



RESOLUTION 2010-817

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL
OF THE TOWN OF CAMP VERDE, YAVAPAI COUNTY, ARIZONA,
APPROVING A COMPROMISE AND SETTLEMENT AGREEMENT WITH CALIFORNIA
HOTWOOD, ZELLNER AND RELATED ENTITIES CONCERNING THE SETTLEMENT OF
THE DISPUTE REGARDING THE ZELLNER WOODLOT**

Whereas, the Town of Camp Verde has been involved in a dispute regarding the woodlot known as the "Zellner Woodlot;" and

Whereas, in order to avoid litigation costs and allow this dispute to be resolved, the Town of Camp Verde desires to approve the "Compromise and Settlement Agreement" and its exhibits.

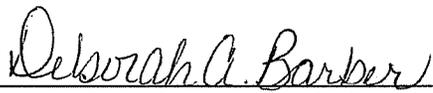
NOW THEREFORE, the Mayor and Common Council of the Town of Camp Verde resolve to approve The Compromise and Settlement Agreement attached hereto as Exhibit A.

Passed and adopted by a majority vote of the Common Council at the Special Session meeting of August 18, 2010.



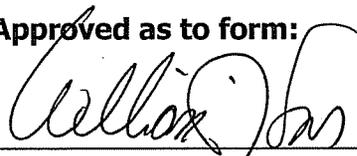
Bob Burnside, Mayor 8-18-2010

Attest:



Deborah Barber, Town Clerk

Approved as to form:



Town Attorney

**COMPROMISE and SETTLEMENT
AGREEMENT**

THIS COMPROMISE and SETTLEMENT AGREEMENT ("Agreement") is made and entered into by and among the Town of Camp Verde, a political subdivision of the State of Arizona ("Town"), California Hotwood, Inc., a California corporation which does business as Canyon Wood Supply ("Hotwood"), Sophronia Zellner, a single woman ("Zellner"), Dad's Wood Supply, LLC., an Arizona limited liability company formerly known as Canyon Wood Supply, LLC ("Dad's"), the Zellner Living Trust ("Trust"); and JerSo Investments, L.L.P., an Arizona limited liability partnership ("JerSo"), (all collectively the "Parties"), is made effective as of the Effective Date set out below. Zellner, Dad's, Trust and JerSo may be referred to collectively herein as the "Zellner Entities."

THE PARTIES RECITE, COVENANT, CONDITION AND AGREE AS FOLLOWS:

RECITALS

A. For many years the Zellner Entities or one or more of them and their predecessors operated a commercial log, wood, and wood by-product storage, cutting, splitting, packaging, chipping, shipping and sale (wholesale and retail) operation utilizing various methods, equipment, and vehicles (all of which activities and uses are collectively hereinafter referred to as a "Wood Yard") on real property located at Murdock Road in Camp Verde, Arizona, Yavapai County Assessor's Parcel Numbers 404-02-062 ("Lot 62"), 404-02-065 ("Lot 65"), 404-02-066 ("Lot 66"), 404-02-067 ("Lot 67"), 404-02-068B ("Lot 68B") and 404-02-069 ("Lot 69"), all collectively referred to as the "Property" and more particularly and legally described in Exhibit "A" attached hereto and made hereof. This commenced in approximately 1966 with such use of Lots 62, 65, and 66.

B. The Yavapai County zoning code authorized the use of Lots 62, 65, and 66, and was interpreted by Yavapai County to permit the expansion to Lots 67 and 68B for commercial purposes for use as a Wood Yard by the Zellner Entities prior to the date of the Town's incorporation on December 8, 1986.

C. Upon approval of the Town's Community Development Director (and who was the Town's "Zoning Administrator" as that title is defined in ARS §9-462), on or about 1998 and in reliance upon such approval, the Zellner Entities purchased parcel (Lot "69") and commenced using it for the Zellner Entities' Wood Yard business.

D. Hotwood, the Zellner Entities, and Jerry Zellner entered into a Purchase and Sale Agreement ("PSA") for the purchase of the Canyon Wood Supply business assets by Hotwood and a Real Property Purchase Agreement ("RPPA") for the purchase by Hotwood of the Property from Jerry Zellner and the Zellner Entities on or about January 31, 2007.

E. Hotwood also agreed to purchase the property and business, at least in part, in reliance upon the government allowed, long-term use of the Property as a Wood Yard and representations made by Town Development Department staff to Hotwood's appraiser that the Property was subject to a legal non-conforming use as a Wood Yard and that such use would be allowed to continue upon the sale or transfer of the Property.

F. Hotwood has already taken delivery and ownership of the business assets of Dad's, formerly Canyon Wood Supply, LLC, and Lots 62, 65, 66, and 68B, from the Zellner Entities and Jerry Zellner.

