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WHEN RECORDED, RETURN TO:  
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ENT 49814:2003 Pg 1 of 6  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2003 Apr 02 10:20 am FEE 0.00 BY BLS  
RECORDED FOR UTAH CNTY COMMISSIONERS

### SETTLEMENT AGREEMENT

**THIS SETTLEMENT AGREEMENT** (“Agreement”), is made and entered into as of this 31 day of MARCH, 2003, by and between Alpine Cove Water Special Service District, a special service district organized and existing under the Utah Special Service District Act, §17A-2-1301 et seq., Utah Code Annotated (the “District”), and Peter and Diane Christensen, of Alpine, Utah (the “Christensens”). The District and the Christensens are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

#### RECITALS

**A.** The Administrative Control Board of the District (the “Board”), by authority of the Board of County Commissioners of Utah County, Utah (the “Commission”), has, pursuant to Resolution No. 2000-6, created the Alpine Cove Water Special Service District, Utah Special Improvement District No. 2000-1 (the “Assessment District”), for the purpose of financing the construction of certain water improvements to the District’s water system, consisting of a new water storage reservoir, water lines, water well, and the acquisition of water rights (the “Improvements”), and other miscellaneous work necessary to complete the Improvements.

**B.** In connection with the creation of the Assessment District, the District mailed written notice to each owner of property within the boundaries of the Assessment District setting forth, among other things, a legal description of the Assessment District, a delineation of the intended Improvements, the estimated cost of constructing the Improvements, the estimated total assessment to be levied against each property within the Assessment District (the “Assessment”), and the property owners’ right to file a written protest. Two-thirds of the Assessment is to be levied on a per-connection basis (the “Connection Portion”), and one-third of the Assessment is to be levied on a per-acre basis (the “Acreage Portion”).

**C.** The Christensens own approximately 6.0 acres of land situated within the boundaries

of the Assessment District (hereinafter the "Property"), more particularly described as follows:

Commencing North 1 Degree East 150 feet from the center of Section 18, Township 4 South, Range 2 East, SLB&M; thence North 1 Degree East 380 feet; thence North 78 Degrees 35 Minutes East 600 feet; thence North 71 Degrees 19 Minutes East 148.59 feet; thence South 1 Degree West 395.33 feet; thence South 78 Degrees 17 Minutes 22 Seconds West 744.10 feet to the point of beginning.

**D.** The Christensens filed a written protest against the Assessment proposed to be levied against the Property, and they appeared before the Commission, acting as the Board of Equalization and Review, which was seated to hear and consider objections and to make corrections to any proposed Assessment which the Commission deemed to be unequal and unjust. The Christensens asserted that the Property is unlike all of the other assessed properties with the Assessment District, in that it lies outside the Alpine Cove Subdivision, that the Property has an independent source of water supply for irrigation, that the Christensens never intended to utilize District water for irrigation of the Property, and that as such the Property is not benefitted by the Improvements to the extent of the capacity therein required to serve irrigation water to the Property.

**E.** In connection with the proceedings of the Board of Equalization and Review, officials of the District met with the Christensens and their legal counsel and negotiated a settlement of the protest pertaining to the amount of the Assessment to be levied against the Property, the terms of which are set forth in this Agreement.

**F.** The terms of settlement were reported to the Commission which incorporated the terms of settlement into its findings and recommendation reducing the amount of the Assessment to be levied against the Property by the amount of the Acreage Portion of the Assessment, subject to the execution of this Agreement by the District and the Christensens.

**G.** On April 23, 2002, the Commission, acting in its capacity as the governing authority of the District, adopted Ordinance No. 2002-08 confirming the assessment rolls and levying assessments against the assessable property within the Assessment District for the purpose of paying the cost of the Improvements and related matters (the "Assessment Ordinance"). The final

assessment list setting forth the amount of the Assessment to be levied against each of the assessable properties within the Assessment District, including a delineation of the Connection Portion and the Acreage Portion of the Assessment for each assessable property, is attached as an exhibit to the Assessment Ordinance.

H. Subsequent to the adoption of the Assessment Ordinance, the Board opted to fund a guaranty fund instead of a debt service reserve fund in connection with the Assessment District financing, resulting in a reduction in the total amount financed and thus a reduction in the assessments levied against assessed properties. Accordingly, on June 11, 2002, the Commission, acting in its capacity as the governing authority of the District, adopted Ordinance No. 2002-17 amending the Assessment Ordinance (the "Amended Assessment Ordinance") to provide for the reduced assessments.

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

1. **District Waiver of Acreage Portion of Assessment**. The District hereby waives the Acreage Portion of the Assessment levied against the Property under the Assessment Ordinance in the amount of \$16,458.00. The Christensens shall nevertheless be and remain obligated to pay, in full, the Connection Portion of the Assessment, in the amount set forth in the Amended Assessment Ordinance of \$17,629.00, in conformance with the terms and provisions of the Assessment Ordinance as amended by the Amended Assessment Ordinance.

