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LOUIS R. VEERMAN  
JAMES D. LINKWILER  
JAMES D. DEWITT  
JOSEPH J. PERKINS, JR.  
GEORGE R. LYLE  
MICHAEL S. MCLAUGHLIN  
SUSAN M. WEST  
JOAN E. ROHLF  
MICHAEL K. NAVE  
JONATHAN A. WOODMAN  
AISHA TINKER BRAY  
NELLENE A. BOOTHBY  
MICHELLE D. HIGUCHI  
STEVEN J. BOOKMAN  
MATTHEW COOPER  
CHRISTINA RANKIN  
PAMELA D. WEISS  
HEIDI L. DRYGAS

LAW OFFICES OF  
**Guess & Rudd**  
P.C.

510 L STREET, SUITE 700  
ANCHORAGE, ALASKA 99501-1964  
TELEPHONE (907) 793-2200  
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W. EUGENE GUESS 1932-1975  
JOSEPH RUDD 1933-1978  
FRANCIS E. SMITH, JR. 1941-1991

OFFICES IN  
ANCHORAGE & FAIRBANKS

OF COUNSEL  
MARGARET S. JONES

October 27, 2005

Peter R. Ehrhardt, Esq.  
Friedman, Rubin & White  
215 Fidalgo Avenue, Suite 203  
Kenai, Alaska 99611

Breck C. Tostevin, Esq.  
Assistant Attorney General  
State of Alaska  
Department of Law  
1031 W. 4th Avenue, Suite 200  
Anchorage, Alaska 99501-1994

Re: Disbursement of Sterling Zipmart Settlement Proceeds  
Our File No. 5876.1

Dear Peter and Breck:

Pursuant to the terms of your fully executed "Agreement to Mediated Terms and Release of Funds" (the "Agreement"), a copy of which Peter e-mailed me earlier today, as well as your respective oral instructions to me, Guess and Rudd has paid the mediator's fees and costs from the segregated Trust Account proceeds. Attached is a copy of my letter to Mr. Sanders documenting that payment.

After deduction of that \$4,973.40 amount, the remaining balance in the segregated Trust Account, including interest through today, is \$1,440,699.46. Pursuant to the terms of your Agreement, this remaining balance is being split 50% to the State of Alaska, Department of Environmental Conservation, payable through the Attorney General's Office, and 50% to Mr. Ehrhardt. Attached are your respective original Wells Fargo cashier's checks in the amount of \$720,349.73, as well as a copy of the other parties' Wells Fargo cashier's check for that same amount.

398-6360 Jennifer

Peter R. Ehrhardt, Esq.  
Breck Tostevin, Esq.  
October 27, 2005  
Page 2

If you have any questions about the above, please do not hesitate to contact me.

Very truly yours,

GUESS & RUDD P.C.



George R. Lyle

GRL/sll  
Enclosure  
F:\DATA\5876\1\CORRESP\135Tostevin-Ehrhardt (10-27-05).doc

cc: Mr. Lynn Baker (w/encls)  
Paul L. Dillon, Esq. (w/encls)

**AGREEMENT TO MEDIATED TERMS  
AND RELEASE OF FUNDS**

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**PART 1  
PARTIES**

The "Parties" to this Agreement to Mediated Terms and Release of Funds (hereinafter "Agreement") are:

- State of Alaska, Department of Environmental Conservation (hereinafter "DEC");
- Donald and Royce Marlowe, plaintiffs in the matter entitled *Marlowe et al. v. Whittier Properties, Inc., d/b/a Zipmart*, Case No. 3KN-03-107 CI (hereinafter "Marlowe");
- William Hiler and Dale Hiler individually and d/b/a B & D's Auto/Denny's Auto Body, (hereinafter "Hiler");
- Wayland and Deborah H. Debnam d/b/a Alaska Wedding Brokers, (hereinafter "Debnam");
- "Abbott Group" including Rick Abbott, James O. Campbell, Phillip Cowart, Dencil Gold and N. Tracy McGinn (hereinafter "Abbot Group");
- Jennifer Hubbard and Thomas Hubbard d/b/a T & H Trucking (hereinafter "Hubbard");
- Sterling Community Club, Inc. (hereinafter "Sterling");
- Sterling Baptist Church (hereinafter "the Church").

Hereinafter Marlowe, Hiler, Debnam, Abbott Group, Hubbard, Sterling and the Church shall be referred to collectively as "Private Claimants."



