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WASTEWATER SERVICE AGREEMENT

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THIS AGREEMENT is made and entered into as of the 15th of March 2006, by and between the TOWN OF MINTURN, COLORADO, a home rule municipal corporation, ("Town") acting by and through the Town of Minturn, Water, Sanitation and Recreation Activities Enterprise ("Enterprise"), whose address is P.O. Box 309, Minturn, Colorado 81645, and Ginn Battle North, LLC, ("Ginn Battle North") a Georgia limited liability company, Ginn Battle South, LLC ("Ginn Battle South"), a Georgia limited liability company, and Ginn-LA Battle One, Ltd., LLLP, ("Ginn-LA Battle One") a Georgia limited liability limited partnership (collectively, the "Ginn Entities").

RECITALS

WHEREAS, the Enterprise intends to provide for the design and construction and to own and operate a wastewater treatment facility in the Town on property owned by the Enterprise that collects and treats wastewater in accordance with the laws of the State of Colorado and applicable federal laws ("Wastewater Plant"); and

WHEREAS, the Ginn Entities desire to develop a recreational and residential project on the property owned by the Ginn Entities more specifically described on Exhibit A ("Ginn Property") which will consist of not more than 1700 residential units (anticipated to consist of a mix of single-family residential homes, divided ownership suites, condominiums, and townhomes, and each such type of residential development shall be considered one "unit") and which will also include associated commercial uses, including restaurants, common areas and open space, golf course and golf course clubhouse with restaurant and pro shop, ski area lodge and attendant recreation and maintenance facilities (collectively "Project"); and

WHEREAS, the Ginn Entities seek municipal wastewater service directly from the Enterprise for the Project; and

WHEREAS, wastewater service for the Project will require the design, planning, permitting, and construction of the Wastewater Plant, which construction may be accomplished in phases; and

WHEREAS, in addition to construction of the Wastewater Plant, wastewater service for the Project will require the design, planning, permitting, construction, installation and/or upgrading of related collection and conveyance facilities, including collection mains from the Ginn Property to the Wastewater Plant, collection lines, pump stations, force mains, odor control and related facilities (collectively "Collection System"), which construction may be accomplished in phases; and

WHEREAS, the Enterprise is authorized by the Town to provide wastewater service to properties within the Town boundaries and to properties located outside of its boundaries by means of a contract; and

WHEREAS, the Ginn Property is currently located outside of such boundaries;
and

WHEREAS, the Enterprise intends that the Wastewater Plant and Collection System be constructed with the capacity to serve the existing and future demands of the Town and the Project; and

WHEREAS, the Enterprise desires to contract with the Ginn Entities to design the entire Wastewater Plant and Collection System and to construct the first phase of the Wastewater Plant and Collection System as further defined in paragraph 2.a.iii below ("First Phase"), all in accordance with certain performance and other specifications to be established by the Enterprise; and

WHEREAS, the Ginn Entities are willing and able to fully fund and pay for the design and construction of all phases of the Wastewater Plant and Collection System as set forth herein; and

WHEREAS, the Enterprise and Ginn Entities intend that all right, title, and interest in the Wastewater Plant and Collection System be transferred free and clear to the Enterprise upon successful completion of construction of the Wastewater Plant and Collection System in accordance with the terms of this Agreement; and

WHEREAS, the Enterprise will provide municipal wastewater service to the Project pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Ginn Entities recognize and agree that the execution and performance of this Agreement, including the issuance of taps for the Project Plant Capacity, do not create any enforceable right or expectation with respect to the annexation of all or any portion of the Ginn Property by the Town;

WHEREAS, it is the intent of the Enterprise and Ginn Entities that performance of this Agreement will also result in an increase in the water supply available to the Town so that the Project can receive a water supply from the Town pursuant to agreements that will be negotiated in the future.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other consideration duly offered and accepted, the receipt and adequacy of which is hereby acknowledged, the parties covenant and agree as follows:

1. Wastewater Treatment Service.

a. Provision of Service. The Enterprise agrees to be the wastewater collection and treatment service ("Wastewater Service") provider and to provide Wastewater Service to the Project under the terms specified in this Agreement and

pursuant to all applicable requirements as set forth in the Town of Minturn Municipal Code (“Municipal Code”) and other applicable laws, rules and regulations.

b. Wastewater Plant Capacity. The necessary physical capacity of the Wastewater Plant to provide the Wastewater Service for the Project and the Town shall be determined as part of the design process described in paragraph 2.b below. The physical capacity in gallons per day, including peaking requirements, estimated in the design process to be necessary and sufficient for approximately 1700 residential taps (for the 1700 units described above in the second recital) and the commercial components of the Project shall be called the “Project Plant Capacity.” The physical capacity in gallons per day, including peaking requirements, estimated in the design process to be necessary and sufficient to provide Wastewater Service to other Enterprise customers shall be called the “Town Plant Capacity.” The Town Plant Capacity shall be based on a projected full buildout population of the Town, excluding the Project, of 4,621 people, with attendant commercial and office development. The total Wastewater Plant physical capacity shall include a 5% buffer.

c. Project Plant Capacity. In consideration for the payment by Ginn Entities of the costs of planning, design, permitting, and construction of the Wastewater Plant and Collection System in accordance with the requirements of this Agreement, the Enterprise agrees that the Ginn Entities shall be allocated and have the perpetual right to the exclusive use of the Project Plant Capacity, so long as Ginn Entities, or their successors or assigns, pay applicable charges as provided in paragraph 1.e below. The Project Plant Capacity shall be used to provide Wastewater Service to the Ginn Property. The Enterprise agrees not to allocate, use, or otherwise commit or rely on the Project Plant Capacity for Wastewater Service for customers other than those within the Project on the Ginn Property. In the event that the Ginn Property or portions thereof is annexed to the Town, the Project Plant Capacity and associated taps may be transferred or assigned by the Ginn Entities in their sole discretion for use on the portion of the Ginn Property that has been annexed. The Project Plant Capacity and any associated taps (issued or unissued) may be transferred by the Ginn Entities for the provision of Wastewater Service to any other area that may be served by the Enterprise (other than any portion of the Ginn Property annexed into the Town), subject to Enterprise approval which shall not unreasonably be withheld subject to the collection system capacity that exists in place at that time from such other area other than the Ginn Property to the Wastewater Plant. In the event that the capacity of the Wastewater Plant is reduced as a result of actions of a governmental authority or other causes not within the control of either the Enterprise or Ginn Entities, the Project Plant Capacity, and the corresponding number of taps, reserved for and allocated to Ginn Entities shall be reduced *pro rata* with the Town Plant Capacity. Any transfers of Project Plant Capacity or associated taps by the Ginn Entities shall be subject to any then existing or future regulatory permits and authorizations applicable to the Wastewater Plant, to applicable provisions of the Municipal Code, and to paragraphs 1.d, 1.e, and 1.f below. The Ginn Entities shall provide Minturn, within 30 days of any such transfer, with the name and billing address of the transferee and the number of taps or amount of capacity transferred.

