

**THIRD AMENDMENT TO
INFRASTRUCTURE/OPEN SPACE AGREEMENT**

THIS THIRD AMENDMENT TO INFRASTRUCTURE/OPEN SPACE AGREEMENT (the “Third Amendment”), made and entered into this ____ day of _____, 2013 is between and among the **CITY AND COUNTY OF DENVER**, a home rule municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado, 80202-1399 (the “City”), the **CENTRAL PLATTE VALLEY METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is c/o CliftonLarsonAllen, LLP, 8390 E. Crescent Parkway, Suite 500, Greenwood Village, Colorado, 80111 (the “District”) and the **DENVER UNION STATION PROJECT AUTHORITY** (“DUSPA”), a Colorado nonprofit corporation and instrumentality of the City (collectively referred to as the “Parties” or individually as a “Party”).

RECITALS

A. The City, the District and Trillium Corporation entered into the Infrastructure/Open Space Agreement dated September 22, 1998 (the “Agreement”) regarding the provision, planning, financing, design, construction, ownership, operation and maintenance of the Facilities, as that term is defined in the Agreement.

B. The Agreement was modified by the First Amendment to Infrastructure/Open Space Agreement dated September 11, 2001 (the “First Amendment”), which was entered into by the City, the District, Trillium Corporation and Trillium Commons, LLC, regarding the provision of additional funds necessary for the 16th Street CML Crossing, as that term is defined in the First Amendment.

C. The Agreement was further modified by the Second Amendment to Infrastructure/Open Space Agreement and Partial Assignment and Assumption Agreement dated April 14, 2010 (the “Second Amendment”), which was entered into by the City, the District, Trillium Corporation, Wodo, LLC (as successor to Trillium Commons, LLC) and DUSPA, regarding the allocation of construction responsibilities for certain facilities due to the redevelopment of the Denver Union Station (the “DUS Project”).

D. Pursuant to Section 6.2(b) of the Agreement, the District is responsible for the maintenance of the landscaping adjacent to the flowline of the streets, maintenance of median landscaping, and maintenance and repair of the sidewalks, pedestrian lights, the CML Crossing (as described therein), and all other improvements to the streets included in the definition of “Facilities” and “Additional Facilities,” excepting certain other public improvements.

E. The definition of “Facilities,” as described at Section 2.19 of the Agreement, includes “17th Street,” as Section 2.46, which is defined as 17th Street extended from Wewatta Street to the Consolidated Main Line (the “CML”).

F. In accordance with Section 1(B) of the Second Amendment, due to the DUS Project the District is no longer responsible for designing or constructing 17th Street.

G. Although the District is no longer responsible for designing or constructing 17th Street, the District's maintenance obligations concerning 17th Street have remained unaffected.

H. Recital "R" of the Second Amendment provides that each of the parties to the Second Amendment intend to enter into agreements with third parties regarding the maintenance of improvements that are common to the District and to the DUS Project.

I. The Parties agree that 17th Street contains public improvements that are common to both the District and to the DUS Project.

J. The District and the Regional Transportation District ("RTD") have entered into that Intergovernmental Agreement Regarding 17th Street Public Improvements, dated May 28, 2013 (as may be amended, revised or restated, the "RTD IGA") regarding the allocation of maintenance responsibilities for all public improvements located along 17th Street between Wewatta Street and the CML, a copy of which is attached hereto and incorporated herein by reference as **Exhibit A**.

K. The purpose of this Third Amendment is for the Parties to acknowledge the RTD IGA and reappportion the responsibility to maintain certain improvements located upon and underneath 17th Street from the District to RTD.

COVENANTS

NOW, THEREFORE, in consideration of the mutual promises and benefits herein expressed and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. RTD IGA. The Parties hereby agree to and acknowledge the following allocation of responsibilities for all public improvements located along 17th Street between Wewatta Street and the CML: a) All responsibilities to maintain, replace or repair any of the public improvements listed within the RTD IGA shall be as delineated pursuant to the RTD IGA; b) The District is hereby released from any responsibility for maintaining, replacing or repairing any Improvements (as defined therein) located within the Light Rail Plaza or the RTD Facility (as defined therein); and c) The District shall remain responsible for maintaining, repairing and replacing all 17th Street BOC Improvements (as defined within the RTD IGA).

