

RESOLUTION NO. 2006-096

AUTHORIZING THE BORROWING OF \$277,875 FROM ALPINE BANK FOR THE BENEFIT OF THE EAGLE HILL RANCH LOCAL IMPROVEMENT DISTRICT; PRESCRIBING THE FORM OF THE PROMISSORY NOTE EVIDENCING SUCH INDEBTEDNESS; PROVIDING FOR THE PAYMENT OF THE INDEBTEDNESS AND THE INTEREST THEREON; AND SETTING FORTH OTHER DETAILS IN CONNECTION THEREWITH.

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

WHEREAS, the Board of County Commissioners, by Resolution No. 2005-059, adopted on September 12, 2005, approved the plans, specifications and cost estimates for the Project, approved and confirmed the manner of payment for the improvements contemplated by the Project, and tentatively approved and confirmed the allocation and apportionment of the Project costs to each lot or tract of land in the District; and

WHEREAS, all improvements contemplated by said Resolution No. 2005-059 have been completed at substantially below the original estimated cost, and were paid by an advance from the Eagle Hill Ranch Homeowners Association pending approval of funding for the District; and

WHEREAS, at an election duly held and conducted in accordance with law on November 7, 2006, the eligible, registered electors of the District voting thereon unanimously approved the issuance of District indebtedness payable from special assessments imposed against benefited properties located within the District, the question relating thereto being as follows:

SHALL OURAY COUNTY DEBT (FOR THE EAGLE HILL RANCH LOCAL IMPROVEMENT DISTRICT) BE INCREASED UP TO \$433,000, WITH A MAXIMUM REPAYMENT COST OF \$625,898.40 FOR THE PURPOSE OF REIMBURSING THE EAGLE HILL RANCH HOMEOWNERS ASSOCIATION FOR ALL COSTS INCURRED BY IT IN CONNECTION WITH PAVING AND CONSTRUCTING NECESSARY IMPROVEMENTS TO THE ROADS SERVING EAGLE HILL RANCH (INCLUDING COSTS NECESSARY OR INCIDENTAL THERETO) BY THE BORROWING OF FUNDS ON SUCH TERMS AS THE BOARD OF COUNTY COMMISSIONERS MAY DIRECT, WHICH BORROWING SHALL BE REPAYED FROM REVENUES COLLECTED FROM SPECIAL ASSESSMENTS IMPOSED AGAINST BENEFITED PROPERTIES LOCATED WITHIN THE DISTRICT OVER A PERIOD OF FIFTEEN YEARS (AND FROM ANY OTHER FUNDS WHICH MAY BE LAWFULLY PLEDGED TO THE PAYMENT OF SUCH DEBT)?

WHEREAS, the results of said election were duly canvassed and the result thereof duly declared; and

WHEREAS, by Resolution No. 2006 - 079 adopted on November 13, 2006, the Board has reviewed and approved the Statement of Expenses showing the whole cost of the improvements, including the costs of inspection and collection, and all other incidental costs relating to the Project; and

WHEREAS, the Board has determined that the District should borrow the sum of \$277,875.00 from Alpine Bank (the "Bank") for the repayment of the costs of the Project; and

WHEREAS, the Board desires to authorize the undertaking of that debt and specify all terms and conditions relating thereto;

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

1. Authorization and Details. In accordance with the Constitution of the State of Colorado; Title 30, Article 20, Part 6, C.R.S., and all other laws of the State of Colorado thereunto enabling:

A. The Eagle Hill Ranch Local Improvement District shall sign and deliver to Alpine Bank its Promissory Note ("the District Promissory Note") in the form attached obligating the District to pay Alpine Bank the principal amount of \$277,875.00 ("the Debt") in full payment of all costs of the Project previously advanced by the Eagle Hill Ranch Homeowners Association and pledging the revenues of the District special assessment to repay same;

B. The District Promissory Note shall be dated January 1, 2007 and shall be for a term of fifteen years payable in annual installments of principal and interest which shall be due on or before the 31st day of December of each year beginning in 2007 and continuing until paid, subject to prepayment as provided herein;

C. The interest rate shall be the Bank's current market interest rate for similar local government indebtedness, provided however that such rate shall not exceed Five Percent (5.0%) per annum;

D. In accordance with the voter approved ballot issue set forth in the preamble to this Resolution, the debt represented by the District Promissory Note does not exceed \$433,000 and the total estimated repayment cost of the District Promissory Note does not exceed \$625,898.40.