d. Payment of Wastewater Tap Fees. The Ginn Entities shall be credited in the amount of all costs paid by them pursuant to this Agreement ("Credit"). The Credit shall be applied to offset any tap fees otherwise due and payable to the Town or the Enterprise for Wastewater Service provided to the Project. The amount of the offset shall be the amount of then existing wastewater tap fee charged by either the Town or the Enterprise. The Project Plant Capacity shall be allocated and available to the Ginn Entities without further or additional charges, levies, or other fees that are in the nature of tap fees for the use of such capacity, so long as applicable connection and service charges and fees are paid as provided for in this Agreement, and so long as the Credit remains available. In the event that the Credit is depleted, the Ginn Entities, or their successors in interest, shall pay the then existing tap fee charged by the Town or the Enterprise to obtain Wastewater Service. For the purposes of this Agreement, tap fees are defined as the one-time fee charged by the Town or the Enterprise to an individual wastewater service customer for the provision of service and to allow connection to the Enterprise's wastewater collection and treatment system, sometimes known as system development fees, as described in Municipal Code Sections 13-63, 13-64, and Appendix A, and shall be based on and limited to the costs of capital improvements and appropriate capital reserves required to provide wastewater service to the Town and the Project. Ginn Entities may elect to have Wastewater Taps issued to them at any time after the completion of the First Phase of the Wastewater Plant.

e. Payment of Connection Charges and Service Fees. If the Project or any portion thereof is annexed to the Town, the Ginn Entities agree that Wastewater Service to the portion of the Project in the Town will be subject to such connection charges and service fees for the provision of Wastewater Service as are charged or assessed and paid by other recipients of Wastewater Service within the Town as provided in the Municipal Code. Any portion of the Project not annexed to the Town will be subject to such connection charges and service charges and fees as are charged or assessed and paid by other similarly situated extraterritorial recipients of Wastewater Service from the Wastewater Plant as provided in the Municipal Code; provided, however, that the Enterprise agrees that any surcharge assessed for extraterritorial service shall not exceed the average of such surcharges charged by any three municipal wastewater providers in Eagle County as selected by the Enterprise. For the purposes of this Agreement, connection charges are defined as the one-time fee charged by the Enterprise to connect an individual Wastewater Service customer to a common wastewater collection pipeline, sometimes known as turn-on fees, and service fees are defined as the monthly or bimonthly fees charged by the Enterprise for the provision of Wastewater Service to an individual Wastewater Service customer, sometimes known as user or usage fees, all as described in Municipal Code Sections 13-62 to -69, and Appendix A.

f. Metering and Related Expenses. Each potable Water Service line for each wastewater customer shall be metered in accordance with the Enterprise's regulations at the sole expense of the customer making the connection, and any other devices required by the Enterprise or the State of Colorado will be installed at the customer's expense.

2. Planning, Design, Permitting, and Construction of Wastewater Plant and Collection System.

a. General Provisions.

i. Allocation of Responsibility. The Enterprise and the Ginn Entities intend to provide for the planning, design, permitting, and construction of the Wastewater Plant and Collection System by assigning responsibility for the planning, permitting and preparation of performance specifications for the Wastewater Plant and Collection System, and acquisition of the site for the Wastewater Plant to the Enterprise and assigning responsibility for design of all phases of the Wastewater Plant and Collection System to the Ginn Entities. Construction of the First Phase of the Wastewater Plant and Collection System is assigned to the Ginn Entities and construction of all subsequent phases of construction of the Wastewater Plant and Collection System is assigned to the Enterprise or its designees. The Ginn Entities shall be responsible for all costs associated with planning, design, permitting, and construction of all phases of the Wastewater Plant and Collection System, as more specifically provided herein.

ii. Project Managers. The Enterprise and the Ginn Entities shall each appoint one or more Project Managers for the process of planning, design, permitting, and construction of the Wastewater Plant and Collection System.

iii. The Enterprise and the Ginn Entities shall jointly prepare a plan for phasing of construction of the Wastewater Plant. The First Phase of the plan shall provide for the construction of the entire Project Plant Capacity, and that portion of the Town Plant Capacity required to serve the existing Town demand and the future Town demand that is anticipated to materialize within 5 years of the anticipated date of completion of construction.

iv. Performance and Design Specifications. The Enterprise shall prepare and develop performance specifications for all phases of the Wastewater Plant and Collection System ("Specifications"). The Specifications shall be prepared by a qualified engineer and provided to the Ginn Entities as provided herein. The Project Manager designated by the Ginn Entities shall be given an opportunity to provide comments on the Specifications. The Specifications shall define: (1) the capacity, in million gallons per day, for the Project Plant Capacity, the Town Plant Capacity, and the Wastewater Plant and the capability of the Wastewater Plant to treat such wastewater to standards that will meet, but not materially exceed, the requirements of local, state, and federal law that will apply at the time of the commencement of operation of the Wastewater Plant for the treatment and discharge of wastewater from the Wastewater Plant to the Eagle River or its tributaries; such criteria shall include consideration of average annual, maximum month, peak day and peak hour wastewater flows and loads, (2) the major elements for all phases of the Wastewater Plant and Collection System, (3) the appropriate phasing of the construction of the Wastewater Plant and Collection System to accommodate the anticipated timing of future buildout of the Town and the Project; (4) the operation and maintenance costs for the Wastewater Plant on a per unit

basis; (5) the collection and conveyance of wastewater from the Town and the Project to the Wastewater Plant through the Collection System; (6) reasonable requirements for the external appearance of the Wastewater Plant and Collection System, including height and other aesthetic concerns; (7) reasonable requirements to ensure that unacceptable changes in air quality and odor do not occur as a result of the construction and operation of the Plant and (8) all necessary tie-ins and infrastructure for coordination of the Wastewater Plant and Collection System with the Town and the Project. The Specifications will also ensure that the maximum required capacity of the Wastewater Plant and Collection System can be achieved through construction of modules in subsequent phases to bring on the additional necessary capacity for the Wastewater Plant and Collection System in the most efficient manner possible. Ginn Entities agree that the Enterprise shall have the right to approve in advance the treatment technologies, unit processes, and other aspects of the design that affect operational and maintenance costs that are incorporated in the Wastewater Plant design, which approval shall not be unreasonably withheld so long as the design will meet applicable governmental requirements and the anticipated future operation and maintenance costs are reasonable when compared to similar facilities.

v. Consultation and Sharing of Information. The Project Managers shall consult with each other on a routine basis as is required to keep both the Enterprise and Ginn Entities fully informed on the progress of all aspects of the planning, design, permitting, and construction of the Wastewater Plant and Collection System. Each Party shall be entitled to receive, and the other Party agrees to provide, full, complete, and timely information regarding all aspects of the planning, design, permitting, and construction of the Wastewater Plant and Collection System, including, without limitation, copies of all plans, major submittals, contracts, subcontracts, schedules, schedule updates, correspondence or other documents relating to the same, with the exception of documents and other information that are the subject of attorney-client privilege.

vi. Work Schedule and Plan. The integration of the planning, design, permitting, and construction efforts by the Enterprise and the Ginn Entities will require the development of a work schedule and plan. No later than 60 days after the execution of this Agreement, the parties shall prepare and finalize a work schedule and plan which shall include, without limitation, the following elements:

(1) Target dates by which the property upon which the Wastewater Plant will be located ("Plant Site") is identified and the Enterprise will initiate the process to obtain the right to possession of and the legal right to use the Plant Site, including a date for annexing the Plant Site into the Town if such Plant Site is not located in the Town.

