

A new private detention basin maintenance agreement will be required per EA 19-218, and change from Global Water. A O&M manual is also required. State what entity is responsible for maintenance

AGREEMENT

THIS AGREEMENT
 (A) COMMISSIONERS OF EL PASO COUNTY, COLORADO (Board or County) and
 VIEWPOINT ESTATES, a Colorado Limited Liability Company (Developers), and
 GLOBAL WATER SYSTEMS, a Colorado Corporation (Global). The above may
 occasionally be referred to here singularly as "Party" and collectively as "Parties."

Recitals

1. **WHEREAS**, the Developers are the owners of certain real estate (the Property or Subdivision) in El Paso County, Colorado, which Property is legally described as:


The West 1/2 and West 1/2 of East 1/2 of Section 10 T14S, R63W more particularly described as follows: Beginning at the Southwest Corner of Section 10, Township 14 South, Range 63 West of the 6th PM, commencing North 01 Deg 10 Min 40 Sec West along the West Section Line a Distance of 50.00 Feet to the true point of beginning; Thence continuing along said West Section Line North 01 Deg 40Sec 40Sec West a Distance of 1281.31 Feet, thence South 89Deg 52Min 52Sec East a Distance of 2617.39 Feet, Thence North 01Deg 11Min 11Sec West a Distance of 3960.76, Thence North 89Deg 54Min 31Sec East a Distance of 1311.15 Feet, Thence South 0Deg 55Min 21Sec East a Distance of 5214.40 to the North Right of Way of Colorado State Highway 94, Thence Along Said North Right of Way Line South 89Deg 47Min 46sec West a Distance of 3903.09 Feet to the True Point of Beginning. Said area contains 233.00 Acres+/-,

2. **WHEREAS**, Developers desire to plat and develop on the Property a subdivision to be known as Viewpoint Estates; and,

3. **WHEREAS**, The development of this subdivision will increase volume of water runoff from the Property, and, therefore, it is in the interest of public health, safety, and welfare for the County to condition approval of the subdivision on Developers' promise to construct adequate drainage and water runoff control facilities in the subdivision; and,

4. **WHEREAS**, Chapter V, Section 49.2 of the El Paso County Land Development Code, as periodically amended, promulgated pursuant to Section 30-28-133(1), Colorado Revised Statutes, 1997, as amended, requires the County to condition approval of all subdivisions on a developer's promise to so construct adequate drainage and water runoff control facilities in subdivisions; and,

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Provide a new private detention basin maintenance agreement utilizing the current El Paso County template. See comment made on the final plat on submittals 1 and 2 (see snip above). The current DMA identifies Global Water and the Developer as responsible parties as well as the lot owner. Global Water does not appear to still be operational and this agreement is not equivalent to the current agreement templates. Identify clearly if who (lot owners/HOA/metro district?) will be responsible for maintenance.

5. **WHEREAS**, Section 2.9 of the El Paso County Drainage Criteria Manual provides for a developer's promises to maintain a subdivision's drainage facility in the event the County does not assume such responsibilities; and,

6. **WHEREAS**, developers in El Paso County have historically chosen water runoff detention basins as a means to provide adequate drainage and water runoff control in subdivisions, which basins, while effective, are less expensive for developers to construct than other methods of providing drainage and water runoff control; and,

7. **WHEREAS**, Developers and Global desire to construct a detention basin as the means for providing adequate drainage and water runoff control in the Subdivision and,

8. **WHEREAS**, Global shall be charged in the Subdivision's Covenants with the duty of maintaining all common areas and common structures within the Subdivision, including the detention basin; and,

9. **WHEREAS**, it is the County's experience that the subdivision developers and homeowners' associations have not historically properly cleaned and otherwise not properly maintained and repaired these detention basins, and that these detention basins, when not so properly cleaned, maintained, and repaired, threaten the public health, safety, and welfare; and,

10. **WHEREAS**, the County, in order to so protect the public health, safety, and welfare, has historically expended valuable and limited public resources to so properly clean, maintain, and repair these detention basins when developers and homeowners' associations have failed in their responsibilities, and, therefore, the County desires the means to recover its costs incurred in the event the burden falls on the County to so clean, maintain, and repair the detention basin in this Subdivision; and,

