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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