G. On or about June 27, 2007, Hotwood made its written Promissory Note to Dad's ("Note"), for and on account of a part of the purchase price set forth in the PSA and on July 1, 2009, a payment plus accrued interest was due on the Note. Hotwood claims that payment was not paid due to the dispute with the Town concerning the Property. Zellner disputes the validity of that claim.

H. On or about June 27, 2007, Trust, JerSo, and Jerry L. Zellner ("Lessors") entered into that certain written Real Property Lease ("Lease") with Hotwood whereby Lessors leased Lots 67 and 69 to Hotwood for a term of twenty-six (26) months, to enable Hotwood's possession of Lots 67 and 69 pending the completion of the purchase of Lots 67 and 69 by Hotwood.

I. Pursuant to the RPPA, Hotwood and the Zellner Entities agreed that the close of escrow for Yavapai County parcel numbers 409-02-67 and 404-02-69 would be on June 3, 2009.

J. Previous to the sale of Lots 62, 65, 66, and 68B to Hotwood, the Zellner Entities utilized all of Lots 62, 65, 66, 67, 68B and 69 for a Wood Yard, and such use has been continued by Hotwood without interruption since Hotwood purchased and leased the subject Property and purchased the business.

K. The Town has made claims that Hotwood may not lawfully use the Property including the parcels already purchased by Hotwood from Trust, Zellner, Jerry L. Zellner, and JerSo pursuant to the RPPA, for use as a Wood Yard due to the residential zoning of the Property and the parcels. A dispute arose regarding the permissible use of the Property and particularly Lot 69 as a Wood Yard (the "Zoning Dispute"), whether such use complies with the Town Zoning Code, and whether the use of the Property by Hotwood for a Wood Yard is a legal non-conforming use (sometimes referred to as a "grandfathered use") that is appurtenant, may continue, runs with the land, and is freely transferable.

L. The Town through its zoning administrators has commenced administrative proceedings against the Zellner Entities and Hotwood.

M. The Zellner Entities have filed a Complaint and an Amended Complaint in Yavapai County Superior Court, Case No. CV82008-0289, (the "Arizona Action") arising out of such dispute. Hotwood intervened and filed its own complaint and said action is now pending, which action shall be included in the term "Arizona Action."

N. The Yavapai County Superior Court granted the Zellner Entities' and Hotwood's motions for summary judgment for a permanent injunction and declaratory relief concerning Lot 69. As a result, the use of Lot 69 for past and future commercial purposes as a Wood Yard has been confirmed as a legal non-conforming use, that runs with the land.

O. The Court in the Arizona Action additionally found as follows:

Yavapai County established zoning in 1968. Detailed zoning for the Camp Verde area was established in September 1970. Thus, land uses established before September 1970 are considered legal non-conforming uses. Land uses established after September 1970 had to meet the zoning regulations in place at the time.

It is undisputed that Zellners utilized all of Lots 62, 65 and 66 as a Wood Yard prior to September 1970 and that use was, a legal non-conforming (grandfathered) use and the Court found and ordered that a 2000 decision of the Town of Camp Verde Board of Adjustments ("BOA") approving expansion of the Wood Yard use onto Lot 69 was legally subject to *Res Judicata* effect and that such lot was, thus, subject to a legal non-conforming use as a Wood Yard. A Partial Judgment consistent with the foregoing is attached hereto as Exhibit "B" ("Partial Judgment") and it shall be submitted to the Court.

P. The Court clarified in a later ruling that there appeared to be a dispute as to Lots 67 and 68B such that it could not then render summary judgment that such lots are subject to a legal non-conforming use as a Wood Yard based on the evidence presented to the Court at the time.

Q. The Town agrees that the Yavapai County Zoning Code as then applicable and as interpreted by Yavapai County allowed the Zellners' expansion of the use as a Wood Yard onto Lots 67 and 68B in the 1970's without the necessity for any formal or informal approval or action by Yavapai County because the expansion was less than a one hundred percent (100%) in area and was upon contiguous property. The Town agrees that the applicable Yavapai County Zoning Code contained no procedures for or requirements to obtain approval of such expansion.

R. Due to the dispute, Hotwood has not completed the purchase under the RPPA of Lots 67 and 69. Zellner disputes that Hotwood was entitled to withhold performance. Hotwood initiated an action in California to compel the Zellner Entities to arbitrate the entitlement of Hotwood to an extension under the RPPA, PSA, and Note in the Superior Court of California (the "California Action"), and said action is now pending. Hotwood and the Zellner Entities have agreed to settle their dispute by a separate Agreement for Close of Escrow and Note Payment which is subject to the express condition of this Agreement being made and effective, and the entry of a final Judgment Pursuant To Stipulation as set forth in paragraph S below, regarding the Property but, otherwise, the terms of that agreement are not a part of this Agreement and are not incorporated herein.

