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**ASSESSMENT APPEALS BOARD  
FOR THE COUNTY OF SACRAMENTO**

**IN RE: APPEAL OF WALMART STORES,  
INC. AND SAM'S REAL ESTATE  
BUSINESS TRUST**

**APPEAL NUMBERS: 15-01097 & 15-  
01099**

**COUNTY OF SACRAMENTO'S  
FINDINGS OF FACT**

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**Hearing Dates: June 25-27, 2019  
Time: 9:00 a.m.**

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1 **I. INTRODUCTION**

2 The hearing on the assessment appeals of Walmart Stores, Inc. and Sam’s Real Estate  
3 Business Trust (“Applicant” or “Walmart”) occurred on June 25 through 27, 2019 before the  
4 Sacramento County Assessment Appeals Board. Both appeals are taken under Proposition 8 and  
5 pertain to tax year 2015-2016.

6 The hearing took place before Board members Mahnaz Khazari, Maurice Thomas, and  
7 Gordon Egan. Attorney C. Stephen Davis appeared on behalf of Walmart. The Applicant’s  
8 witnesses were as follows: Dane Anderson, MAI, Director of Situs RERC; and Stephen D.  
9 Roach, MAI, President and Principal of Jones, Roach & Caringella, Inc.

10 Deputy County Counsel Keith Floyd appeared on behalf of the Sacramento County  
11 Assessor (“Assessor”). The County’s witnesses were as follows: Peter F. Korpacz, MAI,  
12 Founder & President of Korpacz Realty Advisors, Inc.; Larry Grose, Chief Appraiser of the  
13 Sacramento County Assessor’s office; Sacramento County Supervising Appraiser Shannon  
14 Heredia; Sacramento County Senior Appraiser Frank Colwell; and Sacramento County Senior  
15 Appraiser Linda Cogburn.

16 Oral and documentary evidence was presented at the hearing by both parties. In addition  
17 to being video recorded, the hearing was transcribed by the Applicant’s selected reporter as  
18 permitted under California Board of Equalization Property Tax Rule 12(c) and Local Rule 6, and  
19 agreed to by the parties. Walmart’s offered exhibits were marked in two volumes as Applicant’s  
20 Exhibits 1 through 43 (with Exhibit 42 intentionally omitted). The County’s offered exhibits  
21 were marked as Assessor’s Exhibits A-1 through A-15. The Board took the matters under  
22 submission at the conclusion of the hearing and requested both parties to submit proposed  
23 findings of fact by September 4, 2019. Being fully advised, the Board now makes the following  
24 Findings of Fact. These Findings of Fact are based upon the Board’s consideration of all  
25 relevant evidence in the record. References to specific exhibits or testimony do not mean the  
26 Board did not consider or weigh other supporting or contrary exhibits or testimony offered by  
27 Walmart or the Assessor.

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1     **II.     SUMMARY OF THE APPEALS**

2             The summary of the parties’ legal arguments and respective appraisal presentations  
3     which follow is provided in the order they were given at the hearing. Both appeals are taken  
4     under Proposition 8. As such, Walmart bears the burden of proof and made its presentation first.  
5     (TR. Vol. 1: 19.)

6             **A.     The Subject Properties**

7             These appeals involve two separate owner-occupied, large discount department store  
8     (“big box”) properties. Both of the subject properties were developed by Walmart and have been  
9     continuously occupied and operated by it to the present day.

10            **1. Auburn Boulevard Walmart Property**

11            Assessment Appeal #15-01099 is an appeal of the 2015 assessment of the property  
12     located at 7010 Auburn Boulevard, Citrus Heights (APN 211-0870-002-0000). The Auburn  
13     Boulevard location features a 141,279 square foot Walmart Supercenter first generation big box  
14     store. The building was constructed in 2007 for the Supercenter and has been in continuous  
15     operation since then. The store was remodeled and updated in 2014. It includes a full service  
16     grocery store with bakery and deli and a fast food restaurant. The Supercenter is part of a larger  
17     shopping center which features good visibility along Auburn Boulevard.

18            The Assessor concluded the 2015 Proposition 8 value of the Auburn Boulevard Walmart  
19     property is \$21,835,000. Walmart claims the value should be \$10,035,000.

