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June 25, 2018

SENT VIA EMAIL

Board of Equalization
Cochise County
1415 Melody Lane
Building G
Bisbee AZ 85603

Board of Equalization
c/o Cochise County Clerk
100 Quality Hill Road
Bisbee, AZ 85603

Re: NP Arizona Real Estate 1

Dear Board of Equalization Members:

The purpose of this letter is to provide a written narrative for the matter scheduled tomorrow, June 26, 2018. NP Arizona Real Estate I, L.L.C. ("NP Arizona"), is the owner numerous parcels of real property in Cochise County, Arizona, including the fourteen (14) separate tax parcels which were the subject of NP Arizona's Notice of Claim (collectively the "Subject Parcels"). All of the Subject Parcels are part of a well-established and long-standing commercial operation for the growing and processing of pecans.

It is important to clarify for purposes of this appeal that the agricultural use of the Subject Parcels in the relevant year (2017) is not subject to dispute or differing opinions. The only issue relevant here is whether NP Arizona's failure to submit a new agricultural use application within 60 days of its acquisition of the Subject Parcels in December, 2015, may be corrected as an "error" consistent with A.R.S. §§ 42-16251, 42-16254 and 42-12353(B). as an alternative to seeking a refund of excess real property taxes paid, NP Arizona offers to have the excess taxes paid for 2017 applied to future taxes due for the Subject Parcels. This is an effort to avoid the immediate commitment to refund nearly \$140,000 of overpayment while fairly balancing tax revenues in decreasing future obligations. To place this appeal, and the relevant issue, in the proper perspective, I will first outline the material facts. I will then discuss the relevant statutes and legal authorities.

I. FACTUAL BACKGROUND

NP Arizona acquired the Subject Parcels in December, 2015. NP Arizona's operation provides pecans for National Pecan Diamond Foods Co., a national food company. At the time of NP Arizona's acquisition, the Subject Parcels had been

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classified and assessed for many years as “agricultural real property” by the Cochise County Assessor. See A.R.S. § 42-12151.

In early 2016, NP Arizona received an initial Agricultural Use Notice of Value for each of the Subject Parcels for tax year 2017. Thus, NP Arizona believed that the agricultural use of the Subject Parcels continued to be recognized by the Assessor. However, because of NP Arizona’s inadvertent and technical failure to file a new Application for Agricultural Use, the Subject Parcels were later re-assessed as non-agricultural for tax year 2017 and a new Notice of Value was subsequently issued for each of the Subject Parcels. The Re-Assessments and the new Notices of Value significantly increased the Full Cash Values and the Limited Cash Values of the Subject Parcels.

Unfortunately, the new and revised Notices of Value were not received by NP Arizona. When the revised Notices were sent, NP Arizona was in the process of relating its offices and were not forwarded to the new office. The Revised Notices were apparently returned to Cochise County by the U. S. Post Office. By the time NP Arizona actually received notice of the Re-Assessments in 2017, the time to appeal for tax year 2017 had expired.

NP Arizona then filed an Application for Agricultural Use for the Subject Parcels and also appealed the Notices of Value for the Subject Parcels for tax year 2018, along with related parcels, to the Cochise County Assessor. In considering the appeal for tax year 2018, the Cochise County Assessor recognized that the Subject Parcels continued to be used as part of a commercial pecan-growing operation after NP Arizona’s purchase. The Cochise County Assessor adjusted the classification and assessment of the Subject Parcels for tax year 2018 based on and, therefore, affirmed the actual and continuous use of the Subject Parcels for agricultural purposes through at least 2017.

Because the time for a direct appeal had expired, NP Arizona filed a Notice of Claim, pursuant to A.R.S. §§ 42-16251 and 42-16254, to correct the error in the Re-Assessments of the Subject Parcels for tax year 2017 as non-agricultural real property.

II. NP ARIZONA IS ENTITLED TO RELIEF UNDER A.R.S. § 42 16254.

NP Arizona’s Notice of Claim specifically requested the correction of an “error” in the re-classification, re-assessment, and increased values of the Subject Parcels as non-agricultural real property for tax year 2017. The ultimate issue is not the use of the Subject Parcels, but whether NP Arizona’s inadvertent and technical failure to report the Subject Parcels as agricultural,¹ an obligation and duty imposed by A.R.S. § 42-12152, may be corrected as an error as defined in A.R.S. § 42-16251.