(2) A target date by which the Specifications for the Wastewater Plant and Collection System will be provided by the Enterprise to the Ginn Entities;

(3) A list of all governmental permits or other approvals which are required for the completion of the First Phase of the Wastewater Plant and Collection System, and the target dates by which the application or other request for each governmental permit or other approval will be submitted;

(4) A target date or dates by which the design and related construction drawings will be completed to the extent necessary for the application for any governmental or other permit required for the First Phase of the Wastewater Plant and Collection System;

(5) A target date by which all governmental or other forms of approval required for the construction and operation of the First Phase of the Wastewater Plant are anticipated to have been applied for, issued and become final, and any relevant time periods for the commencement of a judicial challenge have expired without the filing of any such judicial challenge, based on the dates of submission.

(6) A target date for commencement of construction of the First Phase of the Wastewater Plant and Collection System, based on the Date for Commitment to Construct; and

(7) A target date or dates for completion of the First Phase of the Wastewater Plant and Collection System, based on the date of commencement of construction.

The work schedule and plan described above shall be referred to herein as the "Work Schedule," and it is understood and anticipated by both Parties that the Work Schedule will need to be modified from time to time to address delays or other circumstances that affect the Parties' ability to proceed in accordance with the Work Schedule. It is also understood that the permitting process necessarily involves approvals by independent governmental entities and agencies, which may also require modification of the Work Schedule. The "target" dates in the work schedules are estimated dates that the parties will use reasonable and good faith efforts to meet. However, neither party shall incur liability if any such "target" dates are not met.

vii. Responsibility for Costs Incurred by Enterprise.

(1) The Ginn Entities shall be responsible for all reasonable and actual costs incurred by the Enterprise, both direct and indirect, associated with the planning, permitting, and preparation of the Specifications for the Wastewater Plant and Collection System, including the cost of participation by Town or Enterprise personnel and the Enterprise's designees in the design and construction of the Wastewater Plant and Collection System, the cost of acquisition of the site for the Wastewater Plant, and all reasonable and actual administrative costs and other costs for services and equipment of the Town or the Enterprise associated with the performance of these tasks by or on behalf of the Town or the Enterprise, including the cost for additional physical security, if required, for the Wastewater Plant and Collection System prior to the Dedication Date. The Ginn Entities shall deposit, in a separate account

maintained by the Enterprise for the sole purpose of providing for the payment of costs as required by this Agreement (“Account”), the sum of \$50,000.00, and shall make such additional deposits as are required to maintain a balance of \$50,000.00 in the Account within 30 days of receipt by Ginn Entities of a copy of an invoice or other detailed form of billing which has been paid by the Enterprise with funds from the Account. If the Ginn Entities fail to replenish the Account within 30 days as provided above, the dispute resolution procedures of paragraph 2.a.ix below shall be automatically invoked. The funds in the Account and any accrued interest shall be held in trust by the Enterprise for the purpose of ensuring that obligations incurred by the Enterprise pursuant to this Agreement are paid. The Enterprise shall provide Ginn Entities with an accounting of the use of the same on a quarterly basis. Any unobligated funds that remain in this account 30 days after the Dedication Date as defined in paragraph 2.g shall be returned to Ginn Entities. Ginn Entities agree that the balance required in the Account may be increased in the event and for such period that the obligations of the Enterprise incurred pursuant to this Agreement substantially exceed \$50,000.00 on a monthly basis.

(2) Ginn Entities shall also make payment directly to the vendor, supplier, contractor or subcontractor, if requested, for all invoices or other forms of billing for work performed by the Enterprise in connection with the planning, and permitting of the Wastewater Plant and securing of the Plant Site, including without limitation, any purchase or condemnation price for acquisition of the Plant Site, within 30 days of receipt and shall provide evidence of the payment of the same to the Enterprise; provided, however that nothing herein shall preclude Ginn Entities or the Town from disputing whether the amounts due are reasonable and actual; provided further, that any amounts due to third parties must be paid by the Ginn Entities as a condition precedent for initiating such dispute. The Enterprise shall keep the Project Manager(s) designated by Ginn Entities informed on a contemporaneous and ongoing basis of all contracts, work orders, change orders or other matters relating to obligations incurred by the Enterprise for which Ginn Entities will be obligated to pay.

(3) Mutual Right to Audit. Each Party shall have the right to audit all financial records of the other Party and its agents, contractors, and consultants relating to work performed under this Agreement.

viii. Access to Property owned by the Town or Enterprise. The Town and the Enterprise agree to reasonably cooperate with the Ginn Entities to provide easements for use of, or rights-of-way through, real property owned by them for the purposes of construction of any Collection System components necessary to convey wastewater from the Project to the Wastewater Plant, pursuant to reasonable conditions or fees, to the extent that the Town Council determines in its discretion that such use or rights-of-way is in the best interest of the Town.

ix. Dispute Resolution. The Ginn Entities on the one hand, and the Town and the Enterprise, on the other hand, shall not be liable to each other and hereby waive claims against each other for consequential damages arising out of or relating to this Wastewater Service Agreement, or the construction, design or operation of the Wastewater Plant or the Collection system. This mutual waiver includes, but is

not limited to, damages for loss of use, income, profit, sales, rents, or financing, damage to business and reputation, and damages for loss of management or employee productivity, principal office expenses, and financing, including anticipated profit arising directly from the Project, whether in contract, tort, warranty, statute, or any other basis of liability. All disputes, controversies or differences which may arise between the parties under this Agreement which cannot be resolved between them shall be settled by arbitration pursuant to the provisions of the Colorado Uniform Arbitration Act, Colo. Rev. Stat. §§13-22-201, et seq., and administered by the American Arbitration Association under its Construction Industry Arbitration Rules, except as otherwise provided in this paragraph. Any party desiring arbitration pursuant to this section shall make a written demand for same and within thirty (30) days after such written demand is received by the other party, the parties shall use their best efforts to agree upon and appoint a single arbitrator. If the parties fail to agree upon and appoint a single arbitrator within the time period set forth herein, each party shall within seven (7) days thereafter designate an arbitrator and both arbitrators shall, within thirty (30) days after their designation, jointly designate a third arbitrator satisfactory to them who shall be the chair of the arbitration panel. If a party fails to appoint an arbitrator or the arbitrators designated by the parties are unable to agree upon the selection of the third arbitrator within the time periods set forth above, such arbitrator shall be appointed by a Judge of the Eagle County District Court. The award of the arbitrators shall be final and binding on the parties and judgment upon any award rendered may be entered in any court of competent jurisdiction. The expenses of the arbitrators and the reasonable and actual costs of Minturn for participation in the arbitration shall be paid by the Ginn Entities, unless otherwise decided by the arbitrators for good cause shown. All arbitration proceedings shall be conducted in the Town of Minturn.

b. Design of Wastewater Plant and Collection System.

i. Design and Designer. The Ginn Entities shall be responsible for the final design of the Wastewater Plant and Collection System to meet the Specifications provided by the Enterprise (“Design”). The firm engaged by the Ginn Entities to provide the Design (“Designer”) shall be experienced in the design of wastewater treatment plants. The award of the contract for the design of the Wastewater Plant and Collection System will be based on a sealed competitive bid process that allows Ginn Entities to select the Designer based on a combination of price and quality. Ginn Entities will provide the Enterprise with a list of proposed prequalified designers, and allow the Enterprise to provide written objections to any of the proposed designers prior to the actual solicitation of bids by Ginn Entities. Ginn Entities agree to carefully consider any such objections, but retain the right to determine which designers will be allowed to bid and to which, if any, bids it will accept to provide the Design for the Wastewater Plant and Collection System. The Ginn Entities are not required to accept the lowest bid.

ii. Preparation of Design. The Design shall be prepared in consultation with the Enterprise and its designees. The Enterprise Project Managers will be kept regularly informed concerning the progress of the preparation of the Design.

