TOWN OF AVON, COLORADO ORDINANCE 12-__ SERIES of 2012

AN ORDINANCE IMPLEMENTING THE SETTLEMENT TERM SHEET TO RESOLVE PENDING LITIGATION 2008 CV 385 AND 2010 CV 316; APPROVING THE CONSOLIDATED, AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT; APPROVING AN AMENDMENT TO THE VILLAGE (AT AVON) PLANNED UNIT DEVELOPMENT (PUD); APPROVING AMENDMENTS TO CHAPTER 18 OF THE AVON MUNICIPAL CODE; AND TAKING SUCH OTHER ACTIONS AS SET FORTH HEREIN TO IMPLEMENT THE SETTLEMENT TERM SHEET.

WHEREAS, the Town of Avon, Traer Creek Metropolitan District, Traer Creek LLC, Traer Creek-RP LLC, Traer Creek Plaza LLC, EMD Limited Liability Company, Traer Creek-HD LLC, Traer Creek-WMT LLC, BNP Paribas and Eagle County are parties to the consolidated litigation Civil Action No: 2008 CV 385 and Civil Action No: 2010 CV 316 ("Litigation");

WHEREAS, the parties entered into a Settlement Term Sheet on October 7, 2011, to resolve and settle the Litigation;

WHEREAS, the Settlement Term Sheet and the documents contemplated in the Settlement Term Sheet require the Town to approve several and various actions which are all related to and necessary for implementation of the Settlement Term Sheet;

WHEREAS, the Town of Avon approved a PUD and corresponding PUD Guide for the Village (at Avon) PUD by Ordinance No. 98-16;

WHEREAS, the Town of Avon approved administrative amendments Village (at Avon) PUD Guide Administrative Amendment No. 1 on May 21, 2001, Village (at Avon) PUD Guide Administrative Amendment No. 2, on February 13, 2002, Village (at Avon) PUD Guide Administrative Amendment No. 3 on May 15, 2002, and Village (at Avon) PUD Guide Administrative Amendment No. 4 on May 15, 2002;

WHEREAS, the Town of Avon approved Village (at Avon) PUD Guide Formal Amendment No. 1 by Ordinance No. 06-16 and 06-17;

WHEREAS, Traer Creek, LLC ("**Applicant**") has submitted an application to amend the Village (at Avon) PUD;

WHEREAS, the Planning & Zoning Commission of the Town of Avon held a public hearing for preliminary planned unit development review on _______, 2012, after publishing and posting notice as required by law, considered all comments, testimony, evidence and staff reports

Page 1 of 5 Ord No. 12-__ Implementing the Settlement Term Sheet 12-04-27 DRAFT ejh provided by the Town staff, considered such information prior to formulating a recommendation, then took action to adopt findings and made a recommendation of approval to the Town Council through Resolution 12-[xx];

WHEREAS, the Town Council of the Town of Avon held a public hearing for preliminary planned unit development review on ______, 2012, after posting notice as required by law, considered all comments, testimony, evidence and staff reports provided by the Town staff prior to taking any action on the preliminary Village (at Avon) PUD amendment application;

WHEREAS, the Planning & Zoning Commission of the Town of Avon held a public hearing for final planned unit development review on ______, 2012, after publishing and posting notice as required by law, considered all comments, testimony, evidence and staff reports provided by the Town staff, considered such information prior to formulating a recommendation, then took action to adopt findings and made a recommendation of approval to the Town Council through Resolution 12-[xx];

WHEREAS, the Town Council of the Town of Avon held a public hearing for final planned unit development review on ______, 2012, after posting notice as required by law, considered all comments, testimony, evidence and staff reports provided by the Town staff prior to taking any action on the final Village (at Avon) PUD amendment application;

WHEREAS, the Town Council of the Town of Avon held a public hearing for minor subdivision plat review on ______, 2012, after posting notice as required by law, considered all comments, testimony, evidence and staff reports provided by the Town staff prior to taking any action on the Village (at Avon) PUD amendment application;

WHEREAS, the Town Council makes the following findings and conclusions:

[insert findings based on public hearings and process]

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the Town Council desires to comply with state law and the ADC by setting a public hearing in order to provide the public an opportunity to present testimony and evidence regarding the application and that approval of this Ordinance on first reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies the proposed zoning;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO, the following:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

