

**FIRST AMENDMENT TO PROTECTIVE
COVENANTS FOR EAGLE'S LANDING
NO. 1-B SUBDIVISION, WASHINGTON COUNTY, UTAH**

A. Leucadia Financial Corporation, a Utah corporation ("Developer"), heretofore executed certain Protective Covenants for Eagle's Landing No. 1-B Subdivision, which Covenants were recorded April 28, 1988 as Document No. 331774, Book 484, Page 861, in the Official Records of Washington County, Utah, and which Covenants encumber the following described property:

Eagle's Landing No. 1-B Subdivision, a part of Section 5, Township 43 South, Range 15 West, S.L.B. & M., Washington County, Utah according to the Official Plat thereof on file with the Washington County Recorder.

B. Developer desire to amend the Covenants as hereinafter set forth pursuant to the provisions of Article II, Section 1 of the Covenants.

NOW THEREFORE, the Developer hereby amends the Covenants as follows:

ARTICLE I - GENERAL RESTRICTIONS

1. **LAND USE AND BUILDING TYPE:** All lots shall be used only for single family residential purposes and no professional, business or commercial use shall be made of the same, or any portion thereof, nor shall any resident's use of a lot endanger the health or disturb the reasonable enjoyment of any other owner or resident; provided, however, that the lot restrictions contained in this section shall not be construed in such a manner as to prohibit an owner or resident from (a) maintaining his personal professional library therein; (b) keeping his personal business or professional records or accounts therein; or (c) handling his personal, business or professional telephone calls or correspondence therefrom. The only building or structure permitted to be erected, placed or permitted to be located on any lot within the subdivision shall be a detached single family dwelling not to exceed two stories in height, with an enclosed private garage for not less than two (2) nor more than five (5) automobiles. The height of the garage door header shall be limited to the height of the roof line of the house and shall not in any event exceed ten (10) feet. No carport or other outdoor or partially enclosed parking facility shall be permitted. All construction shall be of new materials except that used brick may be used so long as it conforms with the building and subdivision ordinances of the City of St. George, Utah. All structures shall be constructed in accordance with the zoning and building ordinances of the City of St. George, Utah, in effect from time to time. "Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law. The construction of any building on any portion of the Property shall be continuously and diligently pursued from and after the commencement of such construction, and in any event shall be substantially completed within nine (9) months after such commencement.

2. **LOT SIZE:** Lot sizes as described on the recorded plat of subdivision are considered minimum lots size and no person shall further subdivide any lot other than as shown on the recorded plat of said subdivision.

3. **MINIMUM AREA:** The minimum total square footage of living area on the first level above ground and located within the area of a foundation for any residential dwelling constructed on any lot within the subdivision, exclusive of porches, balconies, patios and garages, shall be not less than 1,600 square feet.

BY: *[Signature]*
COVENANT
RECORDS
WASHINGTON COUNTY
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REQUEST: SOUTHERN UTAH TITLE
FORM 492 FIC-451-458
REV. 20.00 JMS

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4. **ARCHITECTURAL CONTROL:** No building, wall, pool, or improvement shall be commenced, erected or maintained upon any lot, nor shall any exterior addition, change or alteration, or in the event of a casualty loss, any restoration, be made to the exterior portion of any residence, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same, and the grading plan and landscape plan therefore, shall have been submitted to and approved in writing (as provided in Article II below) as to the harmony of exterior design and location in relation to surrounding structures and topography and finish grade elevations by the Architectural Control Committee. Further, no wall shall be erected, placed or altered upon any lot nearer to any street than the minimum building set back line unless similarly approved.

5. **BUILDING LOCATION:** No building shall be located on any lot nearer to the front lot line than thirty (30) feet therefrom; nor nearer than ten (10) feet to the rear lot line; nor nearer than ten (10) feet to a side lot line. All of the foregoing measurements shall be made from the applicable lot line to the foundation, porch or other extension of such building, whichever is nearer to such lot line. For the purpose of this covenant, eaves and steps shall not be considered as part of a building for the purpose of determining such distance, provided, however, that this shall not be construed to permit any portion of a building, including eaves or steps to encroach upon another lot.

6. **DRIVEWAYS:** Each driveway on a lot shall be constructed out of cement, asphalt or brick. Any driveways consisting of cinders, sand, gravel, or dirt shall not be permitted on any lot. Driveways of any other materials must be approved by the Architectural Control Committee. The driveway on each lot shall be in a color which blends with the exterior of the structure located on such lot.