11. **WHEREAS**, the County conditions approval of this Subdivision on the Developers' and Global's promise to so construct this detention basin, and conditions approval on Global's promise to reimburse the County in the event the burden falls upon the County to so clean, maintain, and/or repair the detention basin in this Subdivision; and,

12. **WHEREAS**, the County could condition subdivision approval on the Developers' and Global's promise to construct a different and more expensive drainage and water runoff control system than that proposed herein, which more expensive system would not create the possibility of the burden of cleaning, maintenance, and repair expenses falling on the County; however, the County is willing to forego such right upon the performance of Developers' and Global's promises contained herein; and,

13. **WHEREAS**, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon the Developers' grant herein of a perpetual Easement over a portion of the Subdivision for the purpose of allowing the County to periodically inspect and, when so necessary, to clean, maintain, and/or repair the detention basin; and,

14. **WHEREAS**, given that Global could potentially avoid liability hereunder by dissolving and reforming as a different entity, and given the difficulties inherent in collecting an unsecured promise, the County in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon the Developers' creation, by and through this Agreement, of a covenant running with the land upon each and every lot in the Subdivision.

Agreement

NOW, THEREFORE, in consideration of the mutual Promises contained herein, the Parties agree as follows:

1. **Incorporation of Recitals**: The Parties incorporate the Recitals above into this Agreement.

2. **Covenants Running the with the Land and Pro Rata Liability upon Individual Lot Owners**: Developers and Global agree that this entire Agreement and the performance thereof shall become a covenant running with the land, which land is legally described in Paragraph One (1) of the Recitals set forth above, and that this entire Agreement and the performance thereof shall be binding upon themselves, their respective successors and assigns, including individual lot owners within the Subdivision.

However, any liability imposed under this Agreement against an individual lot owner shall not be joint and several with the Developer and Global, but shall be pro rata on a per lot basis as determined by the following formula and illustration: each individual lot owner(s) shall be liable for no more than one seventy second (1/72) of the total amount of liability multiplied by the number of lots in the Subdivision owned by a particular lot owner. As to any lot(s) owned by more than one person or entity, the liability among the co-owners shall be joint and several for the pro rata obligation of that lot. The application of this Paragraph is best illustrated by the following example. Assume the following parameters: total liability is \$1,000, Lot 1 is owned by persons A and B, person B also owns Lot 2. Liability is as follows: The Developer, ~~\$1000~~ Global, ~~\$1000~~ Lot 1 is \$13.88 joint and several as to A and B; Lot 2 is \$13.88 owned solely by B. Thus, person A's total liability is \$13.88 and person B's is \$27.76. Applying the principle that the County cannot collect more than is owed, and assuming that the County cannot collect anything from the Developer and Global, if the County collected the whole \$27.76 from B, then it could not collect the \$13.88 from A. Likewise, if the County collected the \$13.88 from A, then it could only collect \$13.88 from B.

The agreement identifies the developer and global as liable along with the lot owners. This needs to be updated/removed as global is no longer operational as far as we can tell. See current El Paso County template

3. Construction: Developers and Global agree that they shall construct on the easements on Lots 71 and 72 described below as private water runoff detention basins, consisting of two (2) detention basins, one on lot 71 and one on lot 72. The Developers and Global shall not commence construction of the detention basin until the Planning Department and the El Paso County Department of Transportation have approved in writing the plans and specifications for the detention basin. Failure to obtain such approval shall be a material breach of this Agreement, and shall entitle the County to pursue any remedies available to it at law or in equity to enforce the same. Construction of the detention basin shall be substantially completed within one (1) year (defined as 365 days), which one year date will commence to run on the date the approved plat of this Subdivision is recorded in the records of the El Paso County Clerk and Recorder. Rough grading of the detention basin must be completed and inspected by the County prior to commencing road construction.

In the event construction is not so substantially completed within the one (1) year period, then the County may exercise its discretion to complete the project, and shall have the right to seek reimbursement from the Developers and Global and their respective successors and assigns, including individual lots owners in the Subdivision, for its actual costs and expenses incurred in the process of completing construction. The term actual costs and expenses shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tool and equipment costs, supply costs and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the Provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorneys fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same. The scope of liability therefore of the Developers, Global, and the individual lot owners shall be as set forth in Paragraph Two (2) above.