- **Section 2. Escrow Agreement**. The effectiveness of this Ordinance shall be subject to the terms and conditions of the Escrow Agreement [cite title and date] between [cite parties]. This Ordinance shall become automatically void *ab initio* and treated as invalid from the outset if all documents and agreements are not executed and other conditions are not satisfied as set forth in Section [x] of the Escrow Agreement.
- Section 3. Approval of Development Agreement. The Consolidated, Amended and Restated Annexation and Development Agreement is hereby approved. The Mayor and the Town Clerk and their respective designees are authorized to execute the Development Agreement.
- <u>Section 4.</u> <u>Acceptance of Property</u>. The Avon Town Council hereby accepts the conveyance of Planning Area B and Planning Area E subject to the restrictive covenants set forth in the [reference Deed] attached to the Development Agreement as Exhibit B.
- **Section 5.** Acceptance and Conveyance of Water Rights. The Avon Town Council hereby accepts conveyance of water rights from Traer Creek Metropolitan District and Reconveyance of such water rights to the Upper Eagle River Water Authority as set forth in Exhibit [X] to this Ordinance. The Mayor and Town Clerk and their respective designees are hereby authorized to execute all documents to effectuate such acceptance and conveyance of water rights.
- **Section 6. Amendment to Village (at Avon) PUD.** The Village (at Avon) Amended and Restated PUD Guide and Village (at Avon) PUD Master Plan amendments are hereby approved.
- <u>Section 7.</u> <u>Repeal of Ordinance No. 06-17</u>. Ordinance 06-17 "An Ordinance Approving, with Conditions, a PUD Amendment Application Amending the Village at Aon PUD Development Plan by Relocating Planning Area G, from Planning Area RMF-l, Filing Village at Avon Subdivision to Planning Area D, Filing 1, Village at Avon Subdivision," adopted by the Town Council on January 23, 2007, is hereby repealed in its entirety.
- **Section 8.** Amendment to Title 3. Avon Municipal Code Sections [xx] are hereby amended as follows: [to be determined based on terms of Development Agreement]
- **Section 9. Amendment to Title 18.** Avon Municipal Code Section 18.01.120 is hereby amended by the adoption of subsection 18.01.120(e) to read as follows:
 - "(e) Notwithstanding any other provision in this Title 18, any provision concerning material modification of Service Plans set forth in this Title 18, including compliance, modification, definition, applicability, enforcement and procedures, shall not apply to the Traer Creek Metropolitan District and all matters concerning material modification by the Traer Creek Metropolitan District shall be governed by the Colorado Revised Statutes as may be amended from time to time."

<u>Section 10.</u> <u>Correction of Errors</u>. Town Staff is authorized to correct any typographical, grammatical, cross-reference, or other errors which may be discovered in any documents associated with this Ordinance and documents approved by this Ordinance provided that such corrections do not change the substantive terms and provisions of such documents.

Section 11. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term "provision" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "application" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

<u>Section 12.</u> <u>Effective Date</u>. This Ordinance shall take effect thirty days after final adoption in accordance with Section 6.4 of the Avon Home Rule Charter. Notwithstanding the foregoing, the effectiveness of this Ordinance shall be subject to the terms of the Escrow Agreement as stated in Section 2 above.

Section 13. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 14. Publication by Posting. The Town Clerk is ordered to publish this Ordinance by posting notice of adoption of this Ordinance on final reading by title in at least three public places within the Town and posting at the office of the Town Clerk, which notice shall contain a statement that a copy of the ordinance in full is available for public inspection in the office of the Town Clerk during normal business hours.

[signature page follows]

POSTED: theday of, 2012, and	a public hearing on this ordinance shall be held at the he day of, 2012, at 5:30 P.M. in the ng, One Lake Street, Avon, Colorado.
	Rich Carroll, Mayor
Published by posting in at least three public Clerk at least seven days prior to final action	places in Town and posting at the office of the Town by the Town Council.
ATTEST:	APPROVED AS TO FORM:
Patty McKenny, Town Clerk	Eric Heil, Town Attorney
INTRODUCED, FINALLY APPROVED, AND PASSED ON SECOND READING, AND ORDERED PUBLISHED BY POSTING on theday of, 2012.	
	Rich Carroll, Mayor
Published by posting by title in at least the office of the Town Clerk.	ree public places in Town and posting by title at the
ATTEST:	
Patty McKenny, Town Clerk	

WATER TANK BONDS PLEDGE AGREEMENT

RECITALS

WHEREAS, TCMD has previously issued its Variable Rate Revenue Bonds, Series 2002 and its Variable Rate Revenue Bonds, Series 2004 (collectively, the "Outstanding TCMD Bonds"); and

WHEREAS, payment of the Outstanding TCMD Bonds is secured by certain revenues of the Districts, and also by an irrevocable letter of credit issued by BNP PARIBAS, San Francisco Branch ("BNP"); and

WHEREAS, TCMD and other entities are parties to that certain litigation (consolidated civil action Case No. 2008CV385, Eagle County District Court), and have entered into that certain Settlement Term Sheet dated October 7, 2011 (the "**Term Sheet**"), to set forth the agreement of the parties concerning resolution of various disputes at issue in the litigation; and

WHEREAS, TCMD, the Authority, the Town of Avon (the "**Town**") and Traer Creek LLC have entered into that certain Traer Creek Water Storage Tank Agreement dated as of _______, 2012 (the "**Water Tank Agreement**") to implement certain provisions of the Term Sheet relating to the construction of a water tank (as more particularly described in the Water Tank Agreement, the "**Tank Project**"), and to address other related matters; and

WHEREAS, the Term Sheet and the Water Tank Agreement contemplate that the Authority will issue bonds to finance the construction of the Tank Project (the "**Tank Project Bonds**"), and that TCMD and VMD will pledge and pay to the Authority the "Annual Debt Service Obligation" (as more particularly defined and described herein); and

WHEREAS, the revenues pledged to pay the Annual Debt Service Obligation on the Tank Project Bonds were pledged to pay all amounts due to BNP (the "BNP Pledge") under the Amended and Restated Reimbursement Agreement, dated as of June 1, 2004, by and among the Districts and BNP (the "Reimbursement Agreement"), and BNP has agreed to consent to release the amount necessary to pay the Annual Debt Service Obligation from the BNP Pledge; and

WHEREAS, TCMD, VMD and the Authority are entering into this Pledge Agreement for the purpose of obligating TCMD and VMD to pay the Annual Debt Service Obligation to the Authority and for the Authority to agree to issue the Tank Project Bonds, subject to the conditions and limitations set forth herein; and