PART 2  
RECITALS

WHEREAS in May 2005 the Parties (with the exception of the Church) engaged in mediation with Whittier Properties, Inc. and Zurich American Insurance Company, which resulted in a settlement agreement and Zurich's payment of \$2,036,372 into the Trust Account of the law firm Guess and Rudd pending an agreement regarding distribution; and,

WHEREAS, after payment of fees and costs, \$1,442,616.40 (including interest through September 30, 2005) (hereinafter "Funds") remains in the Trust Account of the law firm of Guess and Rudd; and,

WHEREAS each of the Parties asserted an interest in the Funds through their participation in the mediation held on October 6, 2005 in Sterling, Alaska; and,

WHEREAS the Parties have agreed to the following terms and conditions for distribution of the Funds;

Therefore, the Parties AGREE as follows:

PART 3  
TERMS

- 3-1 The mediator's fees and expenses related to the October 6, 2005 mediation shall be paid from the Funds before any allocation between the Parties. All remaining Funds and all accumulated interest shall be divided 50/50 between DEC and Private Claimants. The further allocation of Funds among the Private Claimants is not controlled by this Agreement.
- 3-2 The payment described in paragraph 3-1 shall be distributed from the trust account of Guess and Rudd through checks written to the following: Private Claimants payment to Peter Ehrhardt attorney at Law Tax ID. # 92-0173311 and DEC payment to the State of Alaska, Department of Environmental Conservation through the Office of the Attorney General.
- 3-3 To the extent current and future appropriated funds allow, DEC will continue to assess, monitor and mitigate the ZipMart contamination plume, in part by monitoring contaminant levels found in DEC monitoring wells and Private Claimants' raw (untreated) potable water wells. DEC will report to Private



Claimants on a regular basis regarding ongoing cleanup operations and will provide Private Claimants with monitoring data for raw water from existing wells on their respective properties. DEC will establish the schedule for monitoring Private Claimants' wells. DEC's obligation with respect to monitoring Private Claimants' wells pursuant to this Agreement will cease with respect to a specific Private Claimant when: a) DEC monitoring data for raw water from that Private Claimant's well indicates benzene levels at or above the maximum contaminant level for public drinking water established in 18 AAC 80.300(b)(2)(B); b) that Private Claimant installs a filtration or other treatment system or otherwise provides for an alternate source of potable water (this includes Private Claimants who have taken such action prior to this Agreement); or c) five years from the date of this Agreement, whichever occurs first. DEC reserves the right to continue to monitor at its own discretion Private Claimants' wells beyond the time its obligation ceases pursuant to this provision.

- 3-4 Each Private Claimant understands and agrees that it is responsible for analyzing data provided by DEC pursuant to provision 3-3 of this Agreement, for determining further action, if any, and for taking any such action at its own expense. Further action referred to in this provision may include but is not limited to procuring professional consultation services, installing and maintaining a water filtration or other treatment system for potable water well(s), procuring an alternate source of potable water, and drilling a new well or wells. Private Claimants agree to cooperate and provide reasonable access to their property for DEC's continued assessment, monitoring and mitigation efforts. ←
- 3-5 Private Claimants that operate public drinking water systems regulated under 18 AAC 80 understand and agree that they must continue to meet those regulatory requirements, including monitoring for contaminants, at their own expense. Nothing in this paragraph imposes additional requirements upon Private Claimants beyond those currently required by statute or regulation.
- 3-6 The Parties have agreed to enter discussions regarding allocations of funds recovered in the future from persons and/or their insurers determined to be responsible for damages to the Parties due to the ZipMart fuel release and contamination. As of the date of this Agreement, the Parties have not committed to file joint claims or to cooperate in any other manner regarding recovery of future proceeds.

**PART 4  
REPRESENTATIONS AND WARRANTIES**

- 4-1 By entering into this Agreement, the Parties represent they have relied upon the legal advice of their attorneys, who are the attorneys of their choice. The Parties further represent that the terms of this Agreement have been completely read by and explained to them by their attorneys and that they fully understand and voluntarily accept those terms. The Parties each hereby acknowledge full and informed consent regarding the consequences of the actions to be taken hereunder.

**PART 5  
MISCELLANEOUS PROVISIONS**

- 5-1 This Agreement is being entered into in the State of Alaska and shall be construed and interpreted in accordance with its laws.
- 5-2 The Parties and their counsel have reviewed and revised this Agreement and, accordingly, the normal rule of construing a document against its drafter is inapplicable to this document.
- 5-3 This Agreement contains the entire Agreement between the Parties with regard to the matter herein set forth. All discussions and agreements previously entertained between the Parties concerning the subject matter of this Agreement are merged into this Agreement. This Agreement may be amended or modified only by an agreement in writing executed in the same manner as this Agreement.
- 5-4 This Agreement shall be binding upon and is entered into for the benefit of the Parties and their respective executors, administrators, heirs, successors and assigns.
- 5-5 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same document.
- 5-6 The Parties acknowledge they have consulted with their respective counsel in connection with this Agreement, and that they know the contents thereof, and are authorized to enter into this Agreement on behalf of each Party.