The terms and conditions of the RTD IGA are expressly accepted by the City and DUSPA. Nothing contained herein shall be construed as charging either RTD or the District with any further or additional rights, interests, duties, obligations or responsibilities concerning the subject matter detailed within the RTD IGA contrary to what are specified therein.

2. SECTION 8 OF THE AGREEMENT.

A. Section 8.22 of the Agreement shall be amended to read as follows:

8.22 Notices. All notices, certificates or other communication hereunder shall be sufficiently given and shall be deemed given when personally delivered or upon three business days following mailing by registered or certified mail, postage prepaid, addressed as follows:

If to the City:

Mayor
City and County of Denver
1437 Bannock Street, Room 300
Denver, Colorado 80202

With copies to:

Denver City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

and

Manager of Public Works
City and County of Denver
1437 Bannock Street, Room 379
Denver, Colorado 80202

If to the District:

Central Platte Valley Metropolitan District
c/o CliftonLarsonAllen, LLP
8390 East Crescent Parkway, Suite 500
Greenwood Village, Colorado 80111
Attention: Bob Blodgett, Manager

With a copy to:

Dianne D. Miller
Miller & Associates Law Offices, LLC
700 17th Street, Suite 2200
Denver, Colorado 80202

And a copy to:

A.J. Zabbia
68West Engineering, Inc.
1860 Blake Street, Suite 200
Denver, Colorado 80202

If to DUSPA:

Denver Union Station Project Authority
Mike Sullivan
Trammell Crow Company
1225 17th Street, Suite 3050
Denver, Colorado 80202-5534

With a copy to:

Cole Finegan
Hogan & Hartson LLP
1200 17th Street, Suite 1500
Denver, Colorado 80202-5835

and:

Dawn Bookhardt
Bookhardt & O'Toole
999 18th Street, Suite 2500
Denver, Colorado 80202

3. CAPITALIZED TERMS. All capitalized terms not otherwise defined herein or as set forth in the Agreement, the First Amendment or the Third Amendment shall have the meaning set forth in the RTD IGA.

4. PRIOR PROVISIONS EFFECTIVE. Except as specifically amended hereby, all the terms and provision of the Agreement, the First Amendment and the Second Amendment shall remain in full force and effect.

5. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The parties consent to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

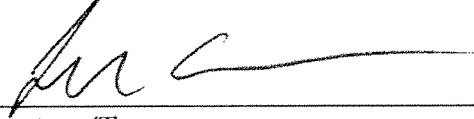
By _____

By _____

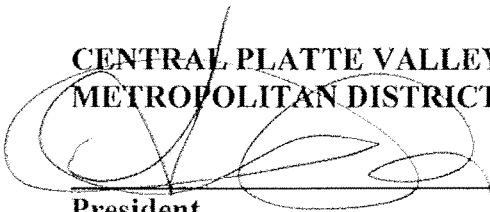
By _____



ATTEST:



Secretary/Treasurer

CENTRAL PLATTE VALLEY
METROPOLITAN DISTRICT


President


"DISTRICT"



ATTEST:

DENVER UNION STATION
PROJECT AUTHORITY, a Colorado
nonprofit corporation

Title: _____



Title: **PROGRAM MANAGER**



EXHIBIT A

RTD IGA

INTERGOVERNMENTAL AGREEMENT REGARDING 17th STREET PUBLIC IMPROVEMENTS

This Intergovernmental Agreement Regarding 17th Street Public Improvements ("Agreement") is made to be effective this 28th day of May, 2013, between CENTRAL PLATTE VALLEY METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("RTD"), whose enabling act is at C.R.S. 32-9-101, *et seq.*, each a "Party" and collectively the "Parties."

