COGGINS LAW

April 8, 2019

Clerk of the Board of Supervisors for the
El Dorado County Board
330 Fair Lane
Placerville, CA 95667

Re: **Claim for Property Tax Refund**

APN: #4821007100, #4821038100, #4821039100, #4821040100, #4821041100, #4821042100, #4821043100, #4821045100, #4821046100, #4821047100

Years: Payments made via Installment Agreement for tax years 2005-2009

Clerk of the Board:

I represent Edward Mackay an owner of the above referenced parcels. This collection of parcels formed the Cornett Mill site and is referred to as the "Mill Property."

Edward Mackay hereby requests a refund of the property taxes, interest, and any related penalties paid as a result of an improper reassessment on the Mill Property for tax years 2005-2009. Specifically, Edward Mackay paid property taxes for the Mill Property of $292,458.00 in a five-year installment agreement entered into by Edward Mackay with the final payment made on March 31, 2017 (See Exhibit A for details on Installment Agreement Payments). The payments of $292,458.00 were paid on behalf of Edward Mackay by El Dorado RV Park LLC (a California limited liability company in which he is a member). The payments under the installment agreement grossly overpaid the taxes for the Mill Property—as the correct amount of taxes for 2005-2009 for the Mill Property was $44,444.00 (See Exhibit B for details on Correct Taxes for Mill Property).

As a result of this overpayment, Edward Mackay hereby requests a refund of **$248,014.00.**

## BASIS OF CLAIM

On June 1, 2005, Edward Mackay transferred partial ownership of the Mill Property parcels to two legal entities. On the Preliminary Change of Ownership Report ("PCOR") the transfer was indicated as a 49% change of ownership. However, this was actually a security interest transfer. The purchase price for the 49% was 49% of the same price that Edward Mackay had previously paid for the property.

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Subsequent to the reappraisal and reassessment, the owner, Edward Mackay, raised the claim with El Dorado County Assessor Karl Weiland in 2012 that this transaction was a transfer to a family corporation at the same price, along with the problems associated with the old mill site.

In response, Assessor Weiland issued a memorandum (See Exhibit C) which concluded that properties in question had been reassessed in error, and that the old base year values would be restored immediately. However, because of the passage of time, he could not then correct the assessments for the years 2005 through 2009, but only for years 2010 and later. Although the 2005 through 2009 assessment could not be corrected at that time, any amounts paid on the erroneous assessments could still be addressed through the refund process, once they were paid. Specifically, Revenue & Taxation Code 5096 (d) provides the authority for refunds of erroneous assessments:

> "Any taxes paid before or after delinquency shall be refunded if they were…
> Paid on an assessment in excess of the ration of assessed value to the full value of the property as provided in Section 401 by reason of the assessor's clerical error or excessive or improper assessments attributable to erroneous property information supplied by the assessed." (R&TC 5096(d)

Edward Mackay paid an assessment in excess of the ratio of assessed value to the full value of the property as provided in Section 401 by reason of the assessor's clerical error or excessive or improper assessments attributable to erroneous property information supplied by the assessed. Therefore, the excess taxes, penalties and related interest should be refunded. This is the only fair and equitable result, as pointed out in *Pacific Coast Co.* v. *Wells,* 134 Cal. 471; *Associated Oil Co.* v. *Orange County,* 4 Cal.App.2d 5:

> "In Pacific Coast Co. v. Wells, supra, relied upon by the appellant, certain property which was not taxable at all was included in the assessment, through a mistake of the taxpayer's bookkeeper in furnishing a statement of property to the assessor. By reason of this mistake the taxpayer's solvent credits were reported in a sum which was $100,000 more than the correct amount. While the assessor thought he saw an error in subtraction in the statement and attempted to correct it, in effect he perpetuated the mistake and adopted as correct the erroneous figure as to the amount of solvent credits owned. The mistake was not discovered until it was too late to seek a revaluation before the board of equalization and, after paying the excessive tax, a refund was sought from the board of supervisors. While a refund was ordered by them, the auditor refused to issue a warrant and the action followed. In that case the court said:

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> "We think the facts stated entitled the petitioner to the writ, and that the court erred in sustaining the demurrer. The money so paid to the county as taxes was not due from petitioner. It was the amount of taxes upon an assessment of one hundred thousand dollars, on property that had no existence. It was an assessment made by the assessor in changing the footings of petitioner's assessment. It was paid without consideration, and the city and county have no right to it. Petitioner has paid all its just taxes, and this sum in addition. No doubt, if the assessor had called the attention of petitioner to the statement it had given in, the footings would never have been changed. It was a clerical error that could easily have been explained. When the attention of the assessor was called to it, he recommended that the mistake be corrected. The board of supervisors, representing the county, after investigation, made an order to correct it. Shall the city and county keep the $1,625 regardless of all this? **It surely would be in violation of honesty and fair dealing for them to do so**. Is it in violation of law for them to refund it? We think not. The board were authorized to order the money refunded…"