The Enterprise and the Ginn Entities Project Managers shall meet, no less frequently than weekly, with the Designer to discuss progress on the preparation of the Design. Suggestions may be made during such meetings to the Designer by either the Enterprise or the Ginn Entities Project Managers. A 60% draft of the Design shall be provided to the Enterprise Project Managers and the Enterprise Engineers for comment prior to finalization. The Enterprise shall be afforded the opportunity to meet with the Designer and a representative of the Ginn Entities to discuss the draft Design prior to finalization. The Design shall comply in all respects with the Specifications. The Ginn Entities shall not begin construction of the First Phase of the Wastewater Plant or Collection System until the Enterprise's Engineers have certified that the 60% draft of the Design fully complies with the Specifications.

iii. Final Drawings. The Designer shall prepare final design and construction drawings for the Wastewater Plant and Collection System which shall include all phases of construction ("Final Construction Drawings").

iv. Responsibility for Costs of Design. All costs, both direct and indirect, of the Wastewater Plant and Collection System design, including, without limitation, claims for extra compensation, mechanic's liens, equitable adjustments, or similar claims by vendors, suppliers, contractors, and subcontractors, together with the reasonable and actual costs of the Town or the Enterprise as described in paragraph 2.a.vii above and as associated with the fulfillment of their responsibilities in this paragraph, shall be the direct responsibility of, and shall be borne by, the Ginn Entities.

c. Permitting. The Enterprise or the Town will submit the required requests for governmental approvals as identified above. The Enterprise and the Town agree to use reasonable and good faith efforts to prepare and pursue such necessary permits in a diligent and efficient manner.

d. Right of Ginn Entities to Suspend or Terminate Work on the Wastewater Plant and Collection System Prior to Commencement of Construction. Within 30 days after the date by which all governmental or other forms of approval required for the construction and operation of the First Phase of the Wastewater Plant have been issued and become final, and any relevant time periods for the commencement of a judicial challenge have expired without the filing of any such judicial challenge (the "Date of Commitment"), the Ginn Entities shall confirm in writing their intent to proceed with construction of the First Phase of the Wastewater Plant and Collection System. No construction on the Wastewater Plant or Collection System may begin until the Letter of Credit described in paragraph 3.a below has been provided. The Ginn Entities shall have the right to suspend or terminate work on the Wastewater Plant and Collection System at any time up to and including the Date of Commitment; provided, however, that Ginn Entities shall be liable for all work associated with the design, planning, permitting, construction or installation of the Wastewater Plant or Collection System or any work performed in accordance with the Work Schedule, prior to and as of the date of the suspension or termination. If the Ginn Entities fail to provide written confirmation of their intent to proceed on or before the Date of Commitment, this Agreement shall terminate.

e. Construction of Wastewater Plant and Collection System.

i. Selection of Construction Contractor. The Ginn Entities shall be responsible for ensuring the construction of the First Phase of the Wastewater Plant and Collection System. The Enterprise will construct all subsequent phases of the Wastewater Plant and Collection System after the First Phase. The First Phase shall be constructed in accordance with the Specifications and the Final Construction Drawings. The firm engaged by the Ginn Entities to construct the Wastewater Plant and Collection System ("Construction Contractor") shall be experienced in the construction of wastewater treatment plants and selected from a list of pre-qualified construction firms developed by the Ginn Entities' Engineering consultants in consultation with the Enterprise. Ginn Entities will provide the Enterprise with a list of proposed prequalified contractors, and allow the Enterprise to provide written objections to any of the proposed contractors prior to the actual solicitation of bids by Ginn Entities. Ginn Entities agree to carefully consider any such objections, but retain the right to determine which contractors will be allowed to bid and which, if any, bids it will accept. The Ginn Entities are not required to accept the lowest bid.

ii. Assistance. Upon the request of the Ginn Entities, the Town and the Enterprise agrees to provide reasonable assistance to the Ginn Entities in the construction process.

iii. Construction Work Schedule. The Ginn Entities, in consultation with the Enterprise shall prepare, and amend as circumstances require, a schedule for the construction of the First Phase of the Wastewater Plant and Collection System for integration into, and modification of, if required, the Work Schedule. The Enterprise shall have the right to review and suggest modifications to such schedule and any modifications thereto. The Work Schedule shall include all phases of construction if requested by the Town or the Enterprise. The Ginn Entities shall require the Construction Contractor to specifically adhere to the Work Schedule.

iv. Responsibility for Costs of Construction. All reasonable and actual costs, both direct and indirect, of the Wastewater Plant and Collection System construction, including, without limitation, claims for extra compensation, mechanic's liens, equitable adjustments, or similar claims by vendors, suppliers, contractors, and subcontractors, shall be the direct responsibility of, and shall be borne by, the Ginn Entities. It is further agreed that all reasonable and actual costs, both direct and indirect, of obtaining possession of and title to the site for the Wastewater Plant and any necessary tie-ins, rights-of-way, construction easements or infrastructure associated or needed for the construction of the Wastewater Plant or Collection System shall be the direct responsibility of, and shall be borne by, the Ginn Entities.

v. In recognition of the uncertainty as to when the full capacity of the Wastewater Plant will be required and the need to construct the Wastewater Plant in phases, it is understood and expressly agreed that a) Ginn Entities shall be responsible for the cost of planning, design, permitting, and construction of the Project

Plant Capacity regardless of when the need for such Capacity occurs, and b) With respect to any portion of the Town Plant Capacity which has not been constructed within 15 years from the Dedication Date as defined in paragraph 2.g below, Ginn Entities shall have the right to elect to deposit such funds in escrow as are estimated by a qualified consulting firm to be required to complete the remaining portions of the Town Plant Capacity as if construction were commenced and completed as of the date of deposit of funds, including reasonably anticipated costs associated with the use of new technology, the associated retrofitting existing phases, and indirect and administrative costs associated with construction (the "Escrow Deposit"). The Escrow Deposit shall remain available to the Enterprise for the purposes of completion of any remaining portions of the Town Plant Capacity for an additional 5 years after deposit, after which any unexpended funds shall revert to Ginn Entities and Ginn Entities shall have no further obligations with respect to the Town Plant Capacity. Ginn Entities shall not be liable for any costs relating to the planning, design, permitting, and construction of the Town Plant Capacity beyond the Escrow Deposit .