STATE OF ALASKA:

Breck Tostevin  
Assistant Attorney General  
Office of the Attorney General  
1031 W. 4<sup>th</sup> Ave, Suite 200  
Anchorage, AK 99501

Telephone: 907 269-5274  
Facsimile: 907 278-7022

MARLOWE:

Donald and Royce Marlowe  
P.O. Box 3  
Sterling, AK 99672

Telephone: (907) 262-4953

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S  
AUTO BODY :

Bill Hiler  
P.O. Box 573  
Sterling, AK 99672

Telephone: (907) 262-8824

WAYLAND and DEBORAH H. DEBNAM d/b/a ALASKA WEDDING BROKERS:

Wayland and Deborah Debnam  
d/b/a Alaska Wedding Brokers  
P.O. Box 1205  
Sterling, AK 99672

Telephone: (907) 260-9278

ABBOTT GROUP

Abbott Group  
c/o Phil Cowart by P.O.A.  
4045 49<sup>th</sup> Avenue SW, Trlr. 60  
Olympia, WA 98512

Telephone: (360) 456-1880



JENNIFER and THOMAS HUBBARD d/b/a T & H TRUCKING

Thomas and Jennifer Hubbard  
d/b/a T & H Trucking  
P.O. Box 372  
Sterling, AK 99672

Telephone: (907) 260-4037

STERLING COMMUNITY CLUB, INC.

Sterling Community Club, Inc.  
c/o Robert J. Oakes  
P.O. Box 15  
Sterling, AK 99672

Telephone: (907) 262-5409

STERLING BAPTIST CHURCH.

Sterling Baptist Church  
Mile 83.4 Sterling Highway  
Sterling, AK. 99672

Telephone: (907) 262-4711

STATE OF ALASKA

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

MARLOWE

Donald W. Marlowe  
DONALD MARLOWE

Royce Marlowe  
ROYCE MARLOWE

Dated 10-21-05

Dated 10-21-05

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S AUTO BODY

\_\_\_\_\_  
WILLIAM HILER, President

Dated \_\_\_\_\_

WAYLAND and DEBORAH <sup>S dd</sup> DEBNAM d/b/a ALASKA WEDDING BROKERS

Wayland Debnam  
WAYLAND DEBNAM

Deborah Debnam  
DEBORAH DEBNAM

Dated 10-19-05

Dated 10/19/05

ABBOTT GROUP

\_\_\_\_\_  
PHIL COWART BY POA

Dated \_\_\_\_\_

JENNIFER and THOMAS HUBBARD d/b/a T & H TRUCKING

\_\_\_\_\_  
JENNIFER HUBBARD

Thomas H Hubbard  
THOMAS HUBBARD

Dated \_\_\_\_\_

Dated 10-20-05

STERLING COMMUNITY CLUB, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

STERLING BAPTIST CHURCH

By Robert B. Shulley

Its Chairman Legal Committee, SBC

Dated 10/26/05

Don T. Hall

Trustee, Deacon Board chairman

10/29/05



STATE OF ALASKA

By *[Signature]*

Its Assistant Attorney General

Dated October 25, 2005

MARLOWE

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S AUTO BODY

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

WAYLAND and DEBORAH H. DEBNAM d/b/a ALASKA WEDDING BROKERS

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

407-283-2896

Sterling Baptist Church  
Mile 83,4 Sterling Highway  
Sterling, AK. 99672  
Telephone: (907) 262-4711

STATE OF ALASKA

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

MARLOWE

\_\_\_\_\_  
DONALD MARLOWE ROYCE MARLOWE

Dated \_\_\_\_\_ Dated \_\_\_\_\_  
WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S AUTO BODY

