

ORDINANCE NO. 573

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SPECIAL ASSESSMENT BONDS OF THE TOWN OF BERTHOUD, COLORADO, IN THE PRINCIPAL AMOUNT OF \$1,580,000 FOR BEIN SPECIAL IMPROVEMENT DISTRICT NO. 1985-1; PRESCRIBING THE FORM OF THE BONDS, AND PROVIDING FOR THE PAYMENT OF THE BONDS AND THE INTEREST THEREON; AND DECLARING AN EMERGENCY.

WHEREAS, the Board of Trustees of the Town of Berthoud, Colorado (the "Board"), has by Ordinance No. 571, adopted and approved on March 19, 1985, created Bein Special Improvement District No. 1985-1 (the "District"), for the purpose of acquiring, constructing, and installing street, water, sanitary sewer, and drainage improvements therein, together with necessary incidentals; and

WHEREAS, an Advertisement for Bids for the construction of the improvements in the District has been advertised, and bids for such construction were received on February 27, 1985; and

WHEREAS, the Board has determined that bonds of the Town for the District should be issued in the amount of \$1,580,000 for the payment of such construction costs; and

WHEREAS, it is now necessary to provide for the issuance of such bonds and the form and payment thereof;

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

Section 1. Bond Details. That by virtue of and pursuant to Title 31, Article 25, Part 5, C.R.S., Special Assessment Bonds of the Town of Berthoud for Bein Special Improvement District No. 1985-1 (the "Bonds") shall be issued for the purpose of paying the costs of local improvements to be constructed in the District. The Bonds shall be in the principal amount of \$1,580,000, shall be dated May 1, 1985, and be in the denomination of \$5,000 each. The Bonds shall be issued only as fully registered bonds without coupons and shall be due and payable on May 1, 1996, subject to prior redemption in accordance

with Section 3 hereof. The Bonds shall bear interest payable semiannually on each May 1 and November 1, commencing on November 1, 1985, as follows:

<u>Amount</u>	<u>Estimated Redemption Dates (May 1)</u>	<u>Interest Rate</u>
\$160,000	1987	8.00%
160,000	1988	8.50
155,000	1989	9.00
160,000	1990	9.50
155,000	1991	9.75
160,000	1992	10.00
155,000	1993	10.25
160,000	1994	10.50
155,000	1995	10.75
160,000	1996	11.00

The maximum net effective interest rate authorized for this issue of Bonds shall be 11.00% per annum. The actual net effective interest rate is 10.631% per annum.

Section 2. Payment of Bonds; Paying Agent and Bond Registrar. The principal of the Bonds is payable in lawful money of the United States of America to the registered owner of each bond upon presentation at the principal office of Berthoud National Bank, in Berthoud, Colorado, or its successor, as paying agent (the "Paying Agent"). Notwithstanding anything contained in this Ordinance to the contrary, interest on any Bond is payable to the person in whose name such Bond is registered, at his address as it appears on the registration books maintained by or on behalf of the Town by Berthoud National Bank, in Berthoud, Colorado, or its successor, as Bond Registrar (the "Bond Registrar"), at the close of business on the fifteenth (15th) day of the calendar month next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of such Bond subsequent to such Record Date and prior to such interest payment date. Such payment shall be paid by check or draft of the Paying Agent.

The principal of and interest on the Bonds shall be paid in accordance with terms of a "Bond Paying Agent and Registrar Agreement" between the Town and Berthoud National Bank, in Berthoud, Colorado.

Section 3. Prior Redemption. The Bonds are subject to call and prior payment on any interest payment date, in direct numerical order, upon payment of par and accrued interest. Notice of such prior redemption will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) not more than 30 days and not less than 15 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed in whole at the address shown on the registration books maintained by or on behalf of the Town by the Bond Registrar. Notice of prior redemption shall also be given by advertisement once a week for three consecutive weeks in some newspaper of general circulation in the Town. Failure to give such notice by mailing to any Bondowner, or any defect therein, shall not affect the validity of any proceeding for the redemption of other Bonds. All Bonds so called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time.

