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**RESTRICTIVE COVENANTS ESTABLISHING
DESIGN REVIEW BOARD
FOR
THE COMMONS**

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The undersigned are the owners of certain real property located in the City and County of Denver, Colorado, more particularly described on Exhibit A attached hereto and made part hereof by this reference (the "Property") and hereby subject the Property to the following grants, submissions and covenants, which shall run with the Property and be binding on the respective successors and assigns of the undersigned:

1. Purpose. These Restrictive Covenants are to protect the value and desirability of the Property and the separate projects which may be formed thereon and to promote the architectural and aesthetic compatibility of properties located therein by the adoption and administration of Design Guidelines and the employment of other powers as described herein.

2. Design Review Board and Guidelines. There is hereby established a Design Review Board (the "Design Review Board"), which is the executive board of The Commons Design Review Board, Inc., a Colorado nonprofit corporation, and its successors and assigns. The Commons Design Review Board, Inc. will in all instances act through the Design Review Board and the Design Review Board shall be deemed to mean and include The Commons Design Review Board, Inc. for all purposes herein, unless otherwise indicated. The Design Review Board will establish and administer design guidelines which may be amended and supplemented from time to time by the Design Review Board (the "Design Guidelines"), to facilitate the purpose and intent of these Restrictive Covenants.

3. Purpose and General Authority. The Design Review Board will review, study and either approve, conditionally approve or reject proposed improvements on the Property, all in compliance with these Restrictive Covenants and as further set forth in the Design Guidelines and such rules and regulations as the Design Review Board may establish from time to time to govern its proceedings. No improvement will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced within the Property until plans for the improvements shall have been approved by the Design Review Board; provided, however, that improvements, reconstruction, replacement, repairs and alterations that are completely within a structure may be undertaken without such approval.

Notwithstanding the foregoing or any contrary provision herein, it is acknowledged that a design review board comprised of certain representatives of the undersigned owners of the Property, Trillium Corporation ("Trillium") and Central Platte Valley Management LLC ("CPVM"), has taken certain actions in de facto status as the Design Review Board prior to the recording of these Restrictive Covenants and establishment of the Design Review Board related to proposed developments within the Property, including, without limitation, approvals of schematic design and imposition of certain conditions to approval relating to the time of completion of the proposed improvements, among others. Any such decisions, approvals, grants and conditions adopted by such de facto design review board shall be fully binding on the Design Review Board as though directly adopted by the Design Review Board and shall not be amended or modified by subsequent action of the Design Review Board without the express consent of the

applicant. Such de facto design review board and its actions shall be afforded all protections and authority granted to the Design Review Board and its actions hereunder. Further, the Design Guidelines adopted by the Design Review Board (i) will acknowledge the validity of approvals given by such de facto design review board and provide that such approvals shall be deemed approvals by the Design Review Board and (ii) will not alter the standards previously applied to the improvements which were the subject of such approvals.

4. **Board Discretion.** The Design Review Board will exercise its reasonable best judgment to approve plans for proposed improvements that harmonize with any existing structures on the Property and with approved concept plans for other proposed structures as to external design, quality and type of construction, materials, color, location on the building site, height, bulk, grade and finished ground elevation, landscaping, streetscaping and the schemes and aesthetic considerations set forth in the Design Guidelines. The Design Review Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. The approval by the Design Review Board of improvements on the Property shall carry no precedential weight when reviewing subsequent requests for approvals and the Design Review Board shall not be required to approve requests for the same or similar improvements in different locations or in the same location at different times.

5. **Design Guidelines.** The Design Guidelines may include, among other things, at the sole discretion of the Design Review Board, the types of restrictions and limitations set forth below:

a. Procedures and necessary fees for making application to the Design Review Board for design review approval, including the documents to be submitted and the time limits in which the Design Review Board must act to approve, conditionally approve or disapprove any submission.

b. Time limitations for the commencement and completion, within specified periods after approval, of the improvements for which approval is required under the Design Guidelines.

c. Designation of the building site on the applicable parcel of land.

d. Landscaping and streetscaping regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the type and use of plants, and other practices benefiting the protection of the environment, conservation of water, aesthetics and architectural harmony of the Property.

e. General guidelines for the construction, reconstruction, exterior refinishing or exterior alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation or utility lines or conduits on the Property, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading,

transformers and meters, dust mitigation, excavated soil disposal, hours of construction, noise abatement and construction fencing, among others.