S. The Parties agree that the use of the Property as a Wood Yard was and is a legal non-conforming use that is appurtenant to and runs with the land, and that the parties disputes should be compromised and settled on the terms set forth herein to avoid the expense of further litigation, to implement the terms of a Judgment Pursuant To Stipulation between the parties (referred to hereafter as the "Judgment" and attached hereto as Exhibit "C"), and to provide greater certainty regarding the rights to use of the subject Property. The parties specifically intend that this Agreement and the Judgment shall be binding upon each party, each party's privies, and all persons and entities represented by each party including the party's respective officers, directors, trustees, beneficiaries, trustees, members, shareholders, franchisees and franchisors, attorneys, principals, successors, predecessors and, in particular, the Town's citizens, residents and property owners to the extent permitted by law.

T. Jerry L. Zellner is now deceased, and Zellner is the successor to the interests of Jerry L. Zellner in the properties and agreements referred to herein.

NOW THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

AGREEMENT

1. Effective Date. This Agreement shall become binding and effective when signed contemporaneously by all of the Parties and the Judgment and the Partial Judgment have been signed by all of the Parties (the "Effective Date"). This Agreement is conditioned upon the contemporaneous execution of the Agreement for Close of Escrow and Note Payment by the Zellner Entities and Hotwood. Each party to this Agreement covenants and agrees not to appeal, seek to vacate or set aside, or otherwise attack or contest the Partial Judgment and the Judgment.

2. Incorporation. All of the recitals set forth above are true, correct, and made a part of this agreement by this reference.

3. Confirmation of Non-Conforming Use. The Parties agree that the weight of the evidence demonstrates that the use of Lots 62, 65 and 66 for Wood Yard purposes commenced in 1966 and has continued to date without interruption. The expansion onto Lots 67, and 68B for Wood Yard purposes by the Zellner Entities occurred in the early 1970's, well prior to the date of the Town's incorporation on December 8, 1986, and such use has continued to date without interruption. The Yavapai County Zoning Code as then applicable and as interpreted by Yavapai County allowed such use and expansion without any formal or informal application to Yavapai County and without any formal or informal approval by Yavapai County. Zoning Administrator Lau testified he investigated the propriety of the use of the property then owned by Zellners in 1998, Lots 62, 65, 66, 67 and 68B, before he approved expansion of said use to Lot 69. Such lots were all being used for a Wood Yard when the expansion was presented to and upheld by Administrator Roberts and, later, the BOA. The Yavapai Superior Court has determined that the expansion by one or more of the Zellner Entities of the Wood Yard use to Lot 69 was a lawful expansion. Pursuant to this Agreement, the Town agrees the use of the Property for Wood Yard purposes is a lawful non-conforming use that runs with the land and is appurtenant to the Property, and the right to such use does not cease or terminate upon the sale, release or transfer of the Property or any portion thereof or interest therein.

4. Releases.

A. The Zellner Entities for themselves, jointly and separately, and on behalf of their respective trustees, agents, assigns, employees, officers, principals, members, beneficiaries, successors, predecessors, nominees, licensors and licensees, franchisors and franchisees, and all others related in any way to any of them, do hereby release, acquit and forever discharge the Town, and each of its agents, attorneys, assigns, employees, departments, officers, directors, shareholders, principals, successors, and nominees of, for, from and against any and all claims, actions, causes of action, demands, damages, costs, loss of profits or service, attorneys' fees, expenses and compensation of any kind and nature, known or unknown, which any of them, jointly or severally, now have or may hereinafter accrue which arise from the said Arizona Action and the facts that formed the basis of the claims of the Zellner Entities therein.

B. The Zellner Entities for themselves, jointly and separately, and on behalf of their respective agents, trustees, assigns, employees, officers, principals, members, beneficiaries, successors, predecessors, nominees, licensors and licensees, franchisors and franchisees, and all others related in any way to any of them, do hereby release, acquit and forever discharge Hotwood, and each of its respective agents, trustees, attorneys, assigns, employees, officers, directors, shareholders, principals, successors and nominees of, for, from and against any and all claims, actions, causes of action, demands, damages, costs, loss of profits or service, attorneys' fees, expenses and compensation of any kind and nature, known or unknown, which any of them, jointly or severally, now have or may hereinafter accrue which arise from the Arizona Action or are in any way related to the facts that formed the basis of the claims of the Zellner Entities therein.