RECITALS

WHEREAS, pursuant to Article XIV, § 18(2)(a), of the Colorado Constitution and § 29-1-203, C.R.S., as each may be amended from time to time, local governments may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City and County of Denver (the "City"), Colorado has adopted, pursuant to the enactment of Ordinance No. 723, Series 2008, a Supplement to the Denver Union Station Plan of Development, which involves the redevelopment of Denver Union Station and the surrounding mixed-use area (the "DUS Project"); and

WHEREAS, the Denver Union Station Project Authority ("DUSPA"), a Colorado non-profit corporation, was formed by and under the authority of the City in 2008 for the purpose of constructing the DUS Project; and

WHEREAS, RTD is an acknowledging and accepting party to the design-build contract entered into by DUSPA; and

WHEREAS, as part of the DUS Project, DUSPA has designed and constructed a pedestrian plaza and façade on 17th Street between Chestnut Place and the Consolidated Main Line (the "CML") (the "Light Rail Plaza"), which Light Rail Plaza is owned in part by RTD and in part by the City; and

WHEREAS, as part of the DUS Project, DUSPA has designed, constructed and installed a subterranean transit bus terminal underneath 17th Street between the historic Denver Union Station building and the CML, as well as certain associated appurtenant facilities, including, without limitation, a fire command center room, skylights, waterproofing materials and other related improvements (collectively, the "RTD Facility"); and

WHEREAS, as part of the DUS Project, DUSPA has designed and constructed a pedestrian plaza and façade on 17th Street between Chestnut Place and Wewatta Street (the "Gardens"), including appurtenances related to the RTD Facility, such as, without limitation, seven (7) above-ground skylights, an egress and ingress stairway and a fire command center room, shown on **Exhibit A**, as attached hereto and incorporated herein; and

WHEREAS, RTD has agreed, between it and the District, and acknowledges herein, to be solely responsible for the repair, replacement and maintenance of all BOC Improvements, facilities and appurtenances associated with the Light Rail Plaza as well as the entirety of the RTD Facility which are shown on **Exhibit A**; and

WHEREAS, RTD does not own all of the Property upon which the BOC Improvements associated with the Gardens, the RTD Facility, or the Light Rail Plaza are located and any agreements made between the RTD and the District may be subject to modification based on City requirements; and

WHEREAS, the District has agreed, and shall acknowledge herein, to be solely responsible to repair, replace and maintain certain BOC Improvements on both the north and south sides of 17th Street within the Gardens between Chestnut Place and Wewatta Street (collectively, the "17th Street BOC Improvements"), as shown on the attached **Exhibit A**; and

WHEREAS, the Parties hereby agree and acknowledge that, due to the scope of the DUS Project, it is necessary to identify the various public infrastructure and facilities that each Party shall be responsible for maintaining, repairing and replacing, including, without limitation, the Light Rail Plaza, the RTD Facility, the Gardens and the 17th Street BOC Improvements; and

WHEREAS, the Parties hereby agree and acknowledge that it is necessary to allocate each Party's respective responsibility to maintain, repair and replace certain overlapping infrastructure resulting from the DUS Project; and

WHEREAS, the Parties have discussed the matters set forth in this Agreement, and wish to memorialize the discussions previously held.

NOW, THEREFORE, in consideration of the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

Based on extensive discussions, the Parties agree as follows:

1. Definitions. As used herein, the following words or terms shall have the following definitions:

A. "Repair," and any derivations therefrom, shall mean throughout this Agreement "to restore, refurbish, renovate or otherwise fix an existing public improvement or facility to a previously existing condition or state."

B. "Replace," and any derivations therefrom, shall mean throughout this Agreement "to remove an existing public improvement or facility and install a corresponding public improvement or facility of similar quality and style."

C. "Maintain," and any derivations therefrom, shall mean throughout this Agreement "to preserve a public improvement or facility in an appropriately useful, unimpaired, clean and safe condition such that it is reasonably free from damage or decay."