*William L. Hiler*

WILLIAM HILER, President

Dated 10-21-05

WAYLAND and DEBORAH H. DEBNAM d/b/a ALASKA WEDDING BROKERS

\_\_\_\_\_  
WAYLAND DEBNAM DEBORAH DEBNAM

Dated \_\_\_\_\_ Dated \_\_\_\_\_

ABBOTT GROUP

\_\_\_\_\_  
PHIL COWART BY POA

Dated \_\_\_\_\_

JENNIFER and THOMAS HUBBARD d/b/a T & H TRUCKING

\_\_\_\_\_  
JENNIFER HUBBARD THOMAS HUBBARD

Dated \_\_\_\_\_ Dated \_\_\_\_\_

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S AUTO BODY

\_\_\_\_\_  
WILLIAM HILER, President

Dated \_\_\_\_\_

WAYLAND and DEBORAH H. DEBNAM d/b/a ALASKA WEDDING BROKERS

\_\_\_\_\_  
WAYLAND DEBNAM

\_\_\_\_\_  
DEBORAH DEBNAM

Dated \_\_\_\_\_

Dated \_\_\_\_\_

ABBOTT GROUP

*Phillip L. Cowart*  
\_\_\_\_\_  
PHIL COWART BY POA

Dated 10/23/05

JENNIFER and THOMAS HUBBARD d/b/a T & H TRUCKING

\_\_\_\_\_  
JENNIFER HUBBARD

\_\_\_\_\_  
THOMAS HUBBARD

Dated \_\_\_\_\_

Dated \_\_\_\_\_

STERLING COMMUNITY CLUB, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_



Oct-25-2005 02:24pm From  
Oct-25-2005 12:51pm From

T-814 P.013/013 F-811  
T-812 \* 001/001 F-807  
283-2896

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S  
AUTO BODY

\_\_\_\_\_  
WILLIAM HILER, President

Dated \_\_\_\_\_

WAYLAND and <sup>S. de</sup> DEBORAH H. DEBNAM d/b/a ALASKA WEDDING BROKERS

Wayland Debnam  
WAYLAND DEBNAM

Dated 10-19-05

Deborah Debnam  
DEBORAH DEBNAM

Dated 10/19/05

ABBOTT GROUP

\_\_\_\_\_  
PHIL COWART BY POA

Dated \_\_\_\_\_

JENNIFER and THOMAS HUBBARD d/b/a T & H TRUCKING

Jennifer Hubbard  
JENNIFER HUBBARD

Dated 10/25/05

Thomas Hubbard  
THOMAS HUBBARD

Dated 10-20-05

STERLING COMMUNITY CLUB, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

Dated . \_\_\_\_\_

PARTIAL SETTLEMENT AGREEMENT, AGREEMENT TO MEDIATE AND RELEASE

PART 1: PARTIES

The "Parties" to this Partial Settlement Agreement and Release (hereinafter "Agreement") are:

- Zurich American Insurance Company and all of its past, present and future, directors, officers, attorneys, agents, assigns, parents, subsidiaries of any tier, affiliated companies, predecessors and successors in interest, (hereinafter "Zurich");
- Whittier Properties, Inc. (hereinafter "Whittier"), the named insured under Zurich American Insurance Company policy no. USC 3569612 and defendant in the matter entitled *Zurich American Insurance Company v. Whittier Properties Inc.*, U.S. Dist. Court of Alaska, Cause No. A02-0067 CIV (RRB) (hereinafter "Coverage Action");
- Whittier's officers, directors, and shareholders, specifically Lynn Baker and Yvonne Baker (hereinafter "Whittier Individuals");
- State of Alaska (hereinafter "Alaska");
- Donald and Royce Marlowe, plaintiffs in the matter entitled *Marlowe et al. v. Whittier Properties, Inc., d/b/a Zipmart*, Case No. 3KN-03-107 CI (hereinafter "Marlowe" and "Third Party Claimant");
- William Hiler and Dale Hiler individually and d/b/a B & D's Auto/Denny's Auto Body, plaintiffs in the matter entitled *Hiler et al. v. Whittier Properties, Inc. d/b/a Zipmart*, Case No. 3KN-03-583 CI (hereinafter "Hiler" and "Third Party Claimant");
- Wayland and Deborah H. Debnam d/b/a Alaska Wedding Brokers, plaintiffs in the matter entitled *Wayland and Deborah H. Debnam, d/b/a Alaska Wedding Brokers v. Whittier Properties, Inc., d/b/a Zipmart*, Case No. 3 KN-04-30 CI (hereinafter "Debnam" and "Third Party Claimant");
- "Abbott Group" including Rick Abbott, James O. Campbell, Phillip Cowart, Dencil Gold and N. Tracy McGirln (hereinafter "Abbot Group" and "Third Party Claimant");
- Jennifer Hubbard ad Thomas Hubbard d/b/a T & H Trucking (hereinafter "Hubbard" and "Third Party Claimant");
- Sterling Community Club, Inc. (hereinafter "Sterling" and "Third Party Claimant");

Hereinafter Alaska, Marlow, Hiler, Debnam, Abbot Group, Hubbard and Sterling may be referred to collectively as "Third Party Claimants."

## PART 2: RECITALS

WHEREAS Zurich issued Storage Tank System Third Party Liability and Corrective Action Policy No. USC 3569612 (hereinafter "Policy") to Whittier.

WHEREAS Whittier Individuals also are insureds under the Policy in their capacity as owners, directors and officers of Whittier;

WHEREAS on or around February 11, 2002, Whittier sent a letter to Zurich, entitled "Notice of Claim / Confirmed Release," which, in part, requested the option to purchase an Extended Reporting Period or "ERP." Zurich denied the request and filed suit in United States District Court for the District of Alaska, Cause No. A02-0067 CIV (RRB) ("Coverage Action").

WHEREAS Alaska contends that Whittier and Whittier Individuals are responsible for costs to investigate and remediate contamination that has emanated from Whittier's underground storage tanks.

WHEREAS the other Third Party Claimants have asserted claims against Whittier and could assert claims against Whittier Individuals for alleged damage to their properties arising from contamination that has emanated from Whittier's underground storage tanks.

WHEREAS the Parties dispute whether the claims of the Third Party Claimants relating to the contamination from Whittier's property are covered by the Policy;

WHEREAS the parties also dispute the maximum amount of available limits;

WHEREAS the Parties desire to engage in mediation to resolve all issues raised in the Coverage Action and also resolve the claims of the Third Party Claimants against Whittier;

WHEREAS the Parties also acknowledge and agree the Coverage Action cannot be resolved through mediation without the active and informed participation of the Third Party Claimants;

Therefore, THE PARTIES and THIRD PARTY CLAIMANTS AGREE as follows:

## PART 3: TERMS

3-1 The Parties and Third Party Claimants agree to mediate before the Honorable Justice Daniel Moore on May 11, 2005, in Anchorage, Alaska. The mediation shall include the Coverage Action and the claims of the Third Party Claimants against Whittier and Whittier Individuals.