C. Hotwood for themselves, jointly and separately, and on behalf of their respective agents, trustees, assigns, employees, officers, principals, members, beneficiaries, successors, predecessors, nominees, licensors and licensees, franchisors and franchisees, and all others related in any way to any of them, do hereby release, acquit and forever discharge the Town, and each of its attorneys, assigns, employees, departments, officers, directors, shareholders, principals, successors and nominees of and from any and all claims, actions, causes of action, demands, damages, costs, loss of profits or service, attorneys' fees, expenses and compensation of any kind and nature, known or unknown, which any of them, jointly or severally, now have or may hereinafter accrue which arise from the Arizona Action and facts that formed the basis of the claims of Hotwood therein.

D. Hotwood for themselves, jointly and separately, and on behalf of their respective agents, trustees, assigns, employees, officers, principals, members, beneficiaries, successors, predecessors, nominees, licensors and licensees, franchisors and franchisees, and all others related in any way to any of them, do hereby release, acquit and forever discharge the Zellner Entities, and each of their respective agents, trustees, attorneys, assigns, employees, officers, directors, shareholders, principals, successors and nominees of, for, from and against any and all claims, actions, causes of action, demands, damages, costs, loss of profits or service, attorneys' fees, expenses and compensation of any kind and nature, known or unknown, which any of them, jointly or severally now have related to claims for breach or default under the PSA and RPPA as a result of the zoning of the Wood Yard or arise from the claims or defenses asserted in the Arizona Action.

E. To the extent permitted by law, the Town on behalf of its respective council, agents, trustees, assigns, employees, officers, departments, citizens, residents, property owners, principals, successors, predecessors, nominees, licensors and licensees, franchisors and franchisees, and all others related in any way to any of them, do hereby release, acquit and forever discharge the Zellner Entities and Hotwood, and each of them, and each of their respective agents, attorneys, assigns, employees, officers, directors, shareholders, principals, successors and nominees of, for, from and against any and all claims, actions, causes of action, demands, damages, costs, loss of profits or service, attorneys' fees, expenses and compensation of any kind and nature, known or unknown, which any of them, jointly or severally, now have or may hereinafter accrue which arise from or are in any way related to the said Arizona Action or the facts that formed the basis of the Town's assertions or defenses to the claims of the Zellner Entities and Hotwood therein.

F. Each Party recognizes that it may not now fully know the number, nature, and magnitude of all claims it now has or in the future may have against the parties released as set forth above but nevertheless, except as otherwise provided herein, intends to assume the risk that it is releasing such unknown claims. Each Party agrees that this Agreement is a full and final release of such claims and is a further consideration and inducement for the settlement.

G. Each Party acknowledges that a material part of this Agreement is the deliberate extinguishing of any of its claims which currently are unknown, so that there is no possibility of future claims by the Parties of the type described and released above except as provided in Section 4.H and Section 4.I. Each Party assumes the risk that it has sustained damages that may not have manifested themselves and that are presently unknown. Each Party also understands and agrees that if the facts with respect to which this Agreement is executed and the releases herein provided for are made, are found hereafter to be other than or different from the facts now believed by it to be true, it expressly accepts and assumes the risk of such possible differences in facts and agrees that this Agreement shall be and remain effective notwithstanding such difference in facts.

H. Nothing provided herein shall be construed as waiving or releasing claims by Hotwood or the Zellner Entities as against each other, for performance of the PSA, the Promissory Note, the Lease and the RPPA, as modified in the Agreement for Close of Escrow and Note Payment ("ACE"), except claims relating to or arising from the zoning dispute.

I. The releases set forth above are not intended to release and do not release any party from the covenants, obligations, and agreements arising from, created by or set forth in this Agreement.

5. Town Approval. This Agreement is subject to review and approval by the Town Council. If this Agreement is not so approved on or before August 18, 2010, it shall be null and void.

6. Judgment. Upon the approval of this Agreement by the Town Council, the Parties shall contemporaneously execute the Stipulation to the Entry of the Judgment Pursuant To Stipulation in the form attached hereto as Exhibit "D," and approve the Judgment and the Partial Judgment as to form and content by affixing their signatures thereto. If this Agreement is and remains operative and effective 45 days after the date the Town's Council approves of this Agreement by a formal executed Resolution, then the Stipulation and the Partial Judgment and the Judgment shall immediately be filed with the Court in the Arizona Action and, if this Agreement does not remain operative and effective, then the Stipulation, Partial Judgment and Judgment shall not be filed with the Court and this Agreement and the Agreement for Close of Escrow and Note Payment shall be null and void. The Parties intend and agree that, to the fullest extent permitted by law, the Judgment Pursuant to Stipulation shall be binding upon and have preclusive effect (collateral estoppel effect and *res judicata* effect) regarding the lawfully conforming use of the Property, and shall be binding upon and applicable to the Parties and the Parties' successors, heirs, assigns, officers, agents, employees, shareholders, members, beneficiaries, trustees, the town's citizens, and the present and future owners of property in the Town whether or not such persons reside within the Town.