The detention basins shall be located on the following parcel(s) within the subdivision:

Lot 71 and Lot 72 of Viewpoint Estates, County of El Paso, State of Colorado; more particularly described as follows:

One detention basin is located 800 feet west of SE corner of Lot 71 along the North ROW of Highway 94.

The second detention basin is located 900 feet west of SE corner of Lot 72 along the North ROW of Highway 94.

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4. Maintenance. The Developers and Global agree for themselves, their respective successors and assigns, including individual lot owners within the Subdivision, that they will regularly and routinely inspect, clean and maintain the detention basin, and otherwise keep the same in good repair all at their own cost expense.

5. Creation of Easement. Developers hereby grant Global and the County a non-exclusive perpetual easement upon Lots 71 and 72 described above. The purpose of the easement is to allow Global and the County to access and inspect, clean, repair and maintain the detention basin. However, the creation of the easement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin.

6. County's Rights and Obligations: Any time the County determines, in the sole exercise of its discretion, that the detention basin is not properly cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Developers, Global, and their respective successors and assigns, including the individual lot owners, within the Subdivision, that the detention basin needs to be cleaned, maintained, and/or otherwise repaired. The notice shall provide a reasonable description of the problem with the detention basin, and the notice shall provide a reasonable time to correct the problem. Should the responsible parties fail to correct the specified problem, the County may enter upon the Property to so correct the specified problem. Notice shall be effective to the above by the County's deposit of the same into the regular United States mail, postage pre-paid; however, this Agreement does not expressly impose on the County a duty to so inspect, clean, repair or maintain the detention basin.

7. Reimbursement of County's Costs/Covenant Running with the Land: The Developers and Global agree and covenant, for themselves, their respective successors and assigns, including the individual lot owners within the Subdivision, that they will reimburse the County for its costs and expenses incurred in the process of cleaning, maintaining, and/or repairing the detention basin. However, the obligation and liability of the Developers hereunder shall only continue until such time as the Developer transfer the entire management and operation of the subdivision to Global and the individual lot owners within the Subdivision. Notwithstanding the previous sentence, Global and the individual lot owners within the subdivision shall always remain obligated and liable hereunder, and as per the provisions of Paragraph Two (2) above. The term actual costs and expenses shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tool and equipment costs, supply costs, analytical and disposal costs, and engineering and design costs regardless of whether the county uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the county initiates any litigation or engages the services of legal counsel in order to enforce the Provisions arising herein, the county shall be entitled to its damages and costs, including reasonable attorneys fees, regardless of whether the county contracts with outside legal counsel or utilizes in-house legal counsel for the same. The scope of

liability therefore of the Developers, Global, and the individual lot owners shall be as set forth in Paragraph Two (2) above.

8. Contingencies of Subdivision Approval: Developers' and Global's execution of the Agreement is a condition of subdivision approval. Additional conditions of this Agreement include, but are not limited to; the following:

- a. Creation of easements in favor of Global and the County on lots 71 and 72 for construction, maintenance, and repair of the detention basin as well as creation of necessary access easements for the same
- b. The County's receipt of a copy of the Articles of Incorporation for Global, as filed with the Colorado Secretary of State; receipt of the Certificate of Incorporation for the same from the Colorado Secretary of State; a copy of the by-laws of Global.
- c. A copy of the Water Contract of the Subdivision establishing that Global is obligated to clean, maintain, and repair the Facilities Agreement as an obligation of Global.
- d. A copy of the Plat of the Subdivision establishing that this Agreement is noted on the Plat and that such Agreement touches and concerns each and every lot within the Subdivision. The County shall have the right, in the sole exercise of its discretion, to approve or disapprove any documentation submitted to it under the conditions of this Paragraph. The County's rejection of any documentation submitted hereunder shall mean that the appropriate condition of this agreement has not been fulfilled.

9. **Distribute to Lot Purchasers:** Upon the initial sale of any lot within the Subdivision, prior to closing on such sale, the Developers shall give a copy of this Agreement to the potential Buyer.

10. **Agreement Monitored by Planning Department:** Any and all actions and decision to be made hereunder by the county shall be made by the Director of the El Paso county Planning Department. Accordingly, any and all document submissions, plan approval, inspections, etc. shall be submitted to and shall be made by the Director of the Planning Department.