In this instant case, Mr. Weiland's Memorandum describes the over-assessment:

> "Upon the completion of this review, it is clear, that the deeds transferring 49% of the mill site parcels to Mackay Homes and Palo Alto Development was for purposes related to the development of the Gateway project and not for purposes related to the mill site. Based on this conclusion, the provisions of §51.5 call for the immediate correction, which in this case, is the restoration of the old base year values. Roll corrections will be processed as allowed by the statute of limitations, which are the current and three prior years."

Mr. Weiland's corrections were limited to roll corrections for the open years. However, just like *Pacific Coast Co.* it would be violation of honesty and fair dealing not to issue the refund.

## CONCLUSION

In accordance with section 5096(d) of the Revenue and Tax Code, we are requesting that the taxes and related interest and any penalties paid in excess of the appropriate tax amount be returned to us. That amount is **$248,014.00.**

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SIGNATURE OF CLAIMANT

Both Edward Mackay and El Dorado RV Park LLC have read and reviewed this claim for refund and verify its accuracy pursuant to section 5097(1) of the Revenue and Tax Code.

I declare under penalty of perjury that the foregoing is true and correct and that the undersigned is the Claimant who directed the payment of tax.

Dated: 4-8-19

Edward Mackay

I declare under penalty of perjury that the foregoing is true and correct and that the undersigned is an authorized member of the entity that paid the tax on behalf of Claimant, Edward Mackay.

Dated: 4-8-19

Edward Mackay, Member
El Dorado RV Park LLC

Approved as to form

Brian L. Coggins
Attorney for El Dorado RV Park LLC
And Edward Mackay

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EXHIBIT A

(Installment Agreement Payments)

| APN | Payment Date | Default/ Bill | Validation | Payment |
|---|---|---|---|---|
| 4821007100 | 1/31/2013 | 98519 | 104768 | $1,959 |
| 4821038100 | 1/31/2013 | 98522 | 104766 | $15,700 |
| 4821039100 | 1/31/2013 | 98523 | 104764 | $6,208 |
| 4821040100 | 1/31/2013 | 98524 | 104762 | $6,648 |
| 4821041100 | 1/31/2013 | 98525 | 104760 | $1,503 |
| 4821042100 | 1/31/2013 | 98526 | 104770 | $3,573 |
| 4821043100 | 1/31/2013 | 98527 | 104772 | $10,431 |
| 4821045100 | 1/31/2013 | 98528 | 104774 | $260 |
| 4821046100 | 1/31/2013 | 98529 | 104776 | $836 |
| 4821047100 | 1/31/2013 | 98530 | 104778 | $2,415 |
| | | | Total | $49,534 |
| | | | Payment | $49,534 |

## 2014

| APN | Date | Default/ Bill | Validation | Payment |
|---|---|---|---|---|
| 4821007100 | 4/4/2014 | 98519 | 107945 | $3,652 |
| 4821038100 | 4/4/2014 | 98522 | 107947 | $29,760 |
| 4821039100 | 4/4/2014 | 98523 | 107949 | $11,725 |
| 4821040100 | 4/4/2014 | 98524 | 107951 | $12,562 |
| 4821041100 | 4/4/2014 | 98525 | 107953 | $2,785 |
| 4821042100 | 4/4/2014 | 98526 | 107955 | $6,719 |
| 4821043100 | 4/4/2014 | 98527 | 107957 | $19,750 |
| 4821045100 | 4/4/2014 | 98528 | 107959 | $424 |
| 4821046100 | 4/4/2014 | 98529 | 107961 | $1,518 |
| 4821047100 | 4/4/2014 | 98530 | 107963 | $4,519 |
| Annual Maintenance Fees- Install Pmt Plan | | | | $250 |
| | | | Total | $93,665 |
| | | | Payment | $93,665 |