3-2 Whittier has proposed, and Zurich agrees, that the negotiating parameters of the mediation shall consist of a "low" of \$1,102,500, which is one policy limit, plus Zurich's current, good faith estimate of Rule 82 fee exposure, and a "high" of \$5,036,372.01, which is four \$1,000,000 policy limits, plus Rule 82 fees on the estimated damages asserted by Third Party Claimants. The basic intent of this "high / low" term is that the parties will mediate between these bounds. Whittier also agrees that, henceforth, the maximum amount of damages that it will seek in the Coverage Action shall be the "high" amount as specified in this paragraph, even if mediation is not successful. By agreeing to the "high" specified in this paragraph, Zurich does not warrant or represent that it is obligated to pay or will ever agree to pay this amount.

3-3 Whittier has insisted, and Zurich has agreed, subject to concerns and conditions previously communicated to Whittier, to advance the "low" sum of \$1,102,500. Zurich believes this represents the full amount of coverage under its policy and a good faith estimate of Rule 82 fees. Whittier disagrees. This sum shall be made payable to the Law Offices of Guess & Rudd in trust for Whittier and the Third Party Claimants. It will be held in trust by the Law Offices of Guess & Rudd until such time as is specified in paragraph 3-7 below. Zurich further agrees to waive any and all rights to contribution and subrogation related to this payment.

3-4 In consideration of Zurich's agreement to the "high / low" negotiating framework for the mediation as described in paragraph 3-2, and Zurich's advancement of the "low" of \$1,102,500 under paragraph 3-3, Whittier and Third Party Claimants agree to fully release Zurich from all liability other than the "high / low" amount, whether or not mediation is successful, and Zurich agrees to withdraw its current Ninth Circuit appeal. Third Party Claimants also fully release Whittier Individuals from any and all personal liability arising out of the emanation of contamination from Whittier's underground storage tanks and appurtenances thereto; provided, however, that this release will not be applicable to Whittier Individuals' interest, if any, as owners or officers of Aspen Enterprises. While Third Party Claimants do not agree to release Whittier from all liability, Third Party Claimants do agree to limit their recovery from Whittier to sources other than the Policy. To the extent any Third Party Claimant pursues any such action, Whittier agrees that Zurich shall have no obligation to provide a defense to Whittier in said action(s).

3-5 Also in consideration of Zurich's agreement to the "high / low" negotiating framework for the mediation as described in paragraph 3-2, and Zurich's agreement to advance the "low" sum of \$1,102,500 and whether or not mediation is successful, Whittier, Whittier Individuals and Third Party Claimants agree to waive, relinquish, forego, release, and extinguish any and all claims they currently have and may have in the future against Zurich based upon negligence, bad faith, violations of any jurisdiction's claims handling practices statutes and contractual basis, including but not limited to any such claims based upon Zurich's agreement to advance the "low" sum of \$1,102,500. This release does not apply to any claims that may arise in the future based on conduct that occurs after the mediation contemplated in this Agreement.

3-6 The Parties reserve all rights regarding the issues designated for mediation in this Agreement, and litigation as described more fully in Paragraph 3-8.



3-7 The payment described in paragraph 3-3 shall be distributed from the trust, with notice to Zurich, upon the earlier of the following: an agreement in writing of Whittier, Whittier Individuals, and Third Party Claimants as to allocation of the payment or upon a final court judgment no longer subject to appeal.

3-8 If the mediation contemplated by this Agreement is unsuccessful, the Parties agree that any further litigation of the Coverage Action shall be limited to determining the number of policy limits, which shall be no less than one and no more than four, the applicability and effect of any aggregate limit or limits, plus the amount of appropriate Rule 82 fees. Zurich shall receive credit of \$1,102,500 towards any judgment that results from the litigation of the Coverage Action. Determining these issues may include identifying which, and whether, Third Party claims arise from releases that commenced after 12/9/97 and were made against Whittier and reported to Zurich during the Policy period and / or Extended Reporting Period of the Policy.

3-9 Whittier, Whittier Individuals, and Third Party Claimants agree to be bound by the outcome of any litigation conducted under paragraph 3-8 of this Agreement, including the Coverage Action.

#### PART 4: REPRESENTATIONS AND WARRANTIES

4-1 The representations and warranties described and made herein are essential terms of this Agreement.

4-2 Whittier and Whittier Individuals represent and warrant they are informed of, and they understand, all risks that flow from demanding Zurich advance the \$1,102,500, which Zurich contends is its full policy limits including an estimated amount of Rule 82 fees, without securing a release of all Whittier insureds from Third Party Claimants. Whittier and Whittier Individuals warrant they have sought and received the advice of their own counsel concerning the risks of Zurich's advance payment. Whittier and Whittier Individuals further warrant they fully understand all risks and, willingly and knowingly upon the advice of their own counsel, Whittier and Whittier Individuals accept those risks. Whittier and Whittier Individuals further acknowledge and represent that Zurich enters into this Agreement based on Whittier's representations and warranties as expressed herein, and based on Whittier's express understanding that Whittier acknowledges its own assets may be in jeopardy. Whittier further warrants and represents it understands that it shall be without a defense provided by Zurich in any action against Whittier seeking those assets.