D. "BOC Improvements" shall be defined throughout this Agreement to include all benches, seat walls, trash receptacles, standard planters, artistic planters, flowers (whether annuals or perennials), shrubbery, trees, newspaper corrals, gardens, bike racks, sidewalk improvements (including concrete and granite pavers), red stone edging, stone bollards, standard bollards, sod, irrigation systems (including all meters, valves, piping, heads, clock and backflow preventers), fossil filters and pedestrian lights appurtenant to an identified parcel of property that are owned by, or have been dedicated to, either Party.

E. "RTD Representative" means Robin McIntosh, Senior Manager, Facilities, 1600 Blake Street, Denver, CO 80202, (303) 299-2287, robin.mcintosh@rtd-denver.com, or another individual subsequently designated in writing by RTD to the District.

F. "District Representative" shall mean Bob Blodgett, Manager of the District, c/o CliftonLarsonAllen, LLP, phone number (303) 779-4525, bob.blodgett@cliftonlarsonallen.com, or another individual subsequently designated in writing by the District to RTD.

2. Allocation of Improvements. Attached to this Agreement and incorporated herein as **Exhibit A** are drawings indicating the relative and approximate placement, depth and location of the RTD Facility, the Back of Curb Improvements within the Gardens and the 17th Street BOC Improvements (collectively, the "Improvements"). Each Party shall be solely responsible for repairing, replacing and maintaining their respective portion of the Improvements as indicated on **Exhibit A** and, subject to authorization and appropriation by their respective governing bodies and, subject to City approval where applicable, shall repair, replace and maintain such respective Improvements in a condition that is at least equal to the quality and style standard that was originally installed. Except as may otherwise be agreed to between the Parties in writing, neither Party shall have any responsibility or liability to repair, replace or maintain any of the other Party's allocated Improvements nor bear any liability for any damage caused to the other Party's allocated Improvements except for any damage caused through the negligence or intentional misconduct of the other Party, its agents, employees, directors or officers. Upon the District's request, RTD shall assign to the District any warranties that have been assigned to RTD that are applicable to any Improvements the District is required to repair, replace or maintain. Notwithstanding the foregoing, RTD shall have no responsibility for safety or maintenance of any 17th Street BOC Improvements pending any action against a contractor for the deficient construction of such 17th Street BOC Improvements. The District shall be responsible for providing snow and trash removal services for all 17th Street BOC Improvements upon the substantial completion of such 17th Street BOC Improvements by the appropriate contracting entity and/or upon such 17th Street BOC Improvements being accessible to the public as part of a public right-of-way. Each Party shall promptly notify the other Party of any damage of which it is actually aware to its allocated

Improvements or appurtenant infrastructure that may reasonably and adversely affect the other Party's allocated Improvements.

3. Light Rail Plaza. RTD shall be responsible for repairing, replacing and maintaining all of the BOC Improvements located upon the Light Rail Plaza. RTD shall be 100% responsible for all costs, whether direct or indirect, associated with the maintenance, repair and replacement of the BOC Improvements located upon the Light Rail Plaza, including, but not limited to, snow removal, trash pick-up and removal, graffiti removal, lawn trimming, irrigation, tree trimming, landscape maintenance and security. RTD shall be solely responsible for all costs associated with the foregoing tasks for all BOC Improvements located upon the Light Rail Plaza, whether currently existing or constructed and installed in the future.

4. RTD Facility. RTD be responsible for repairing, replacing and maintaining all facilities, improvements and infrastructure associated with and included in the final approved construction design for the RTD Facility and shall be solely responsible for repairing, replacing and maintaining the entirety of the RTD Facility below a depth of four feet (4') below finished grade within the Gardens, except as such facilities, improvements and infrastructure may protrude into the Gardens, as shown on **Exhibit A**.

5. 17th Street BOC Improvements. The District shall own all of the 17th Street BOC Improvements at grade and to a depth of four feet (4') below finished grade within the Gardens, except as such facilities, improvements and infrastructure may protrude into the Gardens from the RTD Facility, as shown on **Exhibit A**, which shall remain the sole responsibility of RTD. The District shall be 100% responsible for all costs, whether direct or indirect, associated with the maintenance, repair and replacement of the 17th Street BOC Improvements, including, but not limited to, snow removal, trash pick-up and removal, graffiti removal, lawn trimming, irrigation, tree trimming, landscape maintenance and security. The District shall be solely responsible for all costs associated with the foregoing tasks for all of the 17th Street BOC Improvements, whether currently existing or constructed and installed in the future.