Hotwood and the Zellner Entities have submitted the Partial Judgment based upon various rulings made by the Court in the Arizona Action. The Parties agree that the Partial Judgment fairly reflects the rulings of the Court, that they have and will file no objections to the same and that if they have not already done so they will execute the Partial Judgment as approved as to form and content. That Partial Judgment is not superseded by nor is it merged into this Agreement or the Judgment Pursuant To Stipulation. The Partial Judgment shall remain effective and enforceable both independent of and in conjunction with the Judgment Pursuant to Stipulation.

7. Business License. Within ten (10) days following the Effective Date of this Agreement, the Town shall issue a business license to Hotwood pursuant to Article 9-3 of the Town Code for use of the Property and each of the Lots 62, 65, 66, 67, 68B, and 69 as a Wood Yard.

8. Wood Yard Operational Changes. Use of the Property as a Wood Yard by Hotwood after close of escrow on Lots 67 and 69 pursuant to the ACE shall be subject to the following conditions:

A. Daily Wood Yard operations shall not commence until the earlier of one (1) hour after sunrise or 7:30 a.m.

B. Log processing and receiving operations shall not take place on Sundays. All other business activities such as retail sales of wood and wood products may occur on Sundays.

C. The limitations set forth in A and B above shall not apply to work that does not create noise, dust or excessive traffic, in-office work, the inventory of logs and wood products, and work inside a building.

The sole and only remedy for any alleged violation of this paragraph 8 by the owner or possessor of the Property shall be the right of the Town to enforce compliance by injunction. No violation or violations of this paragraph 8 shall result in a termination of the legal non-conforming use of the Property as a Wood Yard, nor shall any violations or number of violations result in the limitation of the future use of the Property as a Wood Yard.

9. Waterline: The Town shall cause to be constructed and installed at the Town's expense a water line extending to the north property line of Lot 69 and a fire hydrant, as follows:

A. The Town shall install the water line to provide water service to the subject Property, and install the fire hydrant at or about the intersection of the north property line of Lot 69 and Murdock Road, for benefit of the Property, and to promote the health, welfare, and safety of adjacent and nearby property owners. The water line shall be not less than 8" in diameter and shall have sufficient capacity, including pressure, to serve the entire Property, and all properties in the area of the Property that may be reasonably anticipated to connect to the line, and there shall be reserved for the Property sufficient capacity and water to serve no less than 14 residences on the Property.

B. The water line and hydrant shall be completed, installed, and ready for use not later than April 1, 2013. The Town shall be responsible for funding construction of the water line and hydrant and shall deposit a total of \$130,000.00, payable at the rate of \$43,333.00 per year, commencing with the first quarter of the Town's 2010-2011 fiscal year and payable in the same quarter of the Town's 2011-2012 and the 2012-2013 fiscal years into in a separate account with such funds dedicated and restricted to use for the subject water line and hydrant. The Town has estimated the cost of said improvements to be \$130,000.00, and by this Agreement Hotwood is effectively funding that amount by payments totaling \$75,000.00 by joint check to the Town and Sophronia Zellner as set forth in paragraph 10, and by relinquishing its claims against the Town for attorney's fees and costs exceeding \$130,000.00. The additional \$55,000.00 allocated to the cost of the improvements (\$75,000.00 plus \$55,000.00 equals \$130,000.00) is thus contributed by Hotwood by way of releasing its attorney fee claim, and without any further payment by Hotwood. Thus, should the Town fail to install the water line then Hotwood shall have, in its discretion, the right to either: (i) be paid by the Town the sum of \$130,000.00 plus interest thereon at the legal rate from the Effective Date on the \$55,000.00 in relinquished fees and costs and interest at the legal rate on the \$75,000.00 paid by Hotwood to the Town and Zellners from the dates paid by Hotwood or (ii) the right to elect to install the water line and hydrant and recover from the Town the actual cost of the installation of the water line and hydrant. Hotwood shall further be entitled to recover from the Town reasonable attorneys' fees and costs in enforcing the Town's performance and in collecting any sums due under this paragraph 9.

C. Hotwood shall be responsible for the costs of any on-site improvements to the Property, including connection to the water line, and shall be responsible for the costs of setting a meter and monthly water service provider charges. Hotwood shall not be responsible for any other fees attributable to the providing of water, including but not limited to impact fees or development fees charged for providing water to the Property.