Section 4. Form and Execution of Bonds. The Bonds shall be signed with the facsimile or manual signature of the Mayor, sealed with a facsimile or manual impression of the seal of the Town, attested with the facsimile or manual signature of the Town Clerk and countersigned with the facsimile or manual signature of the Town Treasurer. Should any officer whose facsimile or manual signature appears on the Bonds cease to be such officer before delivery of the Bonds to the purchaser, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

The Bonds shall be in substantially the following form:

[Form of Bond]

No. R-\_\_\_\_\_

\$ \_\_\_\_\_

[Front of Bond]  
UNITED STATES OF AMERICA  
STATE OF COLORADO  
COUNTY OF LARIMER

TOWN OF BERTHOUD

BEIN SPECIAL IMPROVEMENT DISTRICT NO. 1985-1,  
SPECIAL ASSESSMENT BOND

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>ORIGINAL ISSUE DATE</u>
_____	May 1, 1996	May 1, 1985

REGISTERED OWNER:

PRINCIPAL AMOUNT:  
DOLLARS

The Town of Berthoud, Larimer County, Colorado, for value received, hereby promises to pay out of the special fund hereinafter designated, but not otherwise, to the registered owner named above, or registered assigns, on the maturity date specified above, the principal amount specified above, and in like manner to pay interest on such principal amount (computed on the basis of a 360-day year of twelve 30-day months) from the interest payment date next preceding the date of registration and authentication of this Bond, unless this Bond is registered and authenticated prior to November 1, 1985, in which event this Bond shall bear interest from May 1, 1985, at the interest rate per annum specified above, payable semiannually on May 1 and November 1 each year, commencing on November 1, 1985, until such principal amount is paid, unless this Bond shall have been previously called for redemption and payment shall have been duly provided for or made. The principal of this Bond is payable in lawful money of the United States of America to the registered owner upon presentation at Berthoud National Bank, in Berthoud, Colorado, or its successor, as Paying Agent.

Payment of each installment of interest shall be made to the registered owner hereof whose name shall appear on the registration books of the Town maintained by or on behalf of the Town by Berthoud National Bank, in Berthoud, Colorado, or its successor, as Bond Registrar, at the close of business on the fifteenth (15th) day of the calendar month next preceding each interest payment date (the "Record Date"), and shall be paid by check or draft of the Paying Agent mailed to such registered owner at his address as it appears on such registration books.

REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF FULLY SET FORTH IN THIS PLACE.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the authorizing Bond Ordinance until the certificate of authentication hereon shall have been signed by the Bond Registrar.

IN TESTIMONY WHEREOF, the Town of Berthoud has caused this Bond to be executed in its name with the facsimile signature of the Mayor, sealed with a facsimile of the Town seal, attested

and countersigned with the facsimile signature of the Town Clerk and Treasurer, all as of the 23 day of April, 1985.

TOWN OF BERTHOUD, STATE OF  
COLORADO

(FACSIMILE  
S E A L )

By: (Facsimile Signature)  
Mayor

ATTESTED  
AND COUNTERSIGNED:

By: (Facsimile Signature)  
Town Clerk and Treasurer

[Form of Bond Registrar's Certificate of Authentication]

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in  
the within mentioned Bond Ordinance.

Date of Registration  
and Authentication:

BERTHOUD NATIONAL BANK,  
Berthoud, Colorado,  
as Bond Registrar

By: \_\_\_\_\_  
Authorized Signatory

[Back of Bond]

ADDITIONAL PROVISIONS

This Bond is one of a series aggregating One Million Five Hundred Eighty Thousand Dollars (\$1,580,000) par value, all of like date, tenor, and effect except as to number, principal amount, and interest rate, issued by the Town of Berthoud, in the County of Larimer and State of Colorado, for the purpose of paying the costs of acquiring, constructing, and installing street, water, sanitary sewer and drainage improvements, together with necessary incidentals, in Bein Special Improvement District No. 1985-1, in the Town of Berthoud, Colorado, by virtue of and in full conformity with the constitution of the State of Colorado, Title 31, Article 25, Part 5, C.R.S., and pursuant to an Ordinance of the Town duly adopted, approved, published, and made a law of said Town prior to the issuance of this Bond.