4-3 By entering into this Agreement, the Parties represent they have relied upon the legal advice of their attorneys, who are the attorneys of their choice. The Parties further represent that the terms of this Agreement have been completely read by and explained to them by their attorneys and that they fully understand and voluntarily accept those terms. The Parties each hereby acknowledge full and informed consent regarding the consequences of the actions to be taken hereunder.

PART 5: MISCELLANEOUS PROVISIONS

5-1 This Agreement is being entered into in the State of Alaska and shall be construed and interpreted in accordance with its laws.

5-2 This Agreement represents a compromise of disputed claims. Nothing in this Agreement shall be construed as an admission of any kind for any purpose on the part of any of the Parties, other than as necessary to enforce the terms of this Agreement.

5-3 The Parties and their counsel have reviewed and revised this Agreement and, accordingly, the normal rule of construing a document against its drafter is inapplicable to this document.

5-4 This Agreement contains the entire Agreement between the Parties with regard to the matter herein set forth. All discussions and agreements previously entertained between the Parties concerning the subject matter of this Agreement are merged into this Agreement. This Agreement may be amended or modified only by an agreement in writing executed in the same manner as this Agreement.

5-5 This Agreement shall be binding upon and is entered into for the benefit of the Parties and their respective executors, administrators, heirs, successors and assigns.

5-6 Except in connection with court proceedings in the Coverage Action, or as otherwise required by law or any statute regarding public disclosure, or in connection with communications with reinsurers, or as necessary to enforce this Agreement, the terms and conditions of this Agreement and negotiations leading to the execution of this Agreement are deemed by the Parties to be confidential and shall not be revealed to non-parties to this Agreement.

5-7 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same document.

5-8 All notices required or given under this Agreement shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand to the last address previously furnished by the Parties hereto. Until hereafter changed by the Parties by notice in writing, notices shall be sent as follows:

ZURICH AMERICAN INSURANCE COMPANY

Director of ZEN Pro Claims  
Zurich American Insurance Company  
31<sup>st</sup> Floor  
1 Liberty Plaza  
New York, New York 10008

with a copy to:

Jacquelyn A. Beatty  
Karr Tuttle Campbell  
1201 Third Avenue, Suite 2900  
Seattle WA 98101

Telephone: 206-224-8090  
Facsimile: 206-782-7100

WHITTIER PROPERTIES, INC.

Whittier Properties, Inc.  
P.O. Box 1102  
Sterling, Alaska 99672  
Attn: Lynn Baker, President

with a copy to:

George Lyle  
Law Offices of Guess & Rudd  
510 L Street  
Seventh Floor  
Anchorage, AK 99501

Telephone: 907 793-2200  
Facsimile: 907 793-2299

WHITTIER INDIVIDUALS:

Lynn Baker  
P.O. Box 1102  
Sterling, Alaska 99672

with a copy to:

George Lyle  
Law Offices of Guess & Rudd  
510 L Street  
Seventh Floor  
Anchorage, AK 99501

Telephone: 907 793-2200  
Facsimile: 907 793-2299

STATE OF ALASKA:

Craig Tillery  
Chief Assistant Attorney General  
Office of the Attorney General  
1031 W. 4<sup>th</sup> Ave, Suite 200  
Anchorage, AK 99501

Telephone: 907 269-5274  
Facsimile: 907 278-7022

MARLOWE:

Donald and Royce Marlowe  
P.O. Box 3  
Sterling, AK 99672

Telephone: (907) 262-4953

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S  
AUTO BODY:

Bill Hiller  
P.O. Box 573  
Sterling, AK 99672

Telephone: (907) 262-2884

WAYLAND and DEBORAH H. DEBNAM d/b/a ALASKA WEDDING BROKERS:

Wayland and Deborah Debnam  
d/b/a Alaska Wedding Brokers  
P.O. Box 1205  
Sterling, AK 99672

Telephone: (907) 260-9278

ABBOTT GROUP

Abbott Group  
c/o Phil Cowart by P.O.A.  
4045 49<sup>th</sup> Avenue SW, Trlr. 60  
Olympia, WA 98512



Telephone: (360) 456-1880

JENNIFER and THOMAS HUBBARD d/b/a T & H TRUCKING

Thomas and Jennifer Hubbard  
d/b/a T & H Trucking  
P.O. Box 372  
Sterling, AK 99672

Telephone: (907) 260-4037

STERLING COMMUNITY CLUB, INC.

Sterling Community Club, Inc.  
c/o Robert J. Oakes  
P.O. Box 15  
Sterling, AK 99672

Telephone: (907) 262-5409

5-8 The Parties acknowledge they have consulted with their respective counsel in connection with this Agreement, and that they know the contents thereof, and are authorized to enter into this Agreement on behalf of each Party.