11. **Indemnification and Hold Harmless:** To the extent authorized by Law, Developers and Global agree, for themselves, their respective successors and assigns, including the individual lot owners in the Subdivision, that they will indemnify, defend, and hold the County harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand action and causes of action whatsoever, whether at law or in equity, arising from or related to their respective intentional or negligent acts, errors or omissions or that of their agents, officers, servants, employees, invitees, and licenses in the construction, operations, inspection, cleaning (including analyzing and disposing of any

solid or hazardous wastes as defined by state and/or federal environmental laws and regulations), maintenance, and repair of the detention basin, and such obligation arising under this Paragraph shall be joint and several. Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to the County pursuant to the Colorado Governmental Immunity Act, Sections 24-10-10, et seq., C.R.S., 1997, as amended, or as otherwise provided by law. However, the obligation and liability of the Developers hereunder shall only continue until such times as the Developers transfer the entire management and operation of the Subdivision to Global and the individual lot owners within the Subdivision.

12. **Solid or Hazardous Wastes:** Should any refuse from the detention basin be suspected or identified as solid waste and/or hazardous waste, the Developer and Global shall take all necessary and proper steps to characterize the waste and properly dispose of it in accordance with applicable state and/or federal environmental laws and regulations, including but not limited to the following: Solid Wastes Disposal Sites and Facilities Act 30-20-100.5 to 30-20-119, C.R.S. (1998) as amended, Colorado Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 C.C.R. 1007-2, et seq., Solid Waste Disposal as amended, Act, 42 U.S. C. sections 6901-6992k (1998) as amended, and Federal Solid Waste regulations 40 CFR Ch. I (1998) as amended. The County shall not be responsible or liable for identifying, characterizing, cleaning up, or disposing of such solid or hazardous waste. Notwithstanding the previous sentence, should any refuse cleaned up and disposed of by the County be determined to be solid or hazardous waste, the Developer and the Association, but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid or hazardous waste.

13. **Applicable Law and Venue:** The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement except that federal law may be applicable regarding solid or hazardous wastes. Venue shall be in the El Paso County District Court.

14. **Severability:** In the event any court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

15. **Third Parties:** This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against either the County, the Developer or Global, their respective successors and assigns including any individual lot owners in the Subdivision, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

IN WITNESS WHEREOF, the Parties affix their signatures below.

Executed this 10th day of September, 1999

[Handwritten signature]

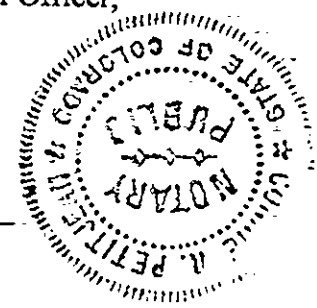
By: Charles McCallister, Chief Officer, Viewpoint Estates, LLC

The foregoing instrument was acknowledged before me this 10 day of SEPTEMBER, 1999 by Charles McCallister, Chief Officer, Viewpoint Estates, LLC.

Witness my hand and official seal

My commission expires 1-9-03

[Handwritten signature: Connie R. Pettigrew]
NOTARY PUBLIC



GLOBAL WATER SYSTEMS, LLC, a Colorado Corporation

[Handwritten signature: Don Taylor]

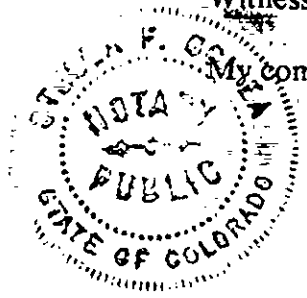
By: Don Taylor, Incorporator

The foregoing instrument was acknowledged before me this 10th day of SEPTEMBER, 1999 by Don Taylor, Incorporator, Global Water Systems, LLC, a Colorado Corporation

Witness my hand and official seal.

My commission expires April 13/2001

[Handwritten signature: Stella Leticia]
NOTARY PUBLIC



Executed this _____ day of _____, 1999, by

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: Chuck Brown

Chuck Brown, Chairperson

Board of County Commissioners of El Paso County

ATTEST

Eileen Wood

Deputy Clerk

The foregoing instrument was acknowledged before me this _____ day of _____, 1999 by Chuck Brown, Chairperson, Board of County Commissioners of El Paso County, Colorado, as Attested to by Eileen Gilbert, Deputy Clerk to the Board of County Commissioners of El Paso County, Colorado

Witness my hand and official seal

My commission expires: _____

NOTARY PUBLIC

Approved as to Content and Form

Assistant County Attorney

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