the assessments shall be payable at the office of the Ouray County Treasurer in fifteen (15) equal annual installments of principal and interest, the first of such installments of principal and interest shall commence in the year 2007. The times of payment of installments shall be the same as the times of payment for installments of property taxes, as specified in §39-10-104.5(2), C.R.S. (the "Installment Payment Date"); provided however, that in no event shall an Installment Payment Date be extended to a date which is later in time than the date currently provided in said Section. The remainder of the installments shall be due and payable successively on or before the Installment Payment Date in each year thereafter until paid in full. The fifteenth and last installment shall be due in the year 2021. Each assessment which is not paid in full within the thirty day period specified in Section 4 above, shall bear interest from the effective date of this Resolution until paid in full at a rate equal to the rate of interest on the Promissory Note given by the District to Alpine Bank plus one percent (1%).

The amount of each installment shall be that amount necessary to fully repay the amount of the assessment plus all interest accrued under the foregoing sentence assuming fifteen equal annual payments.

Pursuant to §30-20-615 C.R.S., the owner of any property not in default as to any installment or payment may, at any time, pay the whole of the unpaid principal then outstanding, together with interest to the date of the next Installment Payment Date; except that any owner who pays under this provision shall be assessed a prepayment premium of five percent (5%) of sum of the remaining principal portion of all unpaid installments of the assessment of such owner's property. Any owner seeking to make prepayment after the initial 30 day prepayment period specified in Section 4 shall be required to notify the County Treasurer of its intent to do so at least ninety days before making the prepayment and the County Treasurer will then calculate the prepayment amount as of the proposed prepayment date in accordance herewith.

Section 6. Penalty for Default or Non-Payment. Failure to pay any installment, whether of principal or interest, when due shall cause the whole of the unpaid principal to be due and payable immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate established pursuant to §5-12-106(2) and (3), C.R.S., until the date of tax sale, as provided by law. At any time prior to the date of the tax sale, the owner may pay the amount of all unpaid installments (being the amount of principal plus interest determined in accordance with the preceding sentence), together with default penalty interest at the penalty rate of an additional one percent (1%) per month and all costs of collection accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered.

Section 7. Assessment Lien; Recordation. The assessments levied against the real property within the District, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same shall constitute, from the effective date of this Resolution, a perpetual lien in the amounts assessed against each lot or tract of land and shall have priority over all other liens excepting general tax liens, and shall be enforced in accordance with the laws of the State of Colorado

The Ouray County Clerk and Recorder shall file in her office copies of this Resolution after its final adoption for recording on the real property records of each lot or tract of land assessed within the County, as provided in Article 30, Article 35 or Article 36 of Title 38, C.R.S. In addition, the Ouray County Clerk and Recorder shall file copies of this Resolution after its final adoption with the Ouray County Assessor and Ouray County Treasurer. The Ouray County Assessor is authorized to create separate schedules for each lot or tract of land assessed within the County pursuant to this Resolution.

Section 8. Assessment Due on Subdivision. Prior to the approval by the Board of the subdivision of any tract of land within the District, the full outstanding amount of the assessment attributable to such tract of land, together with amounts which shall be collected in accordance with the prior resolutions of this Board (in particular, Resolution 2005-59, Section 3(H)), shall become due and payable, together with accrued interest, calculated as the whole of the unpaid principal with interest accruing to the date of the next assessment Installment Payment Date.

Section 9. Changes in Description of Land Assessed. In the event that any two or more lots are combined, the assessments allocable to such lots shall be combined and the new lot shall be subject to the entire amount attributable to the combined lots.

Section 10. Repealer. All orders, bylaws, and resolutions of the County, or parts thereof, inconsistent with this Resolution, are hereby repealed to the extent only of such inconsistency.

Section 11. Severability. If any one or more sections or parts of this Resolution shall be adjudged unenforceable or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Resolution, it being the intention that the various provisions hereof are severable.

Section 12. Effective Date. This Resolution shall take effect immediately upon its adoption.

READ, PASSED AND ADOPTED this ____ day of December 2006 by the Board of County Commissioners of Ouray County, Colorado.

[SEAL]

By _____
Chairman, Board of County Commissioners

Attested:

By _____
County Clerk and Recorder

**EXHIBIT A
ASSESSMENT ROLL**

<u>Property Description</u>	<u>Assessment Units</u>	<u>Assessment Lien</u>
(One Assessment Unit = \$7,125.00)		
1. Eagle Hill Ranch Subdivision (all filings including Sweetwater)	39 Units (1 unit per parcel)	\$7,125.00/unit \$277,875.00 total