ZURICH AMERICAN INSURANCE COMPANY

By *Ernest J. Benson*

Its *Asst. Vice President*

Dated *5/6/05*

WHITTIER PROPERTIES, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

STATE OF ALASKA

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

WHITTIER INDIVIDUALS

By \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_

Dated \_\_\_\_\_

MARLOWE

By Donald W. Marlowe

Its Owner

Dated 5-9-2005

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S AUTO BODY

By Dale Hiler

Its Owner

Dated May 9 2005

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

STATE OF ALASKA

By Bruce J. [Signature] for Attorney General David Márquez  
Its Assistant Attorney General  
Dated May 6, 2005

WHITTIER INDIVIDUALS

By \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_

Dated \_\_\_\_\_

MARLOWE

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S  
AUTO BODY

By \_\_\_\_\_

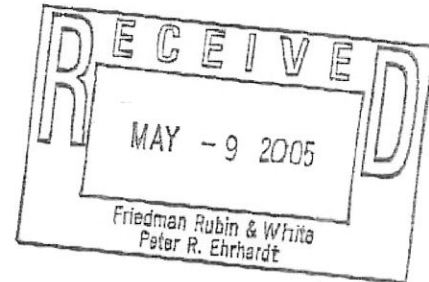
Its \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_



MAY 10 2005 08:44AM FROM  
TO: FROM

From: (shown)

T-255 P.004/005 F-354

**MARLOWE**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated \_\_\_\_\_

**HILER**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated \_\_\_\_\_

**WAYLAND and DEBORAH H. DEBNAM d/b/a ALASKA WEDDING BROKERS**

By Deborah Debnam  
Its owner  
Dated 5/9/05

**ABBOTT GROUP**

By Phillip R. Lovett et al POA  
Its \_\_\_\_\_  
Dated 5/3/05

**JENNIFER and THOMAS HUBBARD d/b/a T & H TRUCKING**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated \_\_\_\_\_



WAYLAND and DEBORAH H. DEBNAM d/b/a ALASKA WEDDING BROKERS

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

ABBOTT GROUP

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

JENNIFER and THOMAS HUBBARD d/b/a T & H TRUCKING

By Thomas H Hubbard

Its \_\_\_\_\_

Dated 5-9-05

STERLING COMMUNITY CLUB

By Grace M. [unclear]

Its authorized signer

Dated 5-9-05

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

Telephone: (360) 456-1880

JENNIFER and THOMAS HUBBARD d/b/a T & H TRUCKING

Thomas and Jennifer Hubbard  
d/b/a T & H Trucking  
P.O. Box 372  
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Sterling, AK 99672

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ZURICH AMERICAN INSURANCE COMPANY

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

WHITTIER PROPERTIES, INC.

By [Signature]

Its President

Dated 5/5/05

STATE OF ALASKA

By Breese Jorda for Attorney General David Marquez

Its Assistant Attorney General

Dated May 6, 2005

WHITTIER INDIVIDUALS

By \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_

Dated \_\_\_\_\_

MARLOWE

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S AUTO BODY

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

STATE OF ALASKA

By Breese J. Toft for Attorney General David Márquez

Its Assistant Attorney General

Dated May 6, 2005

WHITTIER INDIVIDUALS

By \_\_\_\_\_

Dated \_\_\_\_\_

By Yvonne Kay Baker - Trust

Dated 5-9-05

MARLOWE

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S AUTO BODY

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_



STATE OF ALASKA

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

WHITTIER INDIVIDUALS

By *[Signature]*

Dated 5/5/05

By \_\_\_\_\_

Dated \_\_\_\_\_

MARLOWE

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

WILLIAM HILER and DALE HILER individually and d/b/a B & D's AUTO/DENNY'S AUTO BODY

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

CONFIDENTIAL SETTLEMENT AGREEMENT TERM SHEET

The Parties have agreed to settle this matter utilizing a "high" of \$2,036,372.00. This Settlement is subject to final approval from the State of Alaska. Zurich has also agreed to waive and shall not exercise its rights of subrogation as described in paragraph F. of Section VIII of the Policy and/or contribution rights as to this \$2,036,372.00 amount to the Neighbors and the State of Alaska. This assignment will not include any of Zurich's claims or rights against its managing general agent, Americana Financial Services.

DATED this 11th day of May, 2005.

NEIGHBORS:

Grace Meikes for Sterling Community Club.  
Albert S. Olonen  
Tom + Janet [Signature]

State of Alaska

[Signature] Assistant Attorney  
General

WHITTIER:

[Signature] (Mrs.)  
George P. [Signature] RUC/PL

~~STATE OF ALASKA:~~

Donald & Royce Maulous

ZURICH:

Dale [Signature]  
[Signature] authorized  
Representative for Zurich

009

# TERM AGREEMENT NOTICE TO PROCEED AND INVOICE SUMMARY

CONTRACTOR.....:	Shannon & Wilson	NTP NO:	18400212019
TASKS TO BE PERFORMED:	Site Characterization, Excavation, Remed Eval	CONTRACT NO.	18-4002-12
PROJECT TITLE.....:	ZipMart		

**RECEIVED**

MAR 02 2011

## NOTICE TO PROCEED

**ADEC SPAR - RFA  
Contract Management Section**

IN ACCORDANCE WITH OUR TERM AGREEMENT, PROVIDE SERVICES FOR THE ABOVE PROJECT AS DESCRIBED BY THE ATTACHED CORRESPONDENCE.