Minimum and maximum square foot areas of residential or non-residential space that may be developed on any particular parcel, height and bulk restrictions on buildings to be constructed on such parcel shall be as set forth in those documents establishing the planned unit development for The Commons approved by the City and County of Denver (the "PUD Plan").

The Design Review Board may amend, repeal and augment the Design Guidelines from time to time, in the Design Review Board's reasonable discretion; provided, however, that (i) no such amendment will affect an application previously approved by the Design Review Board, (ii) in the event of damage to or destruction of improvements after any amendment of the Design Guidelines, the owner of such improvements may elect either (A) to restore or rebuild such improvements according to the original design of such improvements approved by the Design Review Board, notwithstanding any subsequent amendment of the Design Guidelines, or (B) to request Design Review Board approval of a new or revised design under the then current Design Guidelines, and (iii) in the event of alterations or renovations to improvements undertaken by the owner, other than as a result of damage to or destruction of such improvements, after any amendment of the Design Guidelines, the Design Review Board may in its reasonable discretion apply the same Design Guidelines that were applicable to the initial review of such improvements or apply the amended Design Guidelines, taking into consideration the cost and feasibility of bringing older buildings into compliance with the amended Design Guidelines. The Design Guidelines will be binding on all owners and tenants within the Property and other persons governed by these Restrictive Covenants. Notwithstanding the foregoing, the Design Review Board is empowered in its discretion to grant variances from the requirements of the Design Guidelines in cases where application would create hardship, to promote substantial justice, or under unique or unusual circumstances.

6. Design Review Board Membership. The Design Review Board will be composed of five (5) persons. Two (2) of the members of the Design Review Board will be appointed, removed and replaced by Trillium, two (2) of the members will be appointed, removed and replaced by CPVM, and one (1) of the members will be appointed, removed and replaced by mutual agreement of Trillium and CPVM, each in its sole discretion, until such time as any such party may elect to voluntarily waive this right by written notice recorded in the Office of the Clerk and Recorder for the City and County of Denver, Colorado, and at that time the Executive Board of Riverfront Park Association, a Colorado nonprofit corporation, will succeed to the rights of CPVM and an entity or party to be designated by Trillium will succeed to the rights of Trillium to appoint, remove or replace the members of the Design Review Board as described herein. The appointing party may appoint an alternate for any member it appoints, and such alternate may attend any meeting and may vote when such member is absent. All appointments, removals and replacements shall be effected by giving notice of the same to the other appointing party.

7. Organization and Operation of Design Review Board.

a. The term of office of each member of the Design Review Board, subject to Section 6 above, will be one year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Design Review Board member die, resign or become incapacitated, or in the event of a temporary absence of a member, a successor or substitute may be appointed by the person empowered to designate such member as described in Section 6 above by providing written notice to Design Review Board members.

b. The chairman of the Design Review Board will be elected annually from among the members of the Design Review Board by a majority vote of such members. In the absence of a chairman, the party responsible for appointing or electing the person serving as chairman may appoint or elect a successor, or if the absence is temporary, an interim chairman.

c. The Design Review Board chairman will take charge of and conduct all meetings and will provide reasonable notice to each member of the Design Review Board prior to any meeting. The notice will set forth the time and place of the meeting, and notice may be waived by any member.

d. The affirmative vote of a majority of the members of the Design Review Board will govern its actions and be the act of the Design Review Board. Members may vote by proxy.

e. The Design Review Board may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Design Review Board may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Design Review Board. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant will be equivalent to approval or disapproval by the entire Design Review Board.