vi. Inspection. The Enterprise Project Manager or the Enterprise's duly appointed representative shall have the right to make inspections and require testing during construction of the First Phase of the Wastewater Plant and Collection System in such reasonable intervals as the Enterprise's representative may request in order to, among other things, ascertain that the Wastewater Plant is being constructed in full and complete accordance with the Specifications and the Final Construction Drawings. In the event the Wastewater Plant is not being constructed either in accordance with the Specifications or the Final Construction Drawings, the Enterprise shall have the right and authority to require the Construction Contractor to make any and all corrections or adjustments so as to assure compliance with the Specifications and Final Construction Drawings. During this process the Enterprise Project Manager or the Enterprise's duly appointed representative shall communicate with and through the Ginn Entities' Project Manager and not the Construction Contractor.

vii. Coordination. During construction the First Phase of the Wastewater Plant and Collection System, the Ginn Entities and the Construction Contractor shall coordinate with the Enterprise with respect to such items as tie-ins, construction easements, rights-of-way, necessary infrastructure, permits, access and related matters.

f. Completion and Acceptance of Wastewater Plant and Collection System by Enterprise.

i. Certification of Completion. Upon final completion of construction of the First Phase of the Wastewater Plant and Collection System, the Enterprise's Engineers shall inspect the Wastewater Plant and Collection System and certify their conformity or lack thereof to the Design Specification and Final Construction Drawings ("Completion Certification"). The Ginn Entities shall make all necessary corrections to bring the Wastewater Plant and Collection System into conformity with the above. The Enterprise shall be under no obligation to provide

Wastewater Service to the Project until the Completion Certification. Upon the Enterprise acceptance of the facility, the Ginn Enterprise Design Engineer shall prepare a Certificate of Completion for submittal to the Colorado Department of Public Health and Environment.

ii. As-Built Drawings and Information. 60 days prior to the end of the First Year, as defined in paragraph 2.f.iii below, the Ginn Entities shall provide the Enterprise with all necessary start-up data, warranty manuals, operating instructions, engineering designs, surveys, field surveys, and "as-built" drawings for the Wastewater Plant and Collection System, and any incidental surveys related to the construction of the Wastewater Plant and Collection System, at the Ginn Entities' sole cost and expense.

The legal description of all collection mains and lines and other components of the Collection System shall be prepared by a registered land surveyor at the Ginn Entities' expense. In addition, Ginn Entities shall either provide or pay for the updating the base maps of the Enterprise or Town.

iii. Operation and Maintenance for First Year. The Ginn Entities shall be solely responsible for the costs of operation and maintenance of the First Phase of the Wastewater Plant and Collection System for one year following the Completion Certification ("First Year"). The actual designated operator shall either be the Town or a qualified entity with which the Town has contracted for operation of the Wastewater Plant and Collection System. If the Town is to be the designated operator after the First Year, the Town will contract with the Ginn Entities for the operation and maintenance for the First Year. If another entity will be the operator after the First Year, the operation and maintenance during the First Year will be the subject of a separate contract among the Town or the Enterprise, the Ginn Entities, and such other entity.

g. Dedication to Enterprise. All public improvements constructed in accordance with this Agreement, including the First Phase of the Wastewater Plant and Collection System, any wastewater collection mains, service lines, laterals, pump stations, lift stations and other wastewater collection and treatment facilities, and any easements therefore, shall be dedicated and conveyed to the Enterprise as provided herein. Upon expiration of the First Year, the Ginn Entities shall convey to the Enterprise by general warranty deed, free and clear of all liens and encumbrances, any easements necessary for all physical facilities constructed in accordance with this Agreement, and as necessary for the extension, maintenance and repair of the improvements for the Wastewater Plant and Collection System. All physical facilities and personal property constructed or acquired in accordance with this Agreement shall be conveyed by the Ginn Entities to the Enterprise by bill of sale free and clear of all liens and encumbrances. The Ginn Entities shall not transfer, and the Enterprise shall not be obligated to accept transfer of, the Wastewater Plant and Collection System unless and until the Enterprise's authorized representative has certified that the First Phase of the Wastewater Plant and Collection System has been constructed in accordance with the Final Construction Drawings, and that the Wastewater Plant has met the Specifications and the conditions of any applicable permits, for an uninterrupted

period of 365 days. The date of the conveyance of public improvements pursuant to this paragraph 2.g shall be referred to herein as the "Dedication Date."

h. Operation and Maintenance After First Year. After the Dedication Date, the Enterprise shall be solely responsible for the maintenance of the Wastewater Plant and Collection System, except for any correction work required during the Warranty Period described in paragraph 4 below.

i. The residents of the Town outside the Ginn Property ("Original Town Residents") should not be required to pay increased wastewater treatment service fees as a result of the construction of the Wastewater Plant. Accordingly, after the First Year, Original Town Residents will be charged a wastewater treatment service fee that is the same as the fee charged by such residents' former wastewater treatment service provider to other similarly situated customers. Wastewater treatment customers on the Ginn Property ("Ginn Property Residents") shall be charged service fees as provided in paragraph 1.e above.

ii. Any shortfall between the revenue provided by the service fees and the cost of operation and maintenance of the Wastewater Plant (the "Shortfall") shall be paid to the Enterprise by the Ginn Entities in accordance with the following procedure: At least 30 days prior to the expiration of the First Year, the Enterprise shall provide the Ginn Entities with an estimate of the Shortfall for the forthcoming six-month period, which estimate (and all future estimates contemplated herein) shall be based on projections of the Enterprise's Engineers of operating costs and other criteria made in good faith (as applicable, the "Estimated Shortfall"). On or before the date on which the First Year expires, the Ginn Entities shall deposit with the Enterprise an amount equal to the Estimated Shortfall (together with the additional deposits contemplated under this paragraph 2.h.ii, the "Shortfall Deposit"). At least 30 days prior to the expiration of each six-month period thereafter (as applicable, the "Estimate Date"), the Enterprise shall calculate the actual Shortfall for the preceding five months and notify the Ginn Entities of the amount of the Shortfall Deposit required to be deposited by the Ginn Entities prior to the commencement of the next six-month period, taking into account any excess funds or insufficient funds that were deposited with the last Shortfall Deposit. Such Shortfall Deposits shall continue until such time as the Estimate has been less than \$5,000 for two consecutive six-month periods. At such time, a reconciliation shall be completed by the Enterprise, and the Enterprise shall refund to the Ginn Entities, or the Ginn Entities shall pay to the Enterprise, as applicable, the amount by which there exists excess or insufficient funds in Shortfall Deposit. The Enterprise shall use the Shortfall Deposit solely to fund the Shortfall as provided herein.