10. Payments to Zellners. Hotwood shall pay the total sum of \$75,000.00, by three (3) installments of \$25,000.00 each paid annually by joint checks, payable to both the Town and Sophronia Zellner. The first installment shall be paid on or before 31 days after the Effective Date of this Agreement, and the successive payments shall be paid on or before the first and second anniversary of such date, provided however, the only conditions precedent to Hotwood's paying such sums shall be entry of the Judgment and the Partial Judgment and the running of any and all applicable appeal time periods, without appeal, and the execution and performance of the Agreement for Close of Escrow and Note Payment and the RPPA, to the extent obligations thereunder have then accrued and that the Agreement is and remains legally effective and operative. The Town shall endorse and forward each such check upon receipt from Hotwood to Zellner by first class mail, postage pre-paid, within five (5) days of the Town's receipt of such checks. The Town shall further pay Sophronia Zellner an additional \$75,000.00, in three annual payments of \$25,000.00 each. The first installment shall be due thirty-one (31) days after the Effective Date of this Agreement, and subsequent installments shall be made on or before the first and second anniversaries of such date, provided however, the only conditions precedent to the Town's paying such sums shall be entry of the Judgment and the running of any and all applicable appeal time periods, without appeal and the execution and delivery of this Agreement.

11. Remedies, Non-Excuse of Obligations. Upon this Agreement becoming effective, including the final Judgment and Partial Judgment being entered in the Arizona Action and becoming final, a default in performance due Hotwood from the Town and vice versa shall not excuse or release performance by the Town or Hotwood pursuant to paragraph 10 above. By way of example, while the Town's failure to make one or more of the \$43,333.00 deposits set forth in paragraph 9.B. shall be a default and a breach of this Agreement between the Town and Hotwood, it will not excuse Hotwood's payments or the Town's payments pursuant to paragraph 10 and while Hotwood's failure to abide by the operation limitations may be a default or breach between Hotwood and the Town, it will not excuse the Town's payments to Zellner. Likewise, a breach or default of the obligations by Zellners to the Town shall not excuse the Town's obligations to Hotwood and a breach by Zellners of any obligations to Hotwood shall not excuse Hotwood's obligations to the Town. When any provision of this Agreement specifically limits the remedy for the breach or enforcement of an obligation or future performance then such remedy(s) shall be the only remedy available for that breach or enforcement. No breach by any party shall impair the terms and effect of the Judgment and Partial Judgment entered in the Arizona Action. Notwithstanding the foregoing provisions of this Section 11, if the obligations of the parties under Section 4 of this Agreement are determined to be not enforceable by a court of competent jurisdiction, all other obligations under this Agreement shall terminate. The Zellners are not subject to the provisions of paragraphs 7, 8, and 9 of this Agreement, and no cause of action against the Zellners is created thereby. The Town and Hotwood covenant not to sue the Zellner Entities on account of the breach of paragraphs 7, 8, and 9. Upon the close of escrow pursuant to the ACE, the property shall be burdened by the provisions of paragraph 8 of this Agreement.

12. Non-Admission. Nothing provided herein shall constitute an admission by any party hereto, or a release or modification of any rights and remedies of the parties, except as may be consistent with the terms hereof. The primary purpose of this Agreement is to settle the dispute as to the lawful use of the Property and each lot thereof, which will also allow Hotwood and the Zellner Entities to conclude their agreement.

13. Counterparts and Copies. This Agreement may be executed in two or more counterparts and each counterpart, when executed, shall be deemed an original, and all such counterparts taken together shall constitute one agreement binding on all of the parties. For all purposes, extra duplicate and unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document. It is not necessary that each party execute the same counterpart so long as identical counterparts (except as to pagination) are executed by all parties. The submission of a signature page transmitted by facsimile (or similar electronic transmission facility) shall be considered an "original" signature page for purposes of this Agreement. Facsimile signatures of this Agreement shall be as fully effective as original signatures. Each party signing this Agreement by facsimile signature agrees to furnish a copy bearing an original signature of the party to the other signatories, but the failure to do so shall not affect the binding force and validity of any facsimile signature.

14. Advice of Counsel. Each of the Parties hereto warrants that they have consulted with their attorneys concerning this Agreement and all matter covered by it, that they have been fully advised by their attorneys with respect to their rights, and that with respect to the execution of this Agreement, that they have executed this Agreement after securing the advice of their attorneys. The Parties have cooperated in the drafting and preparation of this Agreement. Hence, no presumption in favor of or against any party shall apply to the construction of this Agreement.

15. Non-Modification. It is expressly understood and agreed that this Agreement may not be altered, amended or modified except by a writing executed by all Parties.

16. Knowing and Voluntary Execution. The Parties hereto acknowledge that they have carefully read the foregoing Agreement, know and understand all of its terms, and voluntarily execute the same with fully knowledge of the consequences thereof. The undersigned warrant their authority to execute this Agreement on behalf of any entity on behalf of which they are executing.