## 2015

| APN | Date | Default/ Bill | Validation | Payment |
|---|---|---|---|---|
| 4821007100 | 4/10/2015 | 98519 | 134192 | $2,936 |
| 4821038100 | 4/10/2015 | 98522 | 134190 | $24,096 |
| 4821039100 | 4/10/2015 | 98523 | 134188 | $9,479 |
| 4821040100 | 4/10/2015 | 98524 | 134188 | $10,157 |
| 4821041100 | 4/10/2015 | 98525 | 134184 | $2,233 |
| 4821042100 | 4/10/2015 | 98526 | 134182 | $5,421 |
| 4821043100 | 4/10/2015 | 98527 | 134180 | $15,983 |
| 4821045100 | 4/10/2015 | 98528 | 134178 | $319 |
| 4821046100 | 4/10/2015 | 98529 | 134176 | $1,206 |
| 4821047100 | 4/10/2015 | 98530 | 134174 | $3,638 |
| | | | Total | $75,468 |

| | | | | |
|---|---|---|---|---|
| | | | Payment | $75,468 |

## 2016

| APN | Date | Default/ Bill | Validation | Payment |
|---|---|---|---|---|
| 4821007100 | 4/1/2016 | 98519 | 77108 | $2,539 |
| 4821038100 | 4/1/2016 | 98522 | 77107 | $20,814 |
| 4821039100 | 4/1/2016 | 98523 | 77106 | $8,190 |
| 4821040100 | 4/1/2016 | 98524 | 77105 | $8,776 |
| 4821041100 | 4/1/2016 | 98525 | 77104 | $1,932 |
| 4821042100 | 4/1/2016 | 98526 | 77103 | $4,686 |
| 4821043100 | 4/1/2016 | 98527 | 77102 | $13,807 |
| 4821045100 | 4/1/2016 | 98528 | 77102 | $279 |
| 4821046100 | 4/1/2016 | 98529 | 77100 | $1,045 |
| 4821047100 | 4/1/2016 | 98530 | 77099 | $3,146 |
| Annual Maintenance Fees- Install Pmt Plan | | | | $250 |
| | | | Total | $65,465 |
| | | | Payment | $65,465 |

## 2017

| APN | Date | Default/ Bill | Validation | Payment |
|---|---|---|---|---|
| 4821007100 | 3/31/2017 | 98519 | 105066 | $2,253 |
| 4821038100 | 3/31/2017 | 98522 | 105067 | $18,467 |
| 4821039100 | 3/31/2017 | 98523 | 105068 | $7,267 |
| 4821040100 | 3/31/2017 | 98524 | 105069 | $7,786 |
| 4821041100 | 3/31/2017 | 98525 | 105070 | $1,714 |
| 4821042100 | 3/31/2017 | 98526 | 105071 | $4,157 |
| 4821043100 | 3/31/2017 | 98527 | 105072 | $12,250 |
| 4821045100 | 3/31/2017 | 98528 | 105073 | $248 |
| 4821046100 | 3/31/2017 | 98529 | 105074 | $927 |
| 4821047100 | 3/31/2017 | 98530 | 105075 | $2,791 |
| | | | Total | $57,860 |
| | | | Payment | $57,860 |
| Installments: 2014 - 2017: | | | | **$292,458** |

EXHIBIT B

Mill Property Correct Property Taxes

## 2005-2006

| 98% Less APN | Net Value | General Taxes |
|---|---|---|
| 48-210-07-100 | $49,036 | $516 |
| 48-210-38-100 | $291,416 | $3,068 |
| 48-210-39-100 | $123,652 | $1,302 |
| 48-210-40-100 | $129,069 | $1,359 |
| 48-210-41-100 | $27,724 | $292 |
| 48-210-42-100 | $69,102 | $728 |
| 48-210-43-100 | $223,051 | $2,348 |
| 48-210-45-100 | $4,026 | $42 |
| 48-210-46-100 | $26,513 | $279 |
| 48-210-47-100 | $80,666 | $849 |
| | | $10,783 |

## 2006-2007

| 98% Less APN | Net Value | General Taxes |
|---|---|---|
| 48-210-07-100 | $50,016 | $527 |
| 48-210-38-100 | $297,244 | $3,129 |
| 48-210-39-100 | $126,125 | $1,328 |
| 48-210-40-100 | $131,650 | $1,386 |
| 48-210-41-100 | $28,279 | $298 |
| 48-210-42-100 | $70,484 | $742 |
| 48-210-43-100 | $227,512 | $2,395 |
| 48-210-45-100 | $4,107 | $43 |
| 48-210-46-100 | $27,044 | $285 |

| | | |
|---|---|---|
| 48-210-47-100 | $82,279 | $866 |
| | | $10,999 |

## 2007-2008

| 98% Less APN | Net Value | General Taxes |
|---|---|---|
| 48-210-07-100 | $51,017 | $537 |
| 48-210-38-100 | $303,189 | $3,192 |
| 48-210-39-100 | $128,647 | $1,354 |
| 48-210-40-100 | $134,283 | $1,414 |
| 48-210-41-100 | $28,844 | $304 |
| 48-210-42-100 | $71,893 | $757 |
| 48-210-43-100 | $232,063 | $2,443 |
| 48-210-45-100 | $4,189 | $44 |
| 48-210-46-100 | $27,585 | $290 |
| 48-210-47-100 | $83,925 | $884 |
| | | $11,219 |