Payment of this Bond and the interest thereon shall be made from, and as security for such payment there is pledged, a special fund designated as "Bein Special Improvement District No. 1985-1 Bond and Interest Fund", which Fund shall contain initially any moneys in the construction account remaining after the cost of improvements has been paid in full and thereafter shall contain the proceeds from special assessments to be assessed against the property included within the District and specially benefited by the acquisition, construction, and installation of improvements therein. The assessments to be assessed by an ordinance of the Town shall constitute a perpetual lien in the several amounts assessed against each lot or tract of land and shall have priority over all other liens except general tax liens. In addition, whenever three-fourths of the Bonds of this issue have been paid and cancelled, and for any reason the remaining assessments are not paid in time to pay the remaining Bonds for the District and the interest due thereon, the Town of Berthoud shall pay the Bonds when due and the interest due thereon and reimburse itself by collecting the unpaid assessments due the District.

It is hereby recited, certified, and warranted that the total issue of Bonds of the Town for the District, including this Bond, does not exceed the amount authorized by law; that every requirement of law relating to the creation of Bein Special Improvement District No. 1985-1, the construction of said local improvements, and the issuance of this Bond has been fully complied with by the proper officers of the Town, and that all conditions required to exist and things required to be done precedent to and in the issuance of this Bond to render the same lawful and valid, have happened, been properly done and performed, and did exist in regular and due time, form, and manner, as required by law.

This Bond does not constitute a debt or an indebtedness of the Town of Berthoud within the meaning of any constitutional or statutory limitation or provision, and shall not be considered or held to be a general obligation of the Town. The payment of this Bond and the interest thereon is not secured by an encumbrance, mortgage, or other pledge of property of the Town except for such special assessments and other moneys pledged for the payment of the Bonds, as set forth above. No property of the Town, subject to such exception, shall be liable to be forfeited or taken in payment of the Bonds. For the payment of this Bond and the interest thereon, the Town pledges all of its lawful corporate powers.

Bonds of this issue, of which this Bond is one, are subject to call and prior payment on any interest payment date, in direct numerical order, upon payment of par and accrued interest. Notice of prior redemption shall be given by mailing a copy of the redemption notice not less than fifteen (15) days prior to the date fixed for redemption, to the registered owner of this Bond at the address shown on the registration books maintained by the Bond Registrar, in the manner set forth in the authorizing Bond Ordinance. All Bonds called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time.

The Town and the Bond Registrar shall not be required to issue or transfer any Bonds: (1) during a period beginning on the Record Date and ending at the close of business on the ensuing interest payment date, or (2) during the period beginning on any date of selection of Bonds to be redeemed and ending on the day on which the applicable notice of redemption is given. The Bond Registrar shall not be required to transfer any Bonds selected or called for redemption, in whole or in part. The Town, the Paying Agent, and the Bond Registrar may deem and treat the registered owner of any Bond as the absolute owner thereof for all purposes (whether or not such Bond shall be overdue) and any notice to the contrary shall not be binding upon the Town, the Paying Agent, or the Bond Registrar.

This Bond is transferable by the registered owner hereof in person or by his attorney duly authorized in writing, at the principal office of the Bond Registrar, but only in the manner, subject to the limitations, and upon payment of the charges provided in the authorizing Bond Ordinance and upon surrender and cancellation of this Bond. This Bond may be transferred upon the registration books upon delivery to the Bond Registrar of this Bond, accompanied by a written instrument or instruments of transfer in form and with guaranty of signature satisfactory to the Bond Registrar, duly executed by the owner of this Bond or his attorney-in-fact or legal representative, containing written instructions as to the details of the transfer of the Bond, along with the social security number or federal employer identification number of such transferee. In the event of the transfer of this Bond, the Bond Registrar shall enter the transfer of ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of authorized denominations of the same maturity and interest rate for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time. The Bond Registrar shall charge the owner of this Bond for every such transfer an amount sufficient to

reimburse it for its reasonable fees and for any tax or other governmental charge required to be paid with respect to such transfer.

[Form of Transfer]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto \_\_\_\_\_

SOCIAL SECURITY OR FEDERAL EMPLOYER  
IDENTIFICATION NUMBER OF ASSIGNEE  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Address of Assignee)

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature of Registered Owner:

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed:

\_\_\_\_\_  
(Bank, Trust Company, or Firm)

Section 5. Authentication. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until a certificate of authentication on such Bond substantially in the form hereinabove set forth shall have been duly executed by the Bond Registrar, and such executed certificate of the Bond Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The Bond Registrar's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Bond Registrar, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds issued hereunder.