2. **Christensen Waiver of Right to Water for Irrigation**. As consideration for the District's waiver of the Acreage Portion of the Assessment pursuant to Section 1 above, the Christensens hereby give up and waive any existing and future right and entitlement which they now have to receive and use water supplied by the District for irrigation purposes on all or any portion of the Property more particularly described in Recital C. above. In connection with the foregoing, the Christensens acknowledge and agree as follows:

a. In the event the Christensens or their successors-in-interest shall ever desire to obtain water from the District to be used for outside irrigation on all or any portion of the Property, the Christensens, or their successors-in-interest, as the case may be, shall be required to

pay to the District, as an express condition precedent, a fee in an amount not less than the Acreage Portion of the Assessment that would have otherwise been paid in connection with the Assessment District as set forth in Section 1 above, plus interest at the rate of 3.5% per annum from the date hereof to the date of payment of said fee, pro-rated based upon that portion of the total Property to be irrigated with District water.

b. The District neither warrants nor guarantees that the District, in the future, will have the water supply and/or associated water rights and capacity in the District's water system to enable it to provide District water for irrigation of the Property, or any portion thereof, if desired by the Christensens or their successors-in-interest.

c. The District shall have no obligation to ever provide water for irrigation use on the Property. The decision to provide water to the Property for irrigation use in response to a request therefor shall be subject to the availability of water supply, water rights and system capacity, and any other factor which the District may determine to be relevant.

d. Upon the execution hereof, the Christensens shall have no claim whatever to any interest in the water supply, water rights and system capacity for outside irrigation, to which they would otherwise have been entitled but for the waiver set forth in Section 2 above. That portion of the District's water supply which would otherwise have been available to Christensens for irrigation use on the Property, and the associated water rights and system capacity in which Christensens would otherwise have had an interest as a customer of the District for outside irrigation use may, by virtue of this Agreement, be utilized by the District, by contract or otherwise, for such purposes and on such lands within the service area of the District as it, in its sole discretion, deems appropriate.

**3. Christensen Entitlement of Inside Culinary Water.** Notwithstanding the provisions of Section 2 above, the Christensens shall be and remain entitled to receive water service from the District for household culinary use only for three (3) connections to the District's water system.

**4. Transfer of Rights.** The Christensens may sell, convey, encumber, hypothecate, alienate or otherwise transfer any or all rights, titles, or interests they have in the District or any or all rights, titles or interests they have in the right to use water from the District, subject to the District's rules and regulations applicable to all District customers as the same currently exist or

as they may be duly promulgated from time to time by the Board.

5. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns.

6. **Attorney's Fees**. In the event that this Agreement or any provision hereof shall be enforced by an attorney retained by a Party hereto, whether by suit or otherwise, the fees and costs of such attorney shall be paid by the Party who breaches or defaults hereunder, including fees and costs incurred upon appeal or in bankruptcy court.

7. **Severability**. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement.

8. **Entire Agreement**. This Agreement constitutes the entire understanding and agreement by and between the Parties hereto, and supersedes all prior agreements, representations or understandings by and among them, whether written or oral, pertaining to the subject matter hereof.

9. **Covenant Running with the Land**. The Christensens, as the sole owners of the Property, hereby declare that the Property is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the covenants, conditions, restrictions, limitations and equitable servitudes set forth in this Agreement, which covenants, conditions, restrictions, limitations, and equitable servitudes shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any portion thereof.

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

ALPINE COVE WATER  
SPECIAL SERVICE DISTRICT

By:   
Chairman, Board of Directors

ATTEST:

District Secretary

Peter Christensen

Diane Christensen

ACKNOWLEDGMENTS

STATE OF UTAH )

: ss.

County of Utah )

On the 31st day of March, 2003, appeared before me Phillip Clegg and Gary D. Tassainier, personally known to me, or proved to me on the basis of satisfactory evidence, to be Chairman and Secretary of the Alpine Cove Water Special Service District, who duly acknowledged that the within and foregoing instrument was signed on behalf of said District by authority of a duly adopted resolution of its Board of Directors, and that said District executed the same.

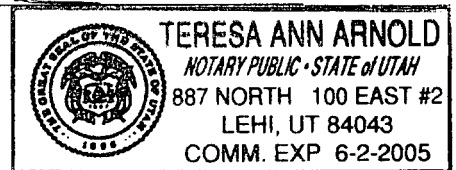
[Signature]

NOTARY PUBLIC

STATE OF UTAH )

: ss.

County of Utah )



On the 19 day of March, 2003, personally appeared before me Peter Christensen and Diane Christensen, personally known to me, or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to this instrument, and who acknowledged that they executed it.

[Signature]

NOTARY PUBLIC

