

**AFTER RECORDING RETURN TO:**

Tracey Harton Poole, Esq.  
McClure & Kornheiser, LLC  
6400 Powers Ferry Road, Suite 150  
Atlanta, Georgia 30339

**WATER QUALITY/KRISTAR UNIT  
FACILITIES AGREEMENT**  
City of Smyrna, GA  
Community Development Department  
(770) 319-5387

THIS WATER QUALITY/KRISTAR UNIT FACILITIES AGREEMENT (this “Instrument”), made and entered into this \_\_\_\_ day of April, 2014, by and between COLUMBIA EAST WEST I, LLC (“Columbia I”), COLUMBIA EAST WEST II, LLC (“Columbia II”), COLUMBIA EAST WEST III, LLC (“Columbia III”), COLUMBIA EAST WEST IV, LLC (“Columbia IV”), and EAST WEST PARTNERS, LLC (“East West”), each Georgia limited liability companies (Columbia I, Columbia II, Columbia III, Columbia IV, and East West are hereinafter collectively called the “Landowner”), and the CITY OF SMYRNA, GEORGIA (hereinafter called the “City”).

**WITNESSETH:**

WHEREAS, Landowner intends to install a Kristar Unit for water quality and

WHEREAS the Landowner is proceeding to build on and develop the Property; and

WHEREAS, the Site Plan attached hereto as Exhibit “D” (hereinafter called the “Plan”), which is expressly made a part hereof, as approved or to be approved by the City, provides for detention of stormwater within the confines of the Property; and

WHEREAS, the City and the Landowner, its successors and assigns, including any property owners association, agree that the health, safety and welfare of the residents of the City of Smyrna, Georgia, require that a Kristar water quality unit (hereinafter the “Facility”) be constructed and adequately maintained on the Property in accordance with the Smyrna, Georgia Code of Ordinances, Sections 46-143-148 (the “Ordinance”); and

WHEREAS, The City requires that the Facility, as shown on the Plan, be constructed and adequately maintained by the Landowner, its successors and assigns, including any property owners association; and

WHEREAS, Landowner, its successors and assigns, understand the execution of this Instrument is a condition precedent to the City's permitting of the contemplated development on the Property;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The Facility shall be constructed and operated by the Landowner, its successors and assigns, in accordance with the Plan.
2. The Landowner, its successors and assigns, including any property owners association, shall adequately maintain the Facility in accordance with the schedule of long term maintenance activities agreed hereto and attached as Exhibit "B" and incorporated herein (the "Maintenance Schedule"). Adequate maintenance is herein defined as good working condition so that the Facility is performing in accordance with the Plan.
3. The Landowner, its successors and assigns, shall inspect the Facility and submit an inspection report annually. The purpose of the inspection is to assure safe and proper functioning of the Facility. The inspections shall cover the entire Facility. Deficiencies shall be noted in the inspection report.
4. The Landowner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Facility as deemed necessary by the City in its sole discretion, no more than one (1) time per calendar year upon thirty (30) days' notice to the Landowner. The City shall provide the Landowner, its successors, heirs or assigns copies of the inspection findings and specify the measures, if any, needed to comply with this Agreement, in accordance with Section 46-146 of the Ordinance (the "Report").
5. Per the Ordinance, in the event the Landowner, its successors and assigns, fails to maintain the Facility in accordance with the Maintenance Schedule, then after thirty (30) days of the receipt by Landowner of the Report, the City may enter the Property and commence taking the recommended corrections, with due notice, and make the corrections set forth in the Report in accordance with the Maintenance Schedule. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the Property. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair the Facility and in no event shall this Instrument be construed to impose any such obligation on the City.
6. In the event the City, pursuant to this Instrument, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner, its successors and assigns, shall reimburse the City upon written demand, within thirty (30) days of receipt thereof, for all actual reasonable costs incurred by the City hereunder.
7. Except as otherwise set forth herein, this Instrument imposes no liability of any kind whatsoever on the City and the Landowner agrees to hold the City harmless from any liability in the event the Facility fails to operate properly.
8. The Landowner's obligations and liability hereunder are only for so long as the Landowner is the record owner of the Property. The obligations and liability hereunder shall transfer to the current record landowner of the Property.
9. It is the intent of this Instrument to insure the proper maintenance of the Facility by the Landowner; provided, however, that this Instrument shall not be deemed to create or affect any

additional liability of any party for damage alleged to result from or caused by storm water runoff or the quality thereof.