2. Prepayment. The District Promissory Note shall be subject to prepayment without penalty. Whenever the County Treasurer has funds derived from assessment payments and other amounts in the District Account which exceed the amount needed to pay the next installment of principal and interest which will be due and payable on the next succeeding annual payment date plus five thousand dollars to be held in reserve if available ("Excess Funds"), the County Treasurer may,

but shall not be required to, remit to the Bank a prepayment in any amount not exceeding the amount of any such Excess Funds. Such prepayment shall be promptly credited to the District's debt by the Bank.

3. Disposition and Investment of Proceeds; Tax Covenants. The proceeds of the District Promissory Note shall be applied as follows: first, to the payment in full of the promissory note from Eagle Hill Ranch Homeowners Association to First National Bank for amounts borrowed and applied by it to the payment of the cost of the Project road improvements within the District; second, to reimburse Ouray County for any administrative expenses incurred by it on behalf of the District; third, to reimburse the Eagle Hill Ranch Homeowners Association for any costs or expenses advanced by it on behalf of the District which were not paid by funds borrowed from First National Bank; and finally, to establishment of a reserve fund in the name of the District to be held and used by the District to repay the District's debt until such debt is paid in full ("the District Reserve Fund").

If requested by Bank, the County shall do and perform any reasonable acts necessary to assure that interest paid on the District Promissory Note shall, for the purposes of federal income taxation, be excluded from the gross income of the recipient thereof and exempt from such taxation. It is hereby covenanted and agreed by the County that it will not make, or permit to be made, any use of the original proceeds of the District Promissory Note nor will it take or permit to be taken any action which would adversely affect the exclusion from gross income of the interest on the District Promissory Note under federal law. To the extent that the County has authority to do so, the District Promissory Note is hereby designated by the County as a "qualified tax-exempt obligation" for all tax purposes.

4. Creation of Accounts and Credit of Funds.

A. There are hereby created and established the Eagle Hill Ranch Local Improvement District Account ("the District Account"), which shall consist of all funds not set aside in the District Reserve Fund, and the Eagle Hill Ranch Local Improvement District Reserve Fund ("the District Reserve Fund"), which shall consist of up to \$5,000 in Excess Funds to be held in reserve to assure the ability of the District to meet its annual obligations to the Bank under the District Promissory Note in the event of nonpayment of any assessment. Both accounts may be established within one or more funds of the County and maintained by the County Treasurer as a book account in accordance with the terms of this Resolution.

B. The County Treasurer may create offsetting revenue and expense accounts or take any other actions not inconsistent with the provisions hereof for her convenience, all as may be determined by the County Treasurer.

C. Moneys credited to the foregoing Accounts may be invested or reinvested in accordance with State law; however, the investment of such moneys shall be subject to the limitations of the Section hereof entitled "Disposition and Investment of Proceeds; Tax Covenants." Except as otherwise provided herein, interest income from any such investments shall be retained in the Reserve Account.

D. Upon the District's signing of the District Promissory Note, the Bank shall apply the proceeds of the District Promissory Note to repayment in full of the existing indebtedness to the Bank signed by the Eagle Hill Ranch Homeowners' Association and shall return the promissory note of said Association to the Association endorsing thereon the fact of its having been paid in full.

E. The District Promissory Note and any interest thereon shall be payable solely from, and as security for such payment there is hereby irrevocably pledged, all funds received in payment of District assessments and all funds hereafter contained within the District Account and the District Reserve Account. Such accounts shall contain: (i) net proceeds from special assessments levied against the assessable property in the District and collected as provided by law pursuant to the assessment resolution; and (ii) other funds legally available therefore.