¹ This failure was technical because, as already noted, the original Notices of Value for tax year 2017, issued in early, 2016, were based on the agricultural

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NP Arizona's Notice of Claim was submitted pursuant to A.R.S. § 42 16254(A), which states, in pertinent part:

If a tax payer believes that his property has been assessed improperly as the result of a property tax error, the tax payer shall file a notice of claim with the appropriate tax officer

What constitutes as an error for purposes of a notice of claim is defined by § 42-16251. Pursuant to subsection 3 of that statute, an "error" includes the "misreporting or the failure to report property if a statutory duty exists to report the property." A.R.S. § 42-16251(3)(d). Error is also alternatively defined as "[a]n incorrect designation or description of the use or occupancy of property or its classification pursuant to Chapter 12, Article 1 of this title."

This Notice of Claim is submitted, consistent with A.R.S. §§ 42-16251 and 42-16254. The Re-Assessments, and the corresponding increased values reflected in the revised Notices of Value, resulted from NP Arizona's failure to comply with its duty, pursuant to A.R.S. § 42-12152, and report the continued agricultural use of the Subject Parcels. The relief sought by NP Arizona's Notice of Claim is consistent with the remedial and equitable intent of this statute. *S. Point Energy Ctr., LLC v. Arizona Dep't of Revenue*, 241 Ariz. 11, 15, ¶ 14, 382 P.3d 1226, 1230 (App. 2016) (error-correction statutes should be interpreted consistent with and "true to the remedial intent of the error-correction statutes."); *Pima Cnty. Assessor v. Ariz. State Bd. of Equalization*, 195 Ariz. 329, 336, ¶ 26, 987 P.2d 815, 822 (App. 1999) It is also consistent with the similar intent expressed in 42-12353(B), which permits an appeal from the classification and assessment of property as non-agricultural "regardless of whether the owner or agent filed an [agricultural use] application form."

In addition, this requested correction is not subject discretion, opinion or judgment, it is instead based on the actual, undisputed and objectively verifiable use of the Subject Parcels before, during and after 2017, rather than on the technical failure to file a new Application for Agricultural Use.

The correction for each of the Subject Parcels requested by this Notice of Claim is based on the determination for each such parcel by the Cochise County Assessor for tax year 2018. The correction for each of the Subject Parcels for tax year 2018 and the corresponding adjustment requested for tax year 2017 are set forth in Attachment 1 and, by this reference, incorporated herein.

III. CONCLUSION

The Subject Parcels have unquestionably been used as part of a commercial pecan-growing and processing operation for many years. This is reflected in the both

use of the Property. The Re-Assessments were not issued until substantially later in 2016, at a time when NP Arizona was relocating its offices.

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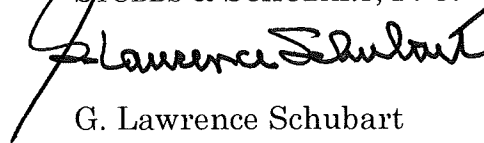
long standing classification of the Subject Parcels as agricultural real property and confirmed by the fact the Subject Parcels were acquired in late 2015 by NP Arizona to provide pecans to a national food company.

NP Arizona satisfies the requirement of both A.R.S. §§ 42-16251 and 42-16254. The error in this situation was based on NP Arizona's failure to report the property in accordance with the statutory obligation imposed by A.R.S. § 42-12152. For these reasons, the corrections requested by this Notice of Claim are proper and should be approved.

Accordingly, NP Arizona requests that the excess taxes paid for tax year 2017 be applied to satisfy real property taxes that become due for the Subject parcels spread over the next three years (1/3 of the overage used each year applied against current taxes).

Very truly yours,

STUBBS & SCHUBART, P. C.

A handwritten signature in black ink, appearing to read "G. Lawrence Schubart", is written over the typed name. The signature is fluid and cursive.

G. Lawrence Schubart

GLS/mr

cc: Assessor, Cochise County (via email)