7. **EASEMENTS:** Easements for installation and maintenance of any and all utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. The title holder of each lot shall from time to time grant rights over, across, on, under and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company. Developer or any public authority shall have the right of access to such easements for the purpose of installing, repairing, maintaining, removing or replacing any such utilities or portions thereof and for removing and clearing any vegetation which could interfere with such utilities or drainage, as aforesaid.

8. **TEMPORARY OR OTHER STRUCTURES:** No structure of a temporary nature, and no trailer, bus, basement, outhouse, tent shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall any such structures be erected or placed on said property at any time. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivision, shall be new construction of good quality, workmanship, and materials.

9. **NUISANCES:** No noxious or offensive activity shall be carried on upon any lot, part or portion of the Property nor shall anything be done thereon which may be or may become an annoyance to the neighborhood.

10. **SIGNS:** No billboard of any character shall be erected, posted, painted or displayed upon or about any of the Property. No sign of any kind, except signs used by the Developer or by a builder to advertise the Property during a development, construction or sales period, shall be displayed to the public view on any lot, part or portion of the Property without the prior written approval of the Architectural Control Committee and said Committee shall have the right to remove or cause the removal of any such billboard or any such sign erected and displayed without said prior approval.

11. **OIL AND MINING OPERATIONS:** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such lot, part or portion of the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any such lot or portion of the Property.

12. **LIVESTOCK, POULTRY, AGRICULTURE:** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, part or portion of the Property, except that dogs, cats or other domesticated household pets may be kept in a residence constructed on a lot, provided that they are not kept, bred, or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled and kept pursuant to all applicable laws and ordinances. No outside dog houses or dog runs whatsoever are allowed on the aforesaid Lots 1 through 6. Outside dog runs may be permitted on the aforesaid Lots 19 through 28 but only with the prior written approval of the Architectural Control Committee.

13. **GARBAGE AND REFUSE DISPOSAL:** No lot, part or portion of the Property, shall be used or maintained as dumping ground or rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste shall not be kept except in sanitary containers. No rubbish, trash, papers, junk or debris shall be burned upon the Property except that trash may be burned in accordance with applicable laws and ordinances inside homes that are properly equipped with inside incinerator units.

14. **BUILDING MATERIALS:** No lot, part or portion of the property shall be used or maintained as a storage for building materials except during a construction phase. Once a dwelling is occupied or made available for sale all building materials shall be removed or stored inside such dwelling.

15. **WATER SUPPLY:** No individual water supply system shall be used or permitted to be used on any lot, part or portion of the Property.

16. **SEWAGE DISPOSAL:** No individual sewage disposal system shall be permitted on any lot, part or portion of the Property.

17. **BOATS AND MOTOR VEHICLES:** No boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored upon any lot except within an enclosed garage or behind an approved wall of satisfactory height to screen said vehicle from any other lot or from any street. No such vehicles shall be parked over night on any street located within the subdivision.

335151

18. **ANTENNAE:** No external radio, television, dish or other antennae of any kind or nature, or device for the reception or transmission of radio, microwaves or other similar signals shall be permitted on any lot without the prior written approval of the Architectural Control Committee.

19. **SAFE CONDITION:** Without limiting any other provision of this declaration, each owner shall maintain and keep such owner's lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other owners of their respective lots.

20. **SIGHT DISTANCE AT INTERSECTIONS:** No structure, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within the ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height to prevent obstructions of such sight lines.

21. **LANDSCAPING:** Within four (4) months after the completion of construction of any home upon a lot, the owner of such lot must have substantially completed the landscaping of such lot. Such landscaping shall include but shall not be limited to the preparation from the planting of lawn, grass or other appropriate ground cover, appropriate shrubbery, and planting of at least one (1) tree in the front yard. No more than twenty-five percent (25%) of the landscaping shall be in the desert motif. The planting of trees and shrubs and grass are encouraged and recommended. Should any lot owner fail to comply with the provisions of this section, the Architectural Control Committee shall have right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof, and shall also have the authority to complete the landscaping and require the lot owner to pay a reasonable amount for such completion. All attorneys fees and costs incurred in any such action, and all expenses incurred in connection with such completion, shall constitute a lien on such lot owner's lot, and shall also be a personal obligations of said lot owner, enforceable at law, until such payment therefore is made.