iii. No later than 30 days before the end of the First Year, the Enterprise and the Ginn Entities shall utilize the following procedure to determine the time at which the obligation of the Ginn Entities to fund the Shortfalls as described above shall terminate: The Enterprise and the Ginn Entities shall jointly agree upon an independent qualified engineering firm to estimate the level (percent) of utilized capacity in the First Phase necessary to generate sufficient wastewater treatment service

fees to equal or exceed the reasonable estimated cost of operation and maintenance of the First Phase (the "Breakeven Level"). The Enterprise agrees that the obligation of the Ginn Entities under paragraph 2.h.ii above to fund the Shortfalls shall terminate when the utilized level of capacity in the First Phase reaches the Breakeven Level plus five percent (5%). For example, if it is estimated that the Breakeven Level is utilization of 50% of the First Phase's capacity, then the obligation of the Ginn Entities to fund the Shortfalls is terminated when the utilization of the First Phase reaches 55%. If there is no Shortfall prior to 55% utilization, then there is no obligation by the Ginn Entities to provide a Shortfall Deposit for that particular period, but the obligation terminates entirely when utilization reaches 55%.

i. Construction of Additional Phases After First Year. It is understood and agreed that additional modules or phases of the Wastewater Plant and Collection System will be constructed by the Enterprise from time to time as necessary for the future needs of the Town after construction of the First Phase. It is agreed that the Town or its designee shall continue the operation of the Wastewater Plant and Collection System during any such construction.

3. Security and Indemnity.

a. Letter of Credit for Construction of the First Phase of the Wastewater Plant and Collection System. Within 30 days of the Date of Commitment by Ginn Entities pursuant to paragraph 2.d above, the Ginn Entities shall provide the Enterprise with a letter of credit in an amount equal to 125% of the cost of the construction of the First Phase of the Wastewater Plant and Collection System in a form acceptable to the Enterprise from a Colorado bank approved by the Enterprise, or other security approved by the Enterprise in its sole discretion ("Letter of Credit"). The Letter of Credit shall terminate and be revoked at the Dedication Date except to the extent it is rolled over by the Ginn Entities in satisfaction of the requirements of the requirements of paragraphs 3.c and 4 of this Agreement.

b. Drawing Upon Letter of Credit.

i. The Enterprise may draw upon the Letter of Credit in the event of (i) failure of the Ginn Entities to timely make all or any portion of a Shortfall Deposit as required hereunder, or (ii) a material default by Ginn Entities in the performance of their obligations under paragraph 2 of this Agreement for the purposes of completing the construction of the First Phase of the Wastewater Plant and Collection System pursuant to the then existing Specifications ("Construction Work"). Upon the Ginn Entities' failure to perform the Construction Work, the Enterprise's Project Manager shall give written notice to the Ginn Entities of the nature of the default and an opportunity to be heard before the Board of Directors of the Enterprise concerning such default ("Default Notice"). The decision of the Board of Directors of the Enterprise on the issue of default will be final and binding. If such default has not been remedied within thirty (30) days of the Default Notice or of the date of any hearing before the Board of the Enterprise, whichever is later (or such reasonable time period as is necessary to cure the default if the Ginn Entities has commenced to cure the default), the

Enterprise's Project Manager may then give written notice to the Ginn Entities and issuer of the Warranty Security, as defined in paragraph 4.c.i below, that the Enterprise, as agent for the Ginn Entities, is proceeding with the task of performing the Construction Work in whole or in part, and will call upon the Letter of Credit for payment.

ii. The applicable portion of the Letter of Credit shall be payable upon presentation of (a) a signed draft drawn on the Letter of Credit in an amount to which the Enterprise is entitled pursuant to this paragraph 3; (b) an affidavit by a Registered Professional Engineer stating that the amount of the draft is required to complete the Construction Work; and c) an affidavit from the Enterprise's Project Manager stating that the Ginn Entities have received a Default Notice, and have failed to cure such failure within a reasonable time; provided, however, that no such affidavit shall be required if the draw on the Letter of Credit is due to a failure to timely make all or any portion of a Shortfall Deposit. In the event of a breach by the Ginn Entities and compliance with the terms of this section by the Enterprise, the issuer of the Letter of Credit shall be authorized to disburse funds, upon written request by the Enterprise, showing the proposed payee and the amount to be paid. Copies of any such requests shall be sent to the Ginn Entities at their last known address. Should the amount of the draft in the affidavit from the Registered Professional Engineer be insufficient to complete the construction work, the Enterprise shall be entitled to submit a supplemental signed draft drawn on the letter of credit in the actual amount required to complete the construction work. The supplemental draft shall be supported by an affidavit from a Registered Professional Engineer certifying the actual amount necessary to complete the construction work.

c. Security for Future Phases of Construction. The parties recognize that the construction of the Wastewater Plant is anticipated to be in phases and that the Ginn Entities are responsible for the costs of construction of all phases, as more specifically provided herein. In order to secure the costs of construction of subsequent phases of the Wastewater Plant, the Ginn Entities shall provide the Enterprise a Letter of Credit in an amount equal to 125% of the estimated cost of the construction (the "Estimated Cost") of subsequent phases ("Subsequent Letter of Credit") prior to the provision of wastewater treatment service from the Wastewater Plant to any portion of the Ginn Property. The Estimated Cost of subsequent phases shall be estimated by a qualified consulting firm as if construction were commenced and completed as of the date of the Completion Certification, including reasonably anticipated costs associated with the use of new technology, the associated retrofitting existing phases, and indirect and administrative costs associated with construction, and including an escalation factor for five years based on the average of the R.S. Means Co., Facilities Construction Cost Data, for the location nearest the Town, for the previous two years. The Estimated Cost determination shall be made prior to the delivery of the Subsequent Letter of Credit and then 30 days prior to the expiration of each five-year period thereafter. The amount of the Subsequent Letter of Credit shall be increased in accordance with the Estimated Cost for the next succeeding five-year period and shall provide that if a continuation of the Subsequent Letter of Credit, as so increased, or a replacement of the then-existing

Subsequent Letter of Credit containing such increase is not provided to the Enterprise prior to the expiration of the then-current Subsequent Letter of Credit, the Enterprise shall be entitled to draw upon the then-existing Subsequent Letter of Credit without the requirement of delivering an affidavit as provided in paragraph 3.b.ii above. The Ginn Entities may roll over any unused portion of the Letter of Credit in order to satisfy in part the requirements of this paragraph 3.c. The Enterprise may draw upon the Subsequent Letter of Credit as provided above and in the event of a material default by the Ginn Entities in the performance of their obligations under paragraphs 2.a.i, 2.h.ii, and 3.c of this Agreement for the purposes of funding the operations, or completing the construction of subsequent phases, of the Wastewater Treatment Plant and Collection System, in the same manner as provided in paragraph 3.b above. The Subsequent Letter of Credit shall be terminated and revoked in the event the Ginn Entities make the Escrow Deposit.

d. Indemnity.