6. Repair, Replacement and Maintenance Notifications. In the event that either Party has actual knowledge of a presently-existing or threatened condition that may require the repair, replacement or maintenance of any of the other Party's allocated Improvements, such Party shall notify the other Party, care of either the District Representative or the RTD Representative, as may be applicable, as soon as reasonably practicable.

7. Headings. Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

8. Further Instruments. Each Party hereto shall from time to time execute and deliver such further instruments as the other Party may reasonably request to effectuate the intent of this Agreement, or to confirm its continuing applicability.

9. Governing Law. The Parties hereto hereby expressly agree that the terms and conditions hereof, and the subsequent performance hereunder, shall be construed and controlled by the laws of the State of Colorado. Any suit or proceeding arising from or relating in any way to

the subject matter of this Agreement shall be brought only in the District Court for and in Denver County, Colorado.

10. Remedies. In the event of any violation of any term or provision of this Agreement, to the extent allowed under applicable law, the damaged Party shall be entitled to whatever remedies it may have at law or in equity, including without limitation, rights to injunctive relief, specific performance and damages.

11. Severability. If any term or provision of this Agreement is deemed to be invalid by a court of competent jurisdiction, then such provisions shall be deemed to be valid to the extent permitted by law and shall be construed accordingly. Further, no such invalid or partially valid provision of this Agreement shall invalidate any other terms or provisions of this Agreement and all such valid provisions shall be enforceable.

12. No Recording. This Agreement shall not be recorded in the public records of any county government.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

14. No Third Party Beneficiaries. This Agreement constitutes the complete and exclusive statement of the agreement of the staffs of the Parties with respect to the subject matter of this Agreement. The Parties acknowledge that additional agreements or permits between each of the Parties, the City and other third-party entities exist or may be entered into and the purpose of this Agreement is to ascertain responsibility for areas that may be more generally described in such third-party agreements. The allocations are solely between the Parties and nothing herein shall be construed as preventing either Party from entering into agreements for third-party contributions, labor, or other allocation of responsibility. The Parties agree if they enter any agreement(s) with City regarding the Improvements that they have each agreed to repair, replace or maintain, neither shall attempt to negotiate an agreement that would charge the other with responsibility contrary to what is specified herein.

15. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of the rights and privileges of the District or RTD pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as the same may be amended from time to time.

16. Authority To Enter Into Agreement. Each Party hereby acknowledges that this Agreement has been approved by their respective staff and any implementation of maintenance, repair or replacement shall require funding and approval by their respective governing bodies.

17. Notices. Except as specified by Section 6, *supra*, any notices or other communications required or permitted by this Agreement or by law to be served on, given to or delivered to any Party hereto, by the other Parties shall be in writing and shall be deemed duly served, given or delivered when personally delivered to the Party to whom it is addressed or in lieu of such personal services, upon receipt in the United States' mail, first-class postage prepaid, addressed as follows:

To the District:

Central Platte Valley Metropolitan District
c/o CliftonLarsonAllen, LLP
8390 East Crescent Parkway, Suite 500
Greenwood Village, Colorado 80111
Attention: Bob Blodgett, District Manager

With a copy to:

Dianne D. Miller
Miller & Associates Law Offices, LLC
700 17th Street, Suite 2200
Denver, Colorado 80202

To RTD:

Assistant General Manager, Safety, Security and Facilities
Regional Transportation District
1600 Blake Street
Denver, CO 80202

With a copy to:

General Counsel
Regional Transportation District
1600 Blake Street
Denver, Colorado 80202

And a copy to:

Chief Engineer
Regional Transportation District
1560 Broadway, Suite 700
Denver, CO 80202

Any Party may change its address for the purpose of this Paragraph by giving written notice of such change to the other Parties in the manner provided in this Paragraph.