10. This Instrument shall be recorded among the land records of Cobb County, Georgia, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interests, including any property owners association.

Attachments:

Exhibit "A" (Legal Description of the Property)  
Exhibit "B" (Responsible Person Form)  
Exhibit "C" (Maintenance and Inspection Schedule)  
Exhibit "D" (Site Plan)

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Landowner and the City have executed this Instrument under seal, as of the date first above written.

LANDOWNER:

Signed, sealed and delivered by the Landowner in the presence of:

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

My Commission Expires: April 15, 2016



**COLUMBIA EAST WEST I, LLC**, a Georgia limited liability company

By: [Signature] (SEAL)  
Name: Daniel S. O'Neill  
Title: Manager

Signed, sealed and delivered in the presence of:

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

My commission expires: April 15, 2016



**COLUMBIA EAST WEST II, LLC**, a Georgia limited liability company

By: [Signature] (SEAL)  
Name: Daniel S. O'Neill  
Title: Manager

Signed, sealed and delivered in the presence of:

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

My commission expires: April 15, 2016



**COLUMBIA EAST WEST III, LLC**, a Georgia limited liability company

By: [Signature] (SEAL)  
Name: Daniel S. O'Neill  
Title: Manager

Signed, sealed and delivered  
in the presence of:

*[Signature]*  
Unofficial Witness

*[Signature]*  
Notary Public

My commission expires: *April 15, 2016*



**COLUMBIA EAST WEST IV, LLC**, a  
Georgia limited liability company

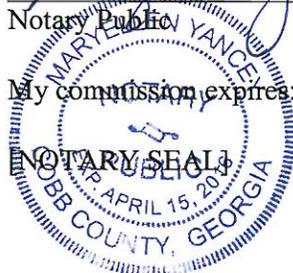
By: *[Signature]* (SEAL)  
Name: Daniel S. O'Neill  
Title: Manager

Signed, sealed and delivered  
in the presence of:

*[Signature]*  
Unofficial Witness

*[Signature]*  
Notary Public

My commission expires: *April 15, 2015*



**EAST WEST PARTNERS, LLC**, a Georgia  
limited liability company

By: *[Signature]* (SEAL)  
Name: Daniel S. O'Neill  
Title: Manager

CITY:

**THE CITY OF SMYRNA, GEORGIA**

Signed, sealed and delivered by  
the City in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

[NOTARIAL SEAL]

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit “C”**

**Required Inspection and Maintenance Schedule**

*Attached is an inspection and maintenance schedule. Refer to Chapter 3, of the “Georgia Stormwater Management Manual” First Edition dated August 2001 for minimum recommended inspection and maintenance requirements.*

Exhibit "A"

All that tract or parcel of land lying and being in Land Lot 677 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia and being more particularly described as Tract 2 on that final plat for Home Depot USA < Inc. prepared by Planners and Engineers Collaborative, bearing the seal and certification of David M. Brown, Georgia Registered Land Surveyor No. 2741, dated February 19, 2004, filed for record March 19, 2004, recorded in Plat Book 221, Page 67, records of Cobb County, Georgia

**Exhibit "B"**

**Responsible Person**

As required by Section 46-143(d) of the City of Smyrna Code of Ordinances, identify the responsible person or position that shall ensure the inspection and maintenance of the Facility is accomplished according to the Maintenance Schedule (attached hereto as Exhibit "C") prepared by the engineer of record for this Facility.

4574 S. Cobb Drive

Address or Name of Facility

Results of those inspections shall be submitted annually to the City of Smyrna.

Inspection reports shall be submitted to:

City of Smyrna

City Engineer

2190 Atlanta Road

Smyrna, Georgia 30080

Attn: City Engineer

If the responsible entity or contact person changes, the City of Smyrna shall be notified in writing of the change. Failure to meet the requirements of this Instrument shall constitute a violation of Section 46-146 of the City of Smyrna Code of Ordinances and shall be punishable under Section 46-146(d) of said code.

Columbia East West I, LLC, Columbia East West II, LLC, Columbia East West III, LLC, Columbia East West IV, LLC, and Columbia East West Partners, LLC, each Georgia limited liability companies  
Responsible Entities

Daniel S. O'Neill

Contact Person's Name

\_\_\_\_\_  
Signature

1355 Terrell Mill Road, Building 1478, Suite 200, Marietta, Georgia 30067

Address

678-460-3122

Phone Number

**Exhibit "D"**

Attach Site Plan