Personal Injury or Property Damage. The Ginn Entities shall and hereby do indemnify and hold harmless the Enterprise and the Town, and their officials, employees, agents, and representatives, from and against liability for any claim, demand, loss, damages, penalty, fines, judgment, expenses, costs (including costs of investigation and defense), fees (including reasonable attorney and expert witness fees) or compensation in any form or kind whatsoever for any bodily injury, death, personal injury or property damage, environmental damages or claims relating to environmental damages, arising out of or in connection with the performance of this Agreement by Ginn Entities

ii. Third Party Lawsuits. The Ginn Entities shall and hereby do indemnify and hold harmless the Enterprise and the Town, and their officials, employees, agents, and representatives, from and against liability for any claim, demand, loss, damages, penalty, fines, judgment, expenses, costs (including costs of investigation and defense), fees (including reasonable attorney and expert witness fees) or compensation in any form or kind whatsoever for any action brought by third parties or governmental entities, or any claim by third parties or governmental entities in an existing action, arising out of or in connection with the performance of the Ginn Entities' obligations pursuant to this Agreement or arising out of or in connection with the effect of the construction of the Wastewater Plant and Collection System on the use of the Town's water rights; provided, however, that this indemnity by Ginn Entities arising out of or in connection with the effect of the construction of the Wastewater Plant and Collection System on the use of the Town's water rights shall terminate in the event that no agreement has been reached among the Ginn Entities, the Town, and the Enterprise within three (3) years from the date of this Agreement for the provision of water service by the Enterprise to the Project in the amount of not less than 90% of the Project's water needs for residential and commercial purposes (excluding irrigation and snowmaking) on substantially the same terms and conditions as water service is provided to residents of the Town. The indemnity provided under this paragraph 3.d.ii shall terminate three years after the construction of the last phase of the Town Plant

Capacity except with respect to actions commenced prior to the termination of the indemnity.

e. Insurance. The Ginn Entities and their Designer and Construction Contractor shall purchase and maintain insurance policies in form and limits reasonably acceptable to the Town.

4. Warranty.

a. Warranty and Performance Guarantee. The Ginn Entities agree that the Wastewater Plant and Collection System are to be considered “public improvements” with respect to performance guarantees that may be required by the Enterprise. The Ginn Entities warrant that the First Phase of the Wastewater Plant and Collection System will meet the Specifications and the requirements of any applicable approvals or permits as more specifically described below (“Warranty”) and shall perform and pay for any work necessary to fulfill the Warranty (“Warranty Work”). The Warranty for any and all public improvements constructed or acquired pursuant to this Agreement or any applicable Subdivision Final Plat applications shall be effective immediately after start-up and continue for a period of four (4) years from the date of Dedication Date, after which the Warranty shall terminate. (“Warranty Period”). Specifically, the Ginn Entities shall warrant the following:

i. Any and all facilities conveyed shall be free of any and all defects in materials or workmanship. The First Phase of the Wastewater Plant and Collection System will be constructed in full accordance with the Final Construction Drawings, will meet the requirements of any applicable approvals or permits and will not be defective.

ii. The Wastewater Plant and Collection System shall meet the Specifications; provided, however, that a reduction in capacity or other restriction on operations which results from a change in the standards applicable to the operation of the Wastewater Plant under state or federal law after the commencement of the Warranty Period shall not be considered to be a breach of warranty.

iii. The Ginn Entities’ shall have the obligation to construct the Wastewater Plant and Collection System in accordance with the Final Construction Drawings and so as to meet the Specifications as provided in this Agreement. None of the following will constitute an acceptance by the Enterprise of work that is not in accordance with the Final Construction Drawings or the Performance Specifications:

(1) Observation, review, or comment by the Enterprise Project Manager or the Enterprise’s authorized representative or the Enterprise’s Engineers, either of the Design or the construction;

(2) Any correction of defective work by the Enterprise or the Enterprise’s designee;

(3) Conveyance of the Wastewater Plant and Collection System by the Ginn Entities to the Town or the Enterprise; and

(4) Certification of Completion under Section 2.f.i. above.

b. Breach of Warranty. Upon the Ginn Entities' failure to perform Warranty Work, the Enterprise's Project Manager shall give written notice to the Ginn Entities of the nature of the default and an opportunity to be heard before the Board of Directors of the Enterprise concerning such default. The decision by the Board of Directors of the Enterprise shall be final and binding on the Ginn Entities. If such default has not been remedied within fifteen (15) days of receipt of the notice or of the date of any hearing before the Board of the Enterprise, whichever is later (or such reasonable time period as is necessary to cure the default if the Ginn Entities has diligently commenced to cure the default), the Enterprise's Project Manager may then give written notice to the Ginn Entities and issuer of the Warranty Security, as defined in paragraph 4.c.i. below, that the Enterprise, as agent for the Ginn Entities, will proceed with the task of performing the Warranty Work in whole or in part, and will call upon the Warranty Security for payment. If necessary, during the time that the Enterprise is performing such Warranty Work, the Enterprise shall be entitled to halt construction of the Wastewater Plant and/or the Collection System. Upon completion of the Warranty Work, the Construction Contractor and the Ginn Entities shall resume construction of the Wastewater Plant and Collection System in accordance with the Specifications and the Final Construction Drawings.

c. Security for Warranty.

i. In order to secure any Warranty Work, the Ginn Entities shall furnish the Enterprise with a certificate or other evidence, in good and sufficient form approved by the attorney for the Enterprise ("Enterprise Attorney"), of a performance bond, letter of credit, or other security acceptable to the Enterprise Attorney in an amount equal to 20% of the actual costs of such improvements, or such other equivalent collateral as may be satisfactory to the Enterprise Attorney ("Warranty Security"). Evidence of such security shall be provided to the Enterprise upon the Dedication Date.

ii. The applicable portion of the Warranty Security shall be payable at any time upon presentation of (a) a signed draft drawn on the Warranty Security in an amount to which the Enterprise is entitled pursuant to this section of this Agreement; (b) an affidavit by a Registered Professional Engineer stating that the amount of the draft is required to cure a breach of the Warranty; and c) an affidavit from the Enterprise's Project Manager stating that the Ginn Entities have received notice of a breach of the Warranty, and have failed to cure such breach within the time set forth herein. In the event of a breach by the Ginn Entities and compliance with the terms of this section by the Enterprise, the issuer of the Warranty Security shall be authorized to disburse funds, upon written request by the Enterprise, showing the proposed payee and

the amount to be paid. Copies of any such requests shall be sent to the Ginn Entities at their last known address.

d. Expiration of Warranty. The Security shall be fully released and discharged upon expiration of the Warranty Period and the correction of any defects discovered during the Warranty Period.

e. Appointment of Attorney-In-Fact. The Ginn Entities hereby designate and irrevocably appoint the Manager of the Enterprise, as their Attorney-In-Fact and agent for the sole purpose of completing all Warranty Work in the event of a default by the Ginn Entities. This Agreement and power of attorney contained herein may be enforced by the Enterprise pursuant to all legal and equitable remedies available, including an action for specific performance in a court of competent jurisdiction.