18. Appropriations. The Parties obligations hereunder, if any, shall extend only to monies appropriated for the purposes of this Agreement by their respective governing body and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by either Party or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Parties or a general obligation or other indebtedness of the Parties within the meaning of any constitutional

or statutory debt limitation, including, without limitation, Article X, Section 20, or Article XI, Sections 1, 2 or 6, of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of District or RTD funds, nor shall any provision of this Agreement restrict the future issuance of bonds or obligations payable from any class or source of District or RTD funds.

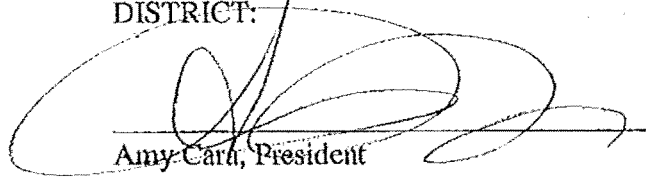
19. No Assignment or Delegation. Neither Party may assign this Agreement or parts hereof or its rights hereunder, nor delegate this Agreement or parts hereof or its duties hereunder, without the prior written consent of the other Party.

20. Amendment and Modification. This Agreement may be amended or modified only in writing signed by both Parties.

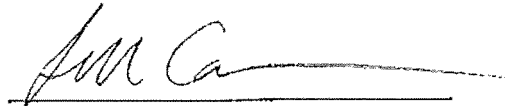
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IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written.


CENTRAL PLATTE VALLEY METROPOLITAN DISTRICT:


Amy Carr, President

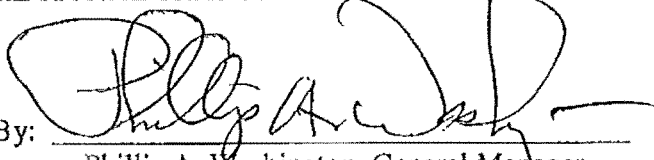
ATTEST:


Frank Cannon, Secretary/ Treasurer

APPROVED AS TO FORM:


Miller & Associates Law Offices, LLC
General Counsel to District

REGIONAL TRANSPORTATION DISTRICT

By: 
Phillip A. Washington, General Manager

APPROVED AS TO LEGAL FORM
FOR THE REGIONAL TRANSPORTATION
DISTRICT


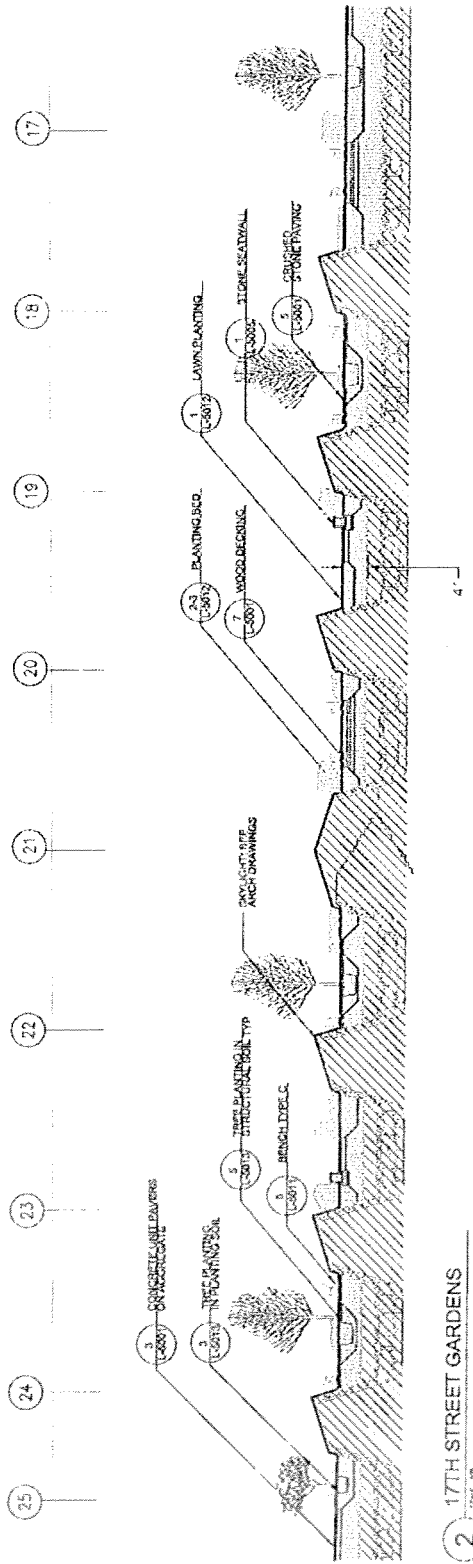

General Counsel

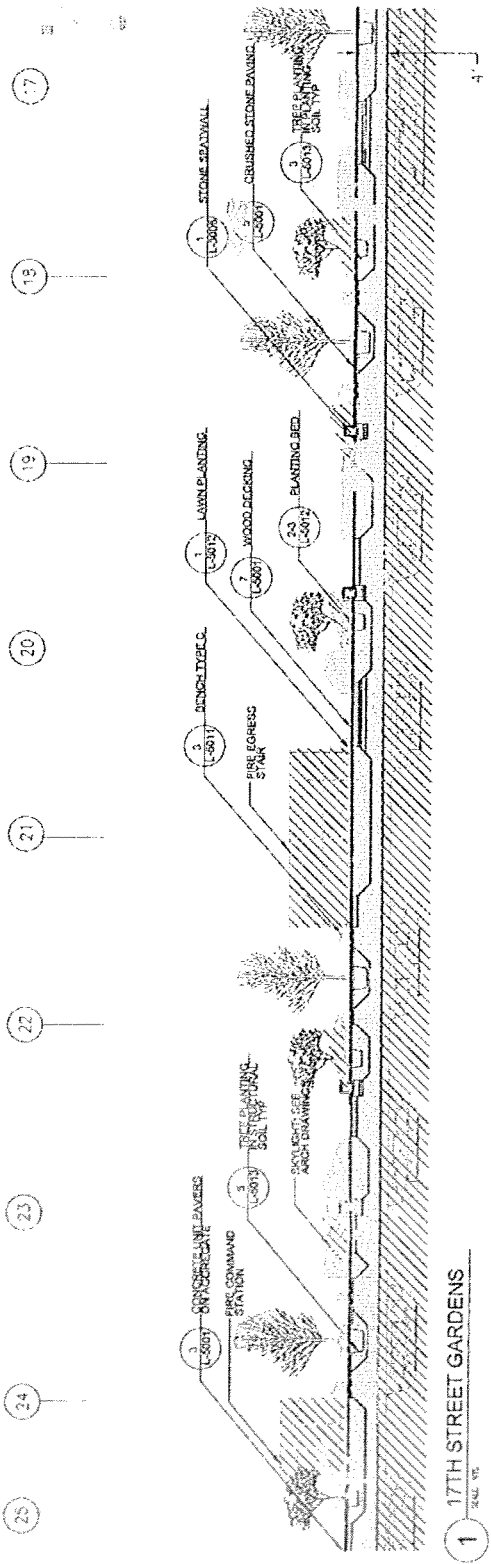
EXHIBIT A
Improvements

LEGEND-
MAINTENANCE
RESPONSIBILITIES

	CPVND
	RTD
	CCD



2 17TH STREET GARDENS
SCALE: 1/8"



1 17TH STREET GARDENS
SCALE: 1/8"

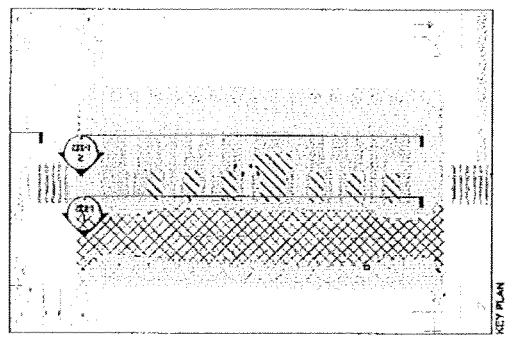


EXHIBIT A - THE GARDENS