DATED: **09/07/10** BETWEEN: **Shannon & Wilson** and **ADEC RFA Contract Management**  
**5430 Fairbanks St., Ste 3** and **555 Cordova Street**  
**Anchorage, Ak 99518** and **Anchorage, Alaska 99501**

CONSISTING OF **18** PAGES. COMPENSATION FOR THESE SERVICES SHALL NOT EXCEED THE AUTHORIZED AMOUNT(S) ENTERED IN THE INVOICE SUMMARY SECTION (BELOW). CONTRACTOR ENSURES THERE IS NO CONFLICT OF INTEREST IN PERFORMING THIS WORK. CONTRACTOR WILL NOTIFY THE DEC PROJECT MANAGER AND PROVIDE WRITTEN NOTIFICATION TO THE CONTRACT MANAGER WITH JUSTIFICATION FOR ANY COST INCREASE THAT WILL EXCEED THE DOLLAR AMOUNT OF THIS NTP OR FOR ANY TIME EXTENSION BEYOND THE END DATE LISTED ON THIS NTP, PRIOR TO CONTINUING THE PROJECT. NOTIFICATION MUST BE PRESENTED TO BOTH THE DEC PROJECT MANAGER AND CONTRACT MANAGER IMMEDIATELY UPON DETERMINATION BY THE CONTRACTOR THAT THE INCREASE OR EXTENSION IS NECESSARY TO COMPLETE THE PROJECT. WORK MUST NOT CONTINUE UNTIL A NTP AMENDMENT HAS BEEN ISSUED. ALL CHARGES BILLED FOR WORK PERFORMED OUTSIDE THE NTP BEGIN AND END DATES OR EXCEEDING THE AMOUNT OF THIS NTP WILL BE HELD IN DISPUTE BY THE DEPARTMENT AND SETTLED UNDER AS 36.30.620, CONTRACT CLAIMS.

NTP ISSUE DATE IS DATE OF MOST RECENT SIGNATURE: \_\_\_\_\_ ADEC PROJECT MANAGER: **Linda Nuechterlein**  
**555 Cordova**  
**Anchorage, AK 99501**

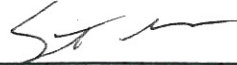
NTP END DATE: **06/30/11**

SIGNATURE <b>Dennis Harwood</b> Digitally signed by Dennis Harwood DN: cn=Dennis Harwood, o=Contracting, ou=SPAR/RFA, email=dennis.harwood@alaska.gov, c=US Date: 2010.09.17 09:47:16 -08'00'	SIGNATURE <b>Stafford Glashan</b> Digitally signed by Stafford Glashan DN: cn=Stafford Glashan, o=Shannon & Wilson, ou=Anchorage, email=stg@shanwil.com, c=US Date: 2010.09.17 10:20:17 -08'00'		
ISSUING OFFICER NAME: <b>Dennis Harwood</b>	DATE	NTP ACCEPTED (CONTRACTOR) NAME: <b>Stafford Glashan</b>	DATE

## INVOICE SUMMARY

CONTRACTORS INVOICE NUMBE **16858** THIS IS A: XX PROCESS BILLING  
 BILLING DATES COVERED 12/26/10 to 02/26/11 \_\_\_\_\_ FINAL BILLING

	AUTHORIZED AMOUNT	PRIOR INVOICES	THIS INVOICE	TOTALS TO DATE	BALANCE REMAINING
S&I	\$ 96,015.00	\$ 54,070.96	\$ 13,221.89	\$ 67,292.85	\$ 28,722.15
EXPENSES	\$ 441,269.00	\$ 98,089.92	\$ 97,970.89	\$ 196,060.81	\$ 245,208.19
FIXED FEE	\$ 10,000.00	\$ 5,407.20	\$ 1,322.34	\$ 6,729.54	\$ 3,270.46
TOTAL	\$ 547,284.00	\$ 157,568.08	\$ 112,515.12	\$ 270,083.20	\$ 277,200.80

SIGNATURE 	DATE <b>2/28/11</b>	SIGNATURE	DATE
PAYMENT REQUEST (CONTRACTOR) NAME: <b>Stafford Glashan</b>		PAYMENT APPROVED (ADEC CM) NAME: <b>Dennis Harwood</b>	

SIGNATURE	COLLOCATION CODE:
PAYMENT RECOMMENDED (ADEC PM) NAME: <b>Linda Nuechterlein</b>	LEDGER CODE: <b>EN 18/2016</b>