No healthy tree shall be removed from any lot prior to the written approval of the Architectural Control Committee of the landscaping plan for such lot, unless the Architectural Control Committee shall have approved of such removal. No healthy tree shall be removed from any lot after the completion of the approved landscaping thereof, nor shall other major landscaping changes be made, without the prior written approval of the Architectural Control Committee. Notwithstanding this section, all diseased trees must be removed by the lot owner within one hundred twenty (120) days after the diseased condition is discovered or after receipt of notification issued by the Architectural Control Committee demanding the removal thereof. All diseased and other trees removed from any lot, part or portion of the Property shall be replaced by the lot owner by the planting of an equivalent number of trees of the same species upon such lot. All trees planted by a lot owner pursuant to the requirements of this paragraph shall be minimum size of two and

335151

one half inches (2 1/2") caliper measured at a point one foot (1') above ground level.

22. **EXCAVATIONS:** Except for excavations for an approved foundation, no excavations or removal of dirt are permitted on any lot below the present grade of such lot.

23. **DWELLING CONSTRUCTION RESTRICTIONS:** In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines and restrictions are applicable to the Property:

(A) Dwelling style, design, alterations and additions will conform to standards established by the Architectural Control Committee.

(B) Exterior construction materials will be limited to stone, stone veneer, brick or brick veneer, stucco or other materials approved for use by the Architectural Control Committee, and shall be in colors and of materials indigenous to the area. Specifications regarding the color, texture, finish and quality for the above will be made available by the Architectural Control Committee.

(C) Roof materials will be limited to tile or shake, and shall be in colors which blend with the exterior of the structure. No mansard roofs are allowed.

(D) Dome structures of any type are not allowed.

(E) Any light used to illuminate garages, patios, parking areas or for any other purposes, shall be so arranged as to reflect light away from adjacent residences and any way from the vision of passing motorists.

(F) Supporting structures for mailboxes will be constructed of brick or stone and shall be of the same materials as yard walls. No pipe, wood or small black posts are allowed.

24. **CONSTRUCTION AND WALL RESTRICTIONS FOR LOTS 1 THROUGH 6:** The following guidelines and restrictions are applicable only to Lots 1 through 6 of the Property:

(A) No storage or utility buildings are allowed. All structures intended for such use must be built so as to be part of a house on the Property. All air conditioning equipment and utility pipes, etc. shall be placed as discreetly as possible and covered with landscaping or permitted screening. Roof mount air conditioning equipment must be situated so as not be visible from the ground.

(B) Walls and other barriers:

1. **Materials:** Walls shall be of brick or stone approved by the Architectural Control Committee and of a color which blends with the exterior of the structure on the lot. No wooden, chain link, wire mesh or other fence whatsoever is permitted and no unpainted concrete block fences or walls are allowed.

2. **Height and location:** Walls or hedges shall not exceed three feet 6 inches in height and shall not extend beyond the front yard set back line of a lot at any point.

3. **Variations:** The Architectural Control Committee will consider approval of aesthetically

335151

compatible walls of the materials listed above or hedges which; (a) are not more than six feet in height, (b) are located on the side lot line of a lot or on the perimeter of a patio or open porch and not extending beyond the front or rear yard set back line, (c) are intended to enhance the privacy of the residents of such lot, and (d) do not unreasonably interfere with the line of sight towards, or view of, any golf course from any neighboring lot.

25. CONSTRUCTION AND WALL RESTRICTIONS FOR LOTS 19 through 28: The following guidelines and restrictions are applicable only to Lots 19 through 28 of the Property:

(A) Storage or utility buildings, garbage and refuse containers, air conditioning equipment, utility pipes, etc. shall conform with the requirements of Paragraph 24 (A) above or may, with the prior written approval of the Architectural Control Committee, be located at the rear of the dwelling if constructed on the lot and in such a manner so as not be conspicuously visible from the roadway along the front of the lot.

(B) Walls and other barriers:

1. Materials: Walls shall be of brick or stone approved by the Architectural Control Committee and of a color which blends with the exterior of the structure on the lot. No wooden, chain link, wire mesh or other fence whatsoever is permitted, and no unpainted concrete block or poured concrete wall is permitted.

2. Height: Walls or hedges shall not exceed six (6) feet in height and shall not extend beyond the front set back line of a lot at any point.

ARTICLE II - DURATION, ENFORCEMENT, AMENDMENT

1. DURATION OF RESTRICTIONS: The covenants and restrictions contained herein shall run with and bind the land for a period of fifty (50) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth. During the Development Phase (defined below), the covenants and restrictions contained herein may be modified, amended or repealed in whole or in part at any time and from time to time by the Developer or his successor or assigns by recorded instrument. The "Development Phase" shall be the time from the date of the recording of the Plat of Subdivision until such time as Developer transfers legal title to more than ninety percent (90%) of the number of lots to bona fide purchasers.