f. All inspection and enforcement powers reserved to the Design Review Board under these Restrictive Covenants may also be exercised by Riverfront Park Association, a Colorado nonprofit corporation, pursuant to the provisions of the Declaration for Riverfront Park recorded (or to be recorded) in the Office of the Clerk and Recorder of the County of Denver, Colorado, with respect to the real property subjected to such Declaration, and by an entity designated by or to be designated by Trillium, with respect to the real property subjected to these Restrictive Covenants but not otherwise subjected to the Declaration for Riverfront Park, in each case subject to the primary power of the Design Review Board. Nothing herein shall be construed as creating an additional level of review by such Association or other entity but, rather, to permit Riverfront Park Association and/or the designee of Trillium inspection and enforcement powers pursuant to these Restrictive Covenants in reference to their respective properties. Riverfront Park Association and/or the Trillium designee, as is applicable, shall use its good faith efforts to enforce violations of these Restrictive Covenants or the Design Guidelines if so requested by the Design Review Board.

8. Expenses. All expenses of the Design Review Board not otherwise covered by application fees as described below will be paid one-half by Riverfront Park Association and one-half by Trillium or its designee and shall constitute a common expense of each. The Design Review Board will have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Design Review Board from time to time, and such fees will be collected by the Design Review Board to help defray the expenses of the Design Review Board's operation. Further, the Design Review Board may retain the services of a third party consultant to assist the Design Review Board in reviewing a particular application. In such event, the Design Review Board may charge the applicant for the professional fees incurred in retaining such consultant.

9. Other Requirements. Compliance with the Association's design review process is not a substitute for compliance with the City and County of Denver building, zoning and subdivision regulations, and each owner (but only during such owner's period of ownership) is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction.

Further, the establishment of the Design Review Board and procedures for architectural review will not be construed as changing any rights or restrictions upon owners to maintain and repair their properties and improvements as may be required under other applicable laws, requirements or covenants.

The Property is subject to certain regulations and requirements of the City and County of Denver, including, without limitation, those contained in the documents and resolutions approving The Commons Planned Unit Development. All Owners are hereby advised of such governmental regulations, and that they may have the effect of imposing upon the Property certain restrictions (including, without limitation, restrictions relating to landscaping, design of improvements and the like) which may or may not be consistent with the provisions of these Restrictive Covenants or the Design Guidelines. In the event of any conflict between provisions of these Restrictive Covenants, the Design Guidelines and the governmental regulations described herein, the more restrictive provision shall control.

10. Limitation of Liability. The Design Review Board will use reasonable discretion in accepting or disapproving all plans and specifications submitted to it. Neither the Design Review Board nor any individual Design Review Board member will be liable to any person for any act or omission of the Design Review Board in connection with submitted plans and specifications, except to the extent the Design Review Board or any individual Design Review Board member acted with malice or wrongful intent. Approval by the Design Review Board does not necessarily assure approval by the appropriate governmental body or commission for the City and County of Denver. Notwithstanding that the Design Review Board has approved plans and specifications, neither the Design Review Board nor any of its members will be responsible or liable to any owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of the Design Review Board's approval of the construction of the improvements. Neither the Design Review Board, nor any agent or representative thereof, nor the undersigned owners of the Property, nor any of their respective partners, employees, agents or consultants will be responsible in any way to any person for any

defects in any plans or specifications submitted, revised or approved in accordance with the provisions of these Restrictive Covenants and the Design Guidelines, or for any design, structural or other defects in any work done according to such plans and specifications. In all events the Design Review Board will be defended and indemnified by The Commons Design Review Board, Inc. in any such suit or proceeding which may arise by reason of the Design Review Board's decisions. The Commons Design Review Board, Inc., however, will not be obligated to indemnify each member of the Design Review Board to the extent that any such member of the Design Review Board is adjudged to be liable for malice or wrongful intent in the performance of his duty as a member of the Design Review Board, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

11. Enforcement.

a. During construction, repair, renovation, or reconstruction of any improvement within the Property, any member or authorized consultant of the Design Review Board, or any authorized officer, director, employee or agent of the Association may enter upon any area within the Property at any reasonable time, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction within such areas and the common areas or common elements of a project to determine whether the improvements have been or are being built in compliance with the Design Guidelines and the plans and specifications approved by the Design Review Board.