Section 6. Delivery of Bonds. Upon the adoption of this Ordinance, the Town shall execute the Bonds and deliver them to the Bond Registrar, and the Bond Registrar shall authenticate the Bonds and deliver them to the purchasers thereof as directed by the Town, and in accordance with a Bond Purchase Agreement between the Town and Prudential Bache Securities Inc., Anderson DeMonbrun Division, Denver, Colorado, as Underwriter.

Section 7. Registration and Transfer of Bonds; Persons Treated as Owners. The Bond Registrar shall maintain the books of the Town for the registration of ownership of each Bond as provided in this Ordinance. Bonds may be transferred upon the registration books upon delivery of the Bonds to the Bond Registrar, accompanied by a written instrument or instruments of transfer in form and with guaranty of signature satisfactory to the Bond Registrar, duly executed by the owner of the Bonds to be transferred or his attorney-in-fact or legal representative, containing written instructions as to the details of the transfer of such Bonds, along with the social security number or federal employer identification number of such transferee. No transfer of any Bond shall be effective until entered on the registration books.

In all cases of the transfer of a Bond, the Bond Registrar shall enter the transfer of ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of authorized denominations of the same maturity and interest rate for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of this Ordinance. The Bond Registrar shall charge the owner of such Bond for every such transfer of a Bond an amount sufficient to reimburse it for its reasonable fees and for any tax or other governmental charge required to be paid with respect to such transfer.

The Town and Bond Registrar shall not be required to issue or transfer any Bonds: (1) during a period beginning on the Record Date and ending at the close of business on the ensuing interest payment date, or (2) during the period beginning on any date of selection of Bonds to be redeemed and ending on the day on which the applicable notice of redemption is given. The Bond Registrar shall not be required to transfer any Bonds selected or called for redemption, in whole or in part.

New Bonds delivered upon any transfer shall be valid special obligations of the Town, evidencing the same obligation as the Bonds surrendered, shall be secured by this Ordinance, and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The Town, the Paying Agent, and the Bond Registrar may deem and treat the registered owner of any Bond as the absolute owner thereof for all purposes (whether or not such Bond shall be overdue), and any notice to the contrary shall not be binding upon the Town, the Paying Agent, or the Bond Registrar.

Section 8. Destruction of Bonds. Whenever any outstanding Bond shall be delivered to the Bond Registrar for cancellation pursuant to this Ordinance and upon payment of the principal amount and interest represented thereby, or whenever any outstanding Bond shall be delivered to the Bond Registrar for

transfer pursuant to the provisions hereof, such Bond shall be cancelled and destroyed by the Bond Registrar and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Bond Registrar to the Town.

Section 9. Lost Bonds. Any Bond that is lost, stolen, destroyed, or mutilated may be replaced or paid by the Bond Registrar in accordance with and subject to the limitations of applicable law. The applicant for any such replacement Bond shall post such security, pay such costs, and present such proof of ownership and loss as may be required by applicable law, or in the absence of specific requirements, as may be required by the Bond Registrar.

Section 10. Disposition and Investment of Bond Proceeds. The Bonds shall be issued and sold for the purpose of paying the costs and expenses of acquiring, constructing, and installing improvements in said District and all other costs and expenses incident thereto. In the event that all of the proceeds of the Bonds are not required to pay such costs and expenses, any remaining amount shall be paid into the Bein Special Improvement District No. 1985-1 Bond and Interest Fund, created in Section 11 below, for the purpose of calling in and paying the principal of and interest on the Bonds. Neither the original purchaser of the Bonds nor any subsequent owners shall be responsible for the application or disposal by the Issuer or any of its officers of the funds derived from the sale thereof.

All or any portion of the Bond proceeds may be temporarily invested or reinvested, pending such use, in securities or obligations which are lawful investments. It is hereby covenanted and agreed by the Town that the temporary investment or reinvestment of the original proceeds of the Bonds, or of any moneys treated as proceeds of the Bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended (the "Code"), and pertinent regulations, rulings, and decisions, shall be of such nature and extent, for such period,

and at such yield, that the Bonds shall not be or become arbitrage bonds within the meaning of Section 103(c) of the Code and pertinent regulations, rulings, and decisions.