Upon completion of the Development Phase, the covenants and restrictions contained herein may be amended by a recorded instrument signed by no less than the owners of seventy-five percent (75%) of the number of lots. Any amendment after the completion of the Development Phase shall require a thirty (30) day written notice of any such proposed amendment be sent to every owner of any lot, part or portion of the Property.

2. PERPETUITIES: If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the applicable provision shall continue and endure only until the expiration of

335151

twenty-one (21) years after the death of the last to survive the class of persons consisting of all of the lawful descendants of Norman Bangerter, Governor of the State of Utah, or Ronald Reagan, President of the United States, living at the date of the recording of this document.

3. **NOTICES:** Any notice required under the provisions of this document to be sent to any lot owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such owner.

4. **CONSTRUCTION AND SEVERABILITY:** All of the restrictions, covenants and conditions contained in this document shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall in no wise affect the enforceability or applicability any of the remaining restrictions, covenants or conditions, or parts thereof.

5. **VIOLATION CONSTITUTES NUISANCE:** Every act or omission whereby any restriction, covenants or condition in this document set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Developer or any owner or owners from time to time of any lot or portion of the Property. Remedies hereunder shall be deemed cumulative and not exclusive.

6. **ENFORCEMENT:** Each and all of the restrictions, covenants and conditions contained in this document is and are for the benefit of the Developer, and of the owner or owners from time to time of any lot, part or portion of the Property. Each such restrictive covenants and condition shall inure to the benefit of and pass with each and every lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, may be enjoined, abated or remedied by appropriate proceedings at law or in equity by the Developer or the owner or owners from time to time of any lot, part or portion of the Property; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent owner of said lot, part or portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. No legal or equitable right presently exists or shall exist with respect to the use of or access to any golf course or other property adjacent to the subdivision or any amenity now or hereafter located thereon.

7. **RIGHT TO ENFORCE:** The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by the Developer, by the owner or owners from time to time of any lot, part or portion of said property, their and each of their legal representatives, heirs, successors and assigns, and failure by the Developer or any such owner, or their respective legal representatives, heirs, successors, or assigns, to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter.

8. **ARCHITECTURAL CONTROL COMMITTEE:** The Architectural Control Committee which is vested with the powers described herein shall consist initially of at least three (3) persons appointed by the Developer. Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition to any structure, there shall first be filed with the Architectural Control Committee two (2) complete sets of building plans and

specifications, together with a site or plot plan indicating the exact part of the building site which the improvements will cover, and no such work shall commence unless and until the Architectural Control Committee shall endorse on one set of such plans its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said Committee pursuant hereto. Said Committee shall have the right to refuse to approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building or other structure so planned on the outlook from adjacent or neighboring property. The Committee shall promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this section. The second set of such plans shall be filed as a permanent record with the Architectural Control Committee. In the event said Committee fails to approve or disapprove in writing any such plans within sixty (60) days after the submission thereof to the Committee, then such approval shall be deemed to have been given. The Developer shall have the right to appoint all members of the Architectural Control Committee until such time as title to more than ninety percent (90%) of the number of lots in the Property has been transferred to bona fide purchasers. When title to more than ninety percent (90%) of all of the lots in said development has been transferred by the Developer, a majority of the owners of lots, parts or portions of the Property subject to these covenants shall elect and appoint members of the Architectural Control Committee, which Committee shall thereafter be vested with the powers described herein and shall have jurisdiction over all of the property subject to these restrictions, covenants and conditions.

9. ASSIGNMENT OF POWERS: Any and all rights and power of the Developer herein contained may be delegated, transferred or assigned. Wherever the term "Developer" is used herein, it includes Developer and its successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto executed his document this 6th day of July, 1988.

LEUCADIA FINANCIAL CORPORATION

By C. Bruce Miller
Its: pres.

ATTEST:

John M. Taggart
Assistant Secretary

STATE OF UTAH)
County of Salt Lake)

On the 6th day of July, 1988, personally appeared before me C. Bruce Miller, the President of LEUCADIA FINANCIAL CORPORATION, a Utah corporation, and John M. Taggart the Assistant Secretary of said corporation; who being duly sworn did say that they executed the foregoing instrument for and on behalf of said corporation by authority of a resolution of its board of directors for the uses and purposes set forth therein.

My Commission Expires:
April 1, 1989