5. General Provisions

a. Binding Effect. This Agreement shall extend to, be binding upon, and inure to the benefit of the parties hereto and the successors and assigns of the respective parties hereto.

b. Assignment. Except as expressly provided in paragraph 1.c above, this Agreement shall not be assigned by the Ginn Entities without the express written consent of the Enterprise, which consent may be withheld in the event the Enterprise determines in its sole discretion that the proposed successor or assign does not have the financial capability of performing the obligations of the Ginn Entities herein. The Enterprise shall not transfer, assign, or otherwise create any right in any third party or other governmental entity with respect to this the performance of this Agreement, including without limitation any increase in the cost of performance or schedule for completion of the Wastewater Plant, without the consent of Ginn Entities, which shall not be unreasonably withheld.

c. Annexation of Ginn Property and Town of Minturn Three Mile Plan. At the time of execution of this Agreement, the Ginn Entities have petitioned the Town for annexation of a substantial portion of the Ginn Property into the Town. It is the intent of the Ginn Entities to petition the Town in the future for annexation of the remainder of the Ginn Property into the Town in conformance with applicable law. If the petitions for annexation are not approved, or if all portions of the Ginn Property are not annexed into the Town, the Town agrees to update its Three Mile Plan to allow the provision of Wastewater Service to the un-annexed portion of the Ginn Property pursuant to this Agreement.

d. Recording. This Agreement shall be recorded in the real property records of the Clerk and Recorder of Eagle County, Colorado, and shall constitute constructive notice of this Agreement and all of its individual provisions.

e. Designated Representatives. Each party's Project Manager(s) designated as provided in paragraph 2.a.ii above shall represent that party in the exercise of each party's rights under this Agreement, as set forth herein.

f. Prior Agreements. This Agreement supersedes and controls all prior written and oral agreements and representations of the parties and is the complete, integrated agreement among the parties with respect to Wastewater Service for the Ginn Property.

g. Termination. This Agreement and any amendments hereto may only be terminated in writing by mutual agreement of the parties, and the term of this Agreement shall continue until such termination. This Agreement and any amendments hereto shall not be terminable under this paragraph as to those individual water customers then receiving water service from the Enterprise. Notice of such termination shall be recorded in the real property records of the Clerk and Recorder of Eagle County, Colorado. Nothing in this paragraph 5.g is intended to modify or undermine the ability of the Ginn Entities to suspend or terminate work on the Wastewater Plant and Collection System at any time up to and including the Date of Commitment as provided in paragraph 2.d above. This agreement is premised on the ability of the Enterprise to obtain appropriate approvals for, and to construct at an appropriate and suitable location, the Wastewater Plant. If, in the Enterprise's reasonable discretion after consultation with the Ginn Entities, the obtaining of such required approvals is improbable or the Wastewater Plant cannot be built at an appropriate and suitable location, the Enterprise shall provide notice to the Ginn Entities and this Agreement shall terminate no later than 30 days after such notice is provided and the Ginn Entities shall be responsible for all work performed prior to and as of the date of termination, in the same manner as set forth in paragraph 2.d above.

h. Public Utility Status. The parties agree that the Enterprise is not a public utility for wastewater service compelled to serve other properties. To the extent allowed by law, the Ginn Entities agree that neither they, nor their successors in interest or assigns shall at any time petition the Colorado courts, the Board of County Commissioners of Eagle County, the Town, or the Public Utilities Commission or any other governmental entities to require service to any property or to acquire jurisdiction over the water service or wastewater collection and treatment systems of the Enterprise.

i. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder.

j. Authority. By signing this Agreement, the parties acknowledge and represent to one another that all procedures necessary to validly contract and execute this Agreement have been performed and that the persons signing for each of the parties have been duly authorized so to do.

k. Rules and Regulations. Except as expressly modified to the contrary herein and except as may otherwise be provided for or satisfied by this Agreement, Wastewater Service provided to the Ginn Entities and all property owners within the Project shall be subject to all applicable rules and regulations of the Town, the Enterprise and State of Colorado that pertain to Wastewater Service.

l. Amendment. This Agreement may not be amended except by subsequent written mutual agreement of the parties, provided however, that subsequent owners of any portion of the Project shall be subject to this Agreement and shall be entitled to receive Wastewater Service pursuant to this Agreement without amendment to this Agreement and shall be considered beneficiaries hereof.

m. Interpretation. Title and paragraph headings shall not be used to alter the meaning of this Agreement.

n. Notice. Any notice required or desired to be given by any party may be given by mailing the same, first class, postage prepaid, addressed to the other parties at the following addresses, and notice so mailed shall for all purposes hereof be as effectual as though served upon such parties in person at the time of depositing such notice in the mail.

o. If to the Town or the Enterprise:

Town Manager
Town of Minturn
302 Pine Street
P.O. Box 309
Minturn, CO 81645

with a copy to:

Allen C. Christensen, Town Attorney
P.O. Box 4128
Edwards, CO 81632-4128

and

Anne J. Castle
Holland & Hart LLP
P.O. Box 8749
Denver, CO 80202

If to the Ginn Entities:

Bill Weber
P.O. Box 56
164 Railroad Ave.
Minturn, CO 81645

p. Counterparts. This Agreement may be signed using counterpart signature pages with the same force and effect as if all parties signed on the same signature page.

q. Attorney's Fees. In the event of any dispute arising from the performance or enforcement of this Agreement, either party may institute litigation proceedings prior to the commencement or completion of any attempts to mediate or otherwise resolve such dispute. A court shall award the substantially prevailing party its reasonable costs and attorney's fees.

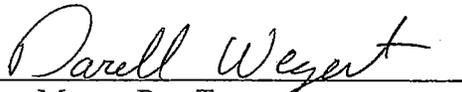
IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals, as of the 2nd day of April, 2006.

TOWN OF MINTURN, COLORADO,
a home rule municipality, acting by and
through its Town of Minturn, Water,
Sanitation and Recreation Activities
Enterprise

ATTEST:

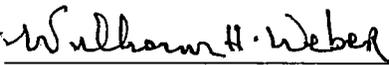

Town Clerk



By 
Mayor Pro Tem

GINN BATTLE NORTH, LLC,
a Georgia limited liability company

By: Battle Development Manager, Inc.,
a Georgia corporation, its Manager

By: 
William H. Weber,
Senior Vice President

Dated: 4/2/06

GINN BATTLE SOUTH, LLC,
a Georgia limited liability company

By: Battle Development Manager, Inc.,
a Georgia corporation, its Manager

By: William H. Weber Dated: 4/2/06
William H. Weber,
Senior Vice President

GINN-LA BATTLE ONE, Ltd., LLLP,
a Georgia limited liability company

By: William H. Weber Dated: 4/2/06
William H. Weber,
Senior Vice President

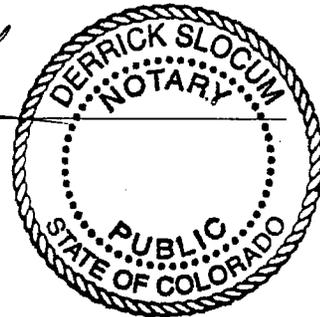
STATE OF COLORADO)
) SS.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 2nd day of April 2006, by Dorell Weget, Mayor Pro Tem, Town of Minturn, Colorado, acting by and through the Town of Minturn Water, Sanitation and Recreation Activities Enterprise and Jay Brunvand as Clerk of the Town of Minturn, Colorado.

Witness my hand and official seal.

My commission expires:

Derrick Slocum
Notary Public



My Commission Expires 02/07/2010

STATE OF Colorado)
) SS.
COUNTY OF Eagle)