F. Any funds remaining in the District Account after the District Promissory Note has been repaid in full shall be released to the County and shall be used by the County for the maintenance and repair of the Project.

5. Covenants of the County. The Board hereby makes the following representations and covenants:

A. The Board reviewed and approved the Statement of Expenses showing the whole cost of the improvements, including the costs of inspection and collection, and all other incidental costs together with the portion thereof to be paid by assessments or from other sources, which statement was duly filed in the office of the Ouray County Clerk and Recorder and was available for public inspection.

B. Notice of Apportionment was duly mailed to all property owners within the District by regular United States mail on November 13, 2006 and further was published in the Ouray Plaindealer on November 17, 2006.

C. The Board has heard and decided any complaints or objections to the apportionment of the expenses of the District Project.

D. The assessments of properties within the District will be sufficient to repay the Debt and the District Promissory Note in full.

E. The County will collect the assessments as provided by law for the benefit of the holder of the District Promissory Note.

F. The County will promptly credit or cause to be deposited to the District Account, or to the District Reserve Account where required hereunder, the net proceeds from special assessments levied against the property included in the District, which remain subject to the lien imposed by such special assessments not previously pre-paid to the County, and to take such action as may be reasonably necessary and practicable to enforce the collection of such assessments in the manner provided by law.

6. Defeasance. When the Debt, including all principal and interest owed under the District Promissory Note has been duly paid, the pledge and lien and all obligations of the County hereunder shall thereby be discharged with respect to said District Promissory Note and said District Promissory Note shall no longer be deemed to be outstanding within the meaning of this Resolution.

7. Effect of Amendment. Upon the execution of any amendatory or supplemental resolution pursuant to this Resolution, this Resolution shall be deemed to be modified and amended in accordance therewith, provided however that no such amendment shall alter or amend any term of the District Promissory Note unless the holder of the District Promissory Note consents to such amendment.

8. Authorization to Execute Documents. The Board hereby delegates full authority to, and appoints and constitutes as its agents for such purposes, its Chairman, the County Treasurer, and the County Clerk and Recorder of the County, all of whom shall be and hereby are authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution, including, but not limited to the execution of the District Promissory Note in substantially the form presented to this meeting of the Board. The execution by the Chairman of the Board of County Commissioners of any document authorized herein, which signature is attested by the County Clerk or her deputy, shall be conclusive proof of the approval by the County of the terms thereof.

9. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the County and the members of the Board of County Commissioners, not inconsistent with the provisions of this Resolution, relating to the any matters relating to the Eagle Hill Ranch Local Improvement District are hereby ratified, approved, and confirmed.

10. Resolution Irrepealable. After the District Promissory Note has been signed and delivered to the Bank, this Resolution shall constitute a contract between the Bank, or any future holder of the District Promissory Note, and the County, and shall be and remain irrepealable until all principal and any interest accrued thereon shall have been fully paid, satisfied, and discharged, as herein provided.

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

12. Severability. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution, the intent being that the same are severable.

13. Effective Date. The Board of County Commissioners of Ouray County hereby declare that this resolution is necessary for the preservation of the public peace, health, safety and welfare and that it therefore shall become effective immediately upon its adoption and approval.

14. Compliance with Law. In passing this Resolution, the Board of County Commissioners has made every effort to comply with the requirements of all applicable statutory provisions. In the event, despite such effort, this Resolution fails to comply in any non-substantive or technical way with any requirements of the law, such noncompliance may be corrected by supplemental Resolution adopted by the Board of County Commissioners. In the event such a supplemental Resolution is adopted, this Resolution shall be read as though such changes had been incorporated in its original text. To the extent that any provision of this Resolution is inconsistent with any prior resolution of this Board, the provision of this Resolution shall control and the prior resolution shall be deemed to have been amended thereby.

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 or Deputy