## 2008-2009

| 98% Less APN | Net Value | General Taxes |
|---|---|---|
| 48-210-07-100 | $52,037 | $548 |
| 48-210-38-100 | $309,253 | $3,256 |
| 48-210-39-100 | $131,220 | $1,381 |
| 48-210-40-100 | $136,969 | $1,442 |
| 48-210-41-100 | $29,421 | $310 |
| 48-210-42-100 | $73,331 | $772 |
| 48-210-43-100 | $236,704 | $2,492 |
| 48-210-45-100 | $4,273 | $45 |
| 48-210-46-100 | $28,136 | $296 |
| 48-210-47-100 | $85,603 | $901 |
| | | $11,443 |

EXHIBIT C

(Karl Weiland Memorandum dated 6/19/12)

KARL WEILAND
EL DORADO COUNTY ASSESSOR

# MEMORANDUM

**DATE:** **June 19, 2012**

**TO:** Record

**FROM:** Karl Weiland

**SUBJECT:** **Restoration of values**

On June 1, 2005, partial ownership of parcels 048-210-38,39,40,41,42,43,45,46,47 & 07 transferred to two legal entities. This collection of parcels formed the Cornett mill site and is referred to as the "Mill Property". On the PCOS, the transfer was indicated as a 49% change of ownership, No indication was made that this was a security interest transfer. Subsequent to the reappraisal and reassessment, the owner, Edward Mackay, raised the claim that this transaction was a transfer to a family corporation for the same price, along with other problems associated with the old mill site. He was requested to provide evidence to corroborate his claim but no substantiation was ever received.

In the fall of 2011, Steve Cockrell, one of the lenders connected with the Gateway Hotel and Service Station project, contacted the Assessor and again raised the issue. The response from the Assessor's office was the same as in 2006. Mr. Cockrell was successful in getting Edward Mackay to provide documents to support the claim that the June 2005 transfer to Palo Alto Development and Mack Construction were solely for the purpose of providing a security interest.

The evidence provided by Edward Mackay consists of two documents. The first, a Letter of Intent, is dated October 1, 2004 and contains recitals and an agreement for funding participation in the Gateway Hotel and Service Stations Projects. The recitals reference the intention of three corporations, Palo Alto Development, Mackay Homes and Mack Construction, to form a joint venture to build the Gateway Hotel and Service station projects As part of the agreement, Edward and John Mackay, dba Gateway Development, are required to contribute the Mill Site and other properties *"as security for the payment to the Corporations in the event the hotel and gas station projects do not proceed.*

The second document is the joint venture agreement contemplated in the Letter of Intent. It is dated September 10th 2005 and executes the essential agreements outlined in the Letter of Intent. Ownership participation and interest are more clearly defined and the responsibilities for the projects are assigned. It is consistent with the Letter of Intent in most aspects.

The "Gateway projects" were proposed developments for APN's 048-290-29, 30 &32. There were actually two projects, one for the service station /store and one for the hotel. Two corporations were formed Gateway Hotel LLC and Gateway Station LLC. Recorded documents by Edward Mackay, John Mackay, Palo Alto Development, Mackay Homes, Mack Construction,

Smith Flat Construction and the two Gateway corporations clearly show that the focus of all the parties involved in these transactions were doing so to further to Gateway Projects and there is no intention expressed in the mill site. All of the above referenced entities' are substantially owned by principals John & Edward Mackay.

Eventually, the Gateway project is halted and the land is eventually foreclosed on by the various note holders.

Upon the completion of this review, it is clear that the deeds transferring 49% of the mill site parcels to Mackay Homes and Palo Alto Development was for purposes related to the development of the Gateway project and not for purposes related to the mill site. Based on this conclusion, the provisions of §51.5 call for the immediate correction, which in this case, is the restoration of the old base year values. Roll corrections will be processed as allowed by the statute of limitations, which are the current and three prior years.