17. Further Acts and Cooperation. Each party hereto agrees to promptly and as expeditiously as possible carry out and execute their respective responsibilities under the terms of this Agreement and to execute any and all documents which may be necessary from time to time in the future to implement the terms of this Agreement. The Parties hereby acknowledge and agree that they shall cooperate in good faith with each other as contemplated by this Agreement, in order that each Party may obtain the full benefit of this Agreement.

18. Binding Effect.

A. To the fullest extent permitted by law, and upon execution hereof by the parties this Agreement shall be binding upon and inure to the benefit of the parties and their successors, beneficiaries, representatives, assigns, trustees and heirs and shall be binding upon all third parties that they represent or who are in privity with them, and including their members, officers, employees, agents and, as regards the town, its citizens and present and future owners of real property within the Town.

B. Notwithstanding anything to the contrary, this Agreement and the requirement for compliance with it shall be binding upon and shall inure to the benefit of the parties and their successors, assigns, representatives, heirs, beneficiaries and trustees upon the full execution of this Agreement by the parties. The binding effect, and the right to enforce this Agreement and the right to obtain the benefits of this Agreement are subject to the provisions of Section 18.C. below.

C. The binding effect of this Agreement shall terminate and it shall be of no further force and effect if and when, through no voluntary action or any inaction by the parties which would be in conflict with the terms hereof: The Court should fail or refuse to execute the Judgment or Partial Judgment, with or without non-substantive changes by the Court which shall be subject to approval by the parties and which approval shall not be unreasonably withheld; or if this Agreement or the Judgment or the Partial Judgment are rendered ineffective or non-operative or set aside by appeal or otherwise. Should the binding effect of this Agreement terminate consistent with the foregoing then: no party shall be bound by the factual or legal statements in this Agreement, the Judgment, the Partial Judgment, or Stipulation for Entry of Judgment Pursuant to Stipulation and none of such documents or any portions thereof shall be admissible regarding the merits of the claims and defenses in either the Arizona Action or the California Action pursuant to Rule 408 Arizona Rules of Evidence and this Agreement.

19. Integration. This Agreement states the entire agreement among the Parties who have executed this Agreement and supersedes their prior agreements, negotiations or understandings, except that the PSA and other instruments and documents related thereto including but not limited to the Seller's Representations, RPPA, Lease, and the Promissory Note payable by Hotwood shall remain in full force and effect except as modified in the separate Agreement for the Close of Escrow and Note Payment between Hotwood and Zellners. Each of the Parties acknowledges and agrees that no other party, nor agent, nor attorney of any of the parties have made any promise, representation, or warranty, express or implied, not set forth in this Agreement and the documents referred to herein. Each party signing this Agreement acknowledges that such party has not executed this Agreement in reliance on any promise, representation, conduct, or warranty of any other Party or their attorneys or agents which are not expressly set forth in this Agreement. The terms of this Agreement are contractual and not a mere recital.

20. Default. Failure or unreasonable delay by any party in the performance of any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten (10) days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. Except as otherwise provided herein, in the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

21. Attorneys' Fees and Costs.

A. Except as otherwise provided herein, each Party to this Agreement shall bear its own costs, expenses, and attorneys' fees, whether taxable or otherwise, incurred in, arising out of, or in any way related to the matters released herein.

B. The prevailing Party or Parties (as determined by the Court or other relevant authority) in any action to enforce, this Agreement shall be entitled to recover its reasonable attorney's fees, experts' fees, costs and other disbursements of counsel.

22. Representations and Warranties of the Parties Regarding Authority, Capacity, and Negotiation Process. The Parties make the following representations and warranties with the understanding that each other Party hereto enters into this Agreement in reliance upon each of these representations and warranties, and that without these representations and warranties, no Party would enter into or consent to, this Agreement:

A. Each Party represents and warrants that it has not sold, transferred, conveyed, assigned, hypothecated or subrogated any of the rights, defenses, claims or causes of action released in this Agreement, and hereby expressly waives all rights it has or may have to do so, except as expressly provided herein.

B. Each party represents and warrants that it has been fully advised by its attorney, concerning the effect and finality of this Agreement contained herein, and that the Party understands, without reservation or doubt, the effect and finality of this Agreement.

C. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter this Agreement on behalf of the Party for whom he or she purports to sign.

23. Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the Town shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

24. Notices. All notices, approvals, and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, and delivered personally or sent by nationally recognized courier (e.g., Federal Express, Airborne, UPS), or by United States mail, certified with return receipt requested, to:

If to the Town:

Town of Camp Verde
473 S Main St
Camp Verde AZ 86322
Telephone: 928 567-6631
Fax: 928 567-9061

With a copy to: William J. Sims, III
Moyes Sellers & Sims
1850 N. Central Ave., #1100
Phoenix, AZ 85004
Telephone: (602) 604-2141
Fax: (602) 274-9134

If to the Zeller Entities: Sophronia Zellner
216 Nesting Glade
Depoe Bay, Oregon 97341

With a copy to: Robert L. Earle
Earle & Associates
P.O. Box 3870
Sedona, AZ 86340
Telephone: (928) 282-5519
Fax: (928) 282-5977

If to Hotwood: California Hotwood, Inc.
5920 E. Live Oak Rd.
Lodi, CA 95240
Telephone: (209) 333-5480
Fax: (209) 333-7008

With a copy to: Daniel A. McDaniel
Nomellini, Grilli & McDaniel
Professional Law Corporations
P.O. Box 1461
Stockton, CA 95201-1461
Telephone: (209) 465-5883
Fax: (209) 465-3956

Thomas P. Kack
Musgrove, Drutz & Kack, P.C.
1135 Iron Springs Road
Post Office Box 2720
Prescott, AZ 86302-2720
Telephone: (928) 445-5935
Fax: (928) 445-5980

Any Party may change the address at which the Party is to receive notice by providing notice of the address change to the other Parties pursuant to this section. Notices, approvals and other communications provided for herein shall be deemed delivered upon personal delivery, within twenty-four (24) hours following deposit with a nationally recognized overnight courier, or within five (5) business days following deposit with the United States mail, certified with return receipt requested, as hereinabove provided, prepaid and addressed as set forth above.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Any action filed regarding this Agreement or damages for breach of the same shall be filed in the Superior Court of Yavapai County, Arizona. The Town enters this Agreement as an administrative action and it does so pursuant to its general authority to dispute and settle disputes and pursuant to ARS §§ 9-240, 9-276, 9-462 et seq including 9-462.02 and §9-500.05 as to development regarding Hotwood's constitutionally protected right to continue a non-conforming use. This Agreement does not abrogate Hotwood's right to abandon a non-conforming use of the property as a Wood Yard.

26. Waiver. No waiver by any Party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

27. Limited Severability. The terms of this Agreement shall be construed and interpreted in a fashion that allows all terms hereof to be effective. The Parties each believe that the execution, delivery and performance of this Agreement is in compliance with all applicable laws. However, in the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement is declared void or unenforceable (or is construed as requiring the Town to do any act in violation of any applicable laws, constitutional provision, law, regulation, or valid provisions of Town Code), so long as the same does not materially affect the use of the Property as a Wood Yard, and does not materially affect the benefits to any party accruing from this Agreement, such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provides essentially the same rights and benefits (economic or otherwise) to the Parties as if such severance and reformation were not required. There shall be no reformation in the event of the inability, upon full performance of this Agreement, to utilize all the Property as a Wood Yard. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

28. Recordation of Agreement. This Agreement is entered into in settlement of a dispute regarding real property and this Agreement shall be recorded in the Official Records of Yavapai County, Arizona, after its approval and execution by the Town.

29. No Third Party Beneficiaries. There are no third party beneficiaries to the Agreement, and no person or entity not a Party will have any right or cause of action.

30. No Agency Created. Nothing contained in the Agreement will create any partnership, joint venture, or agency relationship between the Parties.

31. Apology. The Town shall provide a letter of apology in the form attached as Exhibit 1 to the Zellner family, the neighbors surrounding the Property and the citizens of Camp Verde Arizona. The Town shall provide a letter of apology to Hotwood in the form attached as Exhibit "2".

32. Titles. The titles and headings provided for in the numbered sections of this Agreement are provided for convenience and shall not effect or alter the interpretation or enforcement of this Agreement.

33. Strict Performance and Time of the Essence. Strict performance is required as to each and every term of this Agreement and time is and shall remain of the essence herein.

TOWN OF CAMP VERDE

By: *Bob Burnside*
Bob Burnside, Mayor

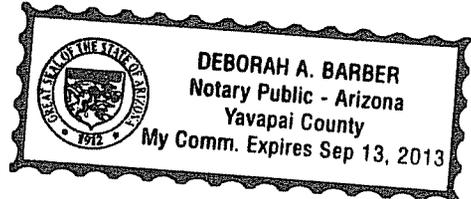
STATE OF ARIZONA)
) ss.
County of Yavapai)

On this, the 19 day of August, 2010, before me a notary public, Bob Burnside, the undersigned officer, personally appeared, satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same, as Mayor of the Town of Camp Verde, Arizona, for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

My Commission Expires: Sept. 13, 2013 *Deborah A. Barber*
Notary Public

ATTEST:
Deborah Barber
Town Clerk



Approved:
William Sims III
William Sims III, Town Attorney