20            **2. Power Inn Road Sam’s Club Property**

21            Assessment Appeal # 15-01097 is an appeal of the 2015 assessment of the property  
22     located at 8250 Power Inn Road, within the unincorporated area of Sacramento County (APN  
23     115-01030-055-0000). The Power Inn Road location features a 138,561 square foot Sam’s Club  
24     first generation big box store. The building was constructed in 2009 for the Sam’s Club, which  
25     has been in continuous operation since its opening. The location is adjacent to Highway 99 and  
26     has strong visibility from both the highway and Power Inn Road. The Sam’s Club includes a tire  
27     center, prepared food sales area, a gasoline station, and five loading docks.

28            The Assessor concluded the 2015 value of the Sam’s Club property is \$21,500,759.

1 Walmart contends the value should be \$10,745,000.

2 In the interest of time and reflective of the similarity of the issues involving the subject  
3 properties, both Walmart and the Assessor focused their valuation presentations primarily on the  
4 Auburn Boulevard Walmart store. Differences in the two locations and necessary appraisal  
5 adjustments for the Sam's Club on Power Inn Road were noted in the hearing testimony of both  
6 Walmart's and the Assessor's witnesses.

7 **B. Issues Presented**

8 Walmart raised two primary legal issues in its appeals: 1.) Whether the term "fee simple  
9 unencumbered" as used in the pertinent Tax Rules of Title 18 California Code of Regulations,  
10 Division 1 ("Tax Rules") and Assessors' Handbook sections requires that the currently occupied  
11 and operating subject properties should be assessed as though vacant; and 2.) Whether the lease  
12 of big box properties by credit or "investment grade" tenants (such as Walmart, Target, Home  
13 Depot, Lowe's, etc.) represents an intangible asset value not subject to taxation under Revenue  
14 and Taxation Code section 212(c). Both issues were addressed in the appeal hearing  
15 introductions by Walmart and the Assessor.

16 **1. Valuing as Vacant Issue**

17 Walmart's principal argument is that the subject properties must be assessed as though  
18 vacant, regardless of their current operating status. (TR 1: 22.) In support of this claim,  
19 Walmart's counsel began his introduction by highlighting the second sentence of Property Tax  
20 Rule 2(a), which states:

21 When applied to real property, the words "full value", "full cash value", "cash  
22 value", "actual value" and "fair market value" mean the price at which the  
23 unencumbered or unrestricted fee simple interest in the real property (subject to  
any legally enforceable governmental restrictions) would transfer for cash or its  
equivalent under the conditions set forth in the preceding sentence.

24 According to Walmart's view, a lease is an encumbrance that cannot be considered when  
25 valuing a fee simple interest. Walmart's counsel also quoted from State Board of Equalization  
26 Assessors' Handbook ("AH") Section 501, page 34, that: "The property tax appraiser, with few  
27 exceptions, must estimate the fair market value of the unrestricted fee simple estate,  
28 unencumbered by liens or leases, based on the highest and best use of the property." (TR 1: 27,

1 Ex. 2: 6.) Continuing to AH Section 502, page 6, Walmart noted the Board of Equalization's  
2 guidance that: "With few exceptions, an appraisal for California property tax purposes involves  
3 the valuation of the entire fee simple estate unencumbered by any private interests (e.g., leases,  
4 liens, easements, etc.)." Although not expressly stated in the Tax Rules, Walmart's  
5 interpretation of the foregoing provisions is that the State Board of Equalization treats a lease as  
6 a form of encumbrance that must be disregarded. (TR 1:28, Ex. 2: 8.)

7 With respect to the income approach to value, Walmart similarly interprets Tax Rule 8 to  
8 require the property tax appraiser to assume there is no lease. Rule 8(d) states when valuing  
9 property encumbered by a lease, "the net income to be capitalized is the amount the property  
10 would yield were it not so encumbered, whether this amount exceeds or falls short of the contract  
11 rent and whether the lessor or the lessee has agreed to pay the property tax." (TR 1:29-30, Ex.  
12 2:10.)