b. Before any residential or non-residential space may be occupied, if required by the Design Guidelines, the owner of the property will be required to obtain a temporary certificate of compliance issued by the Design Review Board indicating substantial completion of the improvements in accordance with the plans and specifications approved by the Design Review Board, and imposing such conditions for issuance of a final certificate of compliance issued by the Design Review Board as the Design Review Board may determine appropriate in its reasonable discretion. Without limiting the generality of the preceding sentence, the Design Review Board may require that the owner deposit with the Design Review Board such sums as may be necessary to complete punchlist items and landscaping by a specified date as a condition of issuing a temporary certificate of compliance. If the punchlist items and landscaping are not completed as scheduled, the Design Review Board may apply the deposit to cover the cost of completing the work and enforce such other remedies as are available to the Design Review Board for the failure of the owner to comply with these covenants, including without limitation the remedies set forth in this Section.

c. Upon completion of construction, the Design Review Board will issue an acknowledged final certificate of compliance setting forth generally whether, to the best of the Design Review Board's knowledge, the applicable improvements are in compliance with the terms and conditions of the approval granted by the Design Review Board.

d. Every violation of these covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an owner will be applicable. Without limiting the generality of the foregoing, these covenants may be enforced as provided below:

The Design Review Board may adopt a schedule of fines for failure to abide by the Design Review Board rules and the Design Guidelines, including fines for failure to obtain any required approval from the Design Review Board.

e. All improvements commenced on the Property will be prosecuted diligently to completion and will be completed within the period of time prescribed for completion in the Design Guidelines, unless an exception is granted in writing by the Design Review Board. If an improvement is commenced and construction is then abandoned for more than ninety (90) consecutive days, or if construction is not completed within the required period of time, if any, then the Design Review Board may impose a fine in an amount as provided in the Design Guidelines to be charged against the owner until construction is resumed, or the improvement is completed, as applicable, unless the owner can prove to the satisfaction of the Design Review Board that such abandonment is for circumstances beyond the owner's control.

12. **Binding Effect.** The actions of the Design Review Board in the exercise of its reasonable discretion by its approval or disapproval of plans and other information submitted to it or with respect to any other matter before it, will be conclusive and binding on all interested parties.

13. **Nonwaiver.** Failure by the Design Review Board to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in these Restrictive Covenants shall in no way or event be deemed to be a waiver of the right to do so thereafter.

14. **Severability.** The provisions of these Restrictive Covenants shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect.

15. **Number and Gender.** Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

16. **Captions.** The captions to the Sections of these Restrictive Covenants are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of these Restrictive Covenants or the intent of any provision of these Restrictive Covenants.

17. **Exhibits.** All the Exhibits attached to and described in these Restrictive Covenants are incorporated in these Restrictive Covenants by this reference.

18. Amendment. These Restrictive Covenants may not be amended, modified or terminated except upon the written consent of all members of the Design Review Board.

19. Counterparts. These Restrictive Covenants may be executed in counterparts, which when taken together shall constitute the entire Restrictive Covenants.

Executed as of dates indicated below.

CENTRAL PLATTE VALLEY MANAGEMENT
LLC, a Delaware limited liability company

By: East West Resort Development IV, L.L.L.P.,
a Delaware limited liability limited
partnership, Manager

By: HF holding Corp., a Colorado corporation,
general partner

By:
Name: MARK SMITH
Title: Vice President
Date: MARCH 28, 2000

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 28th day of March,
2000, by Mark Smith, as Vice President of HF
Holding Corp., a Colorado corporation, general partner of East West Resort Development IV,
L.L.L.P., a Delaware limited liability limited partnership, Manager of Central Platte Valley
Management LLC, a Delaware limited liability company.

WITNESS my hand and official seal.

My commission expires: 5/25/00.

[SEAL]



Lesley Coleman
NOTARY PUBLIC

TRILLIUM CORPORATION, a Washington corporation

By: *[Signature]*
Name: PAULA KURTZ
Title: EXECUTIVE VICE PRESIDENT
Date: March 21, 2000

Washington
STATE OF COLORADO)
Whatcom) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 21st day of March, 2000, by Paula V. Kurtz, as Executive Vice President of Trillium Corporation, a Washington corporation.

WITNESS my hand and official seal.

My commission expires: June 2, 2002.

[SEAL]



Heather M. Maris
NOTARY PUBLIC

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