

UTAH WATER QUALITY BOARD

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| MR. CHRIS COZENS TALISKER MOUNTAIN, INC. 1850 SIDEWINDER DR., 2ND FLOOR P.O. BOX 4349 PARK CITY, UTAH 84060 | DOCKET NUMBER I11-5SA SETTLEMENT AGREEMENT |
| AND | |
| MR. DALE JUDD JSI EXCAVATING 4282 NORTH 650 EAST PROVO, UTAH 84604 | |

This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **TALISKER MOUNTAIN, INC. AND JSI EXCAVATING** (hereinafter "**OPERATOR**") and the **UTAH WATER QUALITY BOARD** (hereinafter the "**BOARD**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **BOARD** has authority to administer the *Utah Water Quality Act, as amended 1953*, (hereinafter the "**ACT**").
2. The **BOARD** has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. The parties now desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this **AGREEMENT**. Entering into this **AGREEMENT** is not an admission of liability or factual allegation set out in the **NOTICE**, nor is it an admission of or an agreement to any disputed facts or disputed legal theories, nor is it an admission of any violation of any law, rule, regulation or permit by the **OPERATOR**.
4. The **EXECUTIVE SECRETARY** of the **BOARD** (hereinafter the "**EXECUTIVE SECRETARY**") will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number I11-5 (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **BOARD**, issued to the **OPERATOR** on MAY 4, 2011, by the **BOARD**. It does not in any way relieve the **OPERATOR** from any other obligation imposed under the *Act* or any other State or Federal laws.
6. In resolution of said **NOTICE** referenced in Paragraph 5 of this **AGREEMENT**, the **OPERATOR** agrees to pay a total penalty amount of \$8,750 payable in four equal payments of \$2187.50 according to the following payment schedule. The payment dates will be December 1, 2011; March 1, 2012, June 1, 2012, and the final payment will be September 1, 2012. Payments made in accordance with this **AGREEMENT**, if made by check, must be made payable to the State of Utah delivered or mailed to the Division of Water Quality, Department of

Environmental Quality, P.O. Box 144870, Salt Lake City, Utah 84114-4870. The penalty may be paid in full or at a rate faster (than indicated above) at the discretion of the violator. The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-8* which considers such factors as the nature, severity and extent of the violations, history of noncompliance, degree of willfulness and/or negligence, good faith efforts to comply, and economic benefit.

7. Nothing contained in this **AGREEMENT** shall preclude the **BOARD** from taking additional actions to include additional penalties against the **OPERATOR** for permit violations not resolved by this **AGREEMENT**.
8. If an agreement between the **OPERATOR** and the **EXECUTIVE SECRETARY** cannot be reached in a dispute arising under any provision of this **AGREEMENT**, then the **OPERATOR** or the **EXECUTIVE SECRETARY** may commence a proceeding with the **BOARD** under the *Administrative Procedures Act* to resolve the dispute. A final decision in any adjudicative proceeding shall be subject to judicial review under applicable state law.
9. Nothing in this **AGREEMENT** shall constitute a waiver by the **OPERATOR** to raise in defense any legal or factual contention for future allegations of noncompliance.
10. Nothing in this **AGREEMENT** shall constitute or be considered as a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the **STATE** may have against the **OPERATOR**, or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to the release of pollutants to waters of the State.

AGREED to this ____ day of _____, 2011.

Chris Cozens
Land Development Director
Talisker Mountain, Inc.
1850 Sidwinder Dr., 2nd Floor
Park City, Utah 84060

UTAH WATER QUALITY BOARD

By _____
Authorized Agent

By _____
Executive Secretary