13 Turning to the sale comparison approach to value, Walmart noted that under Tax Rule  
14 4(b)(2), when appraising "an unencumbered fee interest", the appraiser must:

15 convert the sale price of a property encumbered with a lease to which the property  
16 remained subject to its unencumbered-fee price equivalent by deducting from the  
17 sale price of the seller's equity the amount by which it is estimated that the lease  
18 enhanced that price or adding to the price of the seller's equity the amount by  
19 which it is estimated that the lease depressed that price.  
(TR 1:30-31, Ex. 2:11.)

20 Finally, Walmart quoted from AH Section 502, page 38 that: "If the subject or a  
21 comparable property is encumbered with a lease that enhances the sale price of the property-the  
22 typical example of such enhancement being a property leased at a rental rate above the current  
23 market rent-an estimate of the amount of this enhancement must be deducted from the sale  
24 price." (TR 31-32; Ex. 2:21.)

25 In response, counsel for the Assessor provided the County's position that no existing  
26 California authority states that when considering fee simple value an existing lease must be  
27 disregarded. Additionally, no California authority states that currently operating, owner-  
28 occupied commercial must be assessed as if vacant. Nor is there any special rule for big box  
properties as compared to any other type of occupied property such as office buildings or

1 apartment complexes. Instead, the importance of reading the full context of the Tax Rules and  
2 Assessors' Handbook sections demonstrates that, "fee simple unencumbered" for assessment  
3 purposes actually means that, rather than disregard a lease entirely, adjustments must be made to  
4 properties subject to a lease in order to compare them to owner-occupied properties. A lease is  
5 simply one type of encumbrance mentioned in the Tax Rules and AH sections for which  
6 adjustments are recognized. (TR 1:35-38.)

7 In support of its position, the Assessor included in its exhibits additional portions of the  
8 Tax Rules and Assessors' Handbook sections which Walmart chose not to mention or highlight.  
9 For example, regarding whether to value the subject properties as vacant question, the Assessor  
10 included AH Section 502, page 11, to show that even assuming the subject properties are limited  
11 use properties, "[i]f the appraiser determines that the current use of a limited-market property is  
12 the highest and best use and that this use is likely to continue, it is appropriate to consider the  
13 current use value (i.e., the value of the property based upon its current use) as the property's  
14 market value." (Ex. A-3:11.)

15 With respect to the income approach to value the Assessor provided Tax Rule 8(e), which  
16 states that both recently derived income and recently negotiated rents "of the subject property  
17 and comparable properties should be used in estimating the future income, if in the opinion of  
18 the appraiser, they are reasonably indicative of the income the property will produce in its  
19 highest and best use under prudent management." (Ex. A-3:9.) The Assessor also provided AH  
20 Section 502 to give context to Rule 8(e) regarding the ability of an appraiser to compare income  
21 producing owner-occupied properties with leased properties subject to proper adjustments. AH  
22 Section 502, page 69 states that: "In the case of owner-occupied properties, rental income can  
23 often be imputed by reference to rental data from comparable properties." (Ex. A 3:11.)

24 Under the sales comparison approach to value, the Assessor's exhibits highlighted Tax  
25 Rule 4(d) which requires allowances to be made as the appraiser deems appropriate for  
26 differences between a comparable property at the time of sale and the subject property on the  
27 valuation date, with respect to physical attributes, location, legally enforceable restrictions, and  
28 income the properties are expected to produce. (Ex. A-3:6.) The Assessor also highlighted the



1 fourth paragraph on page 34 of AH Section 501, which notes that since the law requires an  
2 appraisal for assessment purposes be based on the unencumbered fee simple interest - with  
3 respect to the sale price of the subject or comparable properties, “where contract rents differ from  
4 current market rents- must be adjusted in order to reflect the market value of the fee simple  
5 interest.” (Ex. A-3:19.)

## 6 **2. Credit Tenant Leases as an Intangible Asset Claim**

7 The related second issue raised by Walmart is that a lease to a credit or investment-grade  
8 tenant enhances the value of the property and is therefore an intangible asset. Under Revenue  
9 and Taxation Code section 212(c):

10 Intangible assets and rights are exempt from taxation and, except as otherwise  
11 provided in the following sentence, the value of intangible assets and rights shall  
12 not enhance or be reflected in the value of taxable property. Taxable property may  
13 be assessed and valued by assuming the presence of intangible assets or rights  
14 necessary to put the taxable property to beneficial or productive use.