Section 11. Bein Special Improvement District No. 1985-1 Bond and Interest Fund. The Bonds and the interest thereon shall be payable solely from the local improvement fund, hereby created and designated as the "Bein Special Improvement District No. 1985-1 Bond and Interest Fund", which shall contain initially any moneys in the construction account remaining after the cost of improvements has been paid in full and thereafter to contain the proceeds from special assessments to be levied against the property within the District and specially benefited by the construction of improvements therein.

When there is on hand a sufficient amount to pay six months' interest on outstanding bonds for the District, the Town shall call for payment, on the next interest payment date, outstanding bonds in direct numerical order with funds available therefor.

Section 12. Additional Security for the Payment of Principal and Interest. In accordance with §31-25-534, C.R.S., whenever three-fourths of the Bonds of this issue have been paid and cancelled, and for any reason the remaining assessments are not paid in time to pay the remaining Bonds for the District and the interest due thereon, the Town shall pay the Bonds when due and the interest due thereon and reimburse itself by collecting the unpaid assessments due the District.

Section 13. Assessment of Costs. Upon completion of the local improvements, and upon acceptance thereof by the Board, or whenever the total cost can be definitely ascertained, the Board shall cause a statement showing the total cost of the improvements to be prepared and filed in the office of the Town Clerk. The Board shall further cause assessments to be levied against the property included within the District and specially benefited by the acquisition, construction, and installation of such improvements, in accordance with law.

Section 14. Repealer. All Ordinances or resolutions, or parts thereof in conflict herewith are hereby repealed.

Section 15. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

Section 16. Ordinance Irrepealable. After said Bonds are issued, this Ordinance shall be and remain irrepealable until said Bonds and the interest thereon shall have been fully paid, satisfied and discharged.

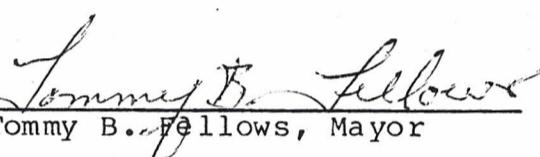
Section 17. Recording and Authentication. This Ordinance, after its passage, shall be recorded in the book kept for that purpose, shall be authenticated by the signatures of the Mayor and the Town Clerk, and published in accordance with Colorado law.

Section 18. Declaration of Emergency. By reason of the fact that bids for the construction of the improvements have been received, that it is necessary to proceed with the acquisition, construction, and installation of improvements as soon as possible, and that it is necessary to issue bonds in order to pay the costs of acquisition, construction, and installation which will hereafter become due, it is hereby declared that an emergency exists, and this ordinance is necessary to the immediate

preservation of the public health or safety, and that it shall be in full force and effect upon adoption by the affirmative vote of three-fourths of the members of the Board and compliance with §31-16-105, C.R.S., and adoption thereby.

ADOPTED AND APPROVED AS AN EMERGENCY ORDINANCE THIS 23rd DAY OF APRIL, 1985.

( S E A L )

  
Tommy B. Fellows, Mayor

ATTESTED:

  
Orahbelle Patterson, Town Clerk

Thereupon Trustee Yurk moved that the foregoing Ordinance be passed and adopted as read. Trustee Davis seconded the motion, and the question being upon the passage and adoption of the Ordinance, the roll was called with the following result:

Those voting YES:

Trustees:	
	Lloyd Conder
	F. R. Douthit
	Tommy B. Fellows
	Donna Davis
	Tom Patterson
	Fred Peterson
	H. Chris Yurk

Those voting NO: \_\_\_\_\_

The presiding officer thereupon declared that three-fourths of the members of the Board having voted in favor thereof, the motion was carried and the Ordinance was duly passed and adopted as an emergency ordinance, and is effective upon adoption pursuant to §31-16-105, C.R.S.

Thereupon, after consideration of other business, the meeting was adjourned.

( S E A L )

Tommy B. Fellows  
Mayor

ATTESTED:

Diahelle Patterson  
Town Clerk