15 Walmart did not cite to any authority that a lease to a credit tenant should be considered  
16 an intangible asset.

17 The Assessor responded in its introduction that Walmart’s view on this issue only reflects  
18 its unsupported belief. No legal authority refers to a lease to a credit tenant as an intangible asset  
19 not subject to tax. The Assessor noted an example of what constitutes an intangible business  
20 asset is contained in the case cited by Walmart in its hearing brief with respect to the burden of  
21 proof on this issue – *DFS Group, L.P. v. County of San Mateo* (2019) 31 Cal.App.5th 1059.  
22 That case involved an exclusive lease held by a business to operate the only duty-free store in the  
23 international terminal of the San Francisco International Airport. The court held that the value  
24 attributable to the exclusive portion of the lease constituted an intangible asset that had to be  
25 separated from the rest of the lease which remained subject to assessment. According to the  
26 Assessor, the value of an exclusive lease or of the particular goodwill value of a business is an  
27 intangible asset because of its unique nature. In contrast, a lease of a first generation big box  
28 property similar to the subject properties just reflects the reality of the market for leases of that  
type. Accordingly, in the Assessor’s view, such leases are not unique to any particular individual  
property and are thus not intangible assets. (TR 1:43-45.)

1 **III. THE APPEAL PRESENTATIONS**

2 **A. Walmart’s Presentation**

3 **1. Dane Anderson and RERC Big Box Study**

4 Walmart’s first witness was Dane Anderson, MAI, and Director of Situs Real Estate  
5 Research Corporation (“RERC”). RERC provides real estate survey and analysis information  
6 and reports to approximately 1,700 real estate related subscribers. (TR 1:47-50.) As part of its  
7 exhibits, Walmart included SERC’s “Big Box Transaction Research” report, dated June 2019.  
8 (Ex. 4.) and “IPT Sponsored Research Big Box Valuation Methodology, Sale Transaction  
9 Analysis, and Market Participant Survey.” (Ex. 33.) “IPT” is an acronym for the Institute for  
10 Professionals in Taxation.” IPT includes a Walmart executive as one its 2018-2019 officers.  
11 (Ex. A-15.) IPT engaged RERC to assemble research on big box property valuation issues  
12 involving national big box sales transactions during 2010 through 2018. (TR 1: 55-57.)

13 Mr. Anderson testified that the fee simple median sales price per square foot of analyzed  
14 big box properties was \$34.40, versus leased fee property values of \$109.20 per square foot. He  
15 attributed the difference in prices to the leases in place. (TR 1:70-71.) Mr. Anderson further  
16 testified the RERC research found that deed restrictions which prohibited future owners from  
17 conducting the same type of business on big box properties over 50,000 square feet did not have  
18 an impact on the sale price. (TR 1: 75-78, 86.)

19 To accommodate Mr. Anderson’s schedule, cross-examination by the Assessor was  
20 permitted immediately following his testimony. Chief Appraiser Larry Grose noted the research  
21 really represents a study of vacant versus occupied properties. Additionally, given the claimed  
22 600 hours of time spent developing the RERC Big Box Transaction Research, less than an hour  
23 on average would have been spent analyzing the 740 total sales, which was reflected in the lack  
24 of specific property identification or sales information in the report. Mr. Anderson  
25 acknowledged that RERC did not have the actual leases of the 375 leased properties or  
26 physically inspect any of them. (TR 1: 89-95.)

27 In response to questions from the Assessor’s counsel, Mr. Anderson acknowledged the  
28 RERC study did not analyze the difference in cost between developing a new big box location

1 and purchasing an existing property that was not subject to any future use deed restrictions. (TR  
2 1:96-100.) Further, the research did not include information to indicate which, if any, of the 43  
3 deed restricted sales identified in Exhibit 33 were Walmart or Sam’s Club locations. (TR 1:106-  
4 107.) It was also pointed out that while the RERC report contained in Exhibit 33 contained  
5 purported sample deed restriction language neither the sample nor any other deed restriction  
6 language was provided by RERC to any of the survey participants. Thus, while the RERC  
7 research sample language is similar to a typical Walmart deed restriction, the report gives no  
8 insight as to the effect such actual language might have on the actual sale prices or marketing  
9 time of any of the sales used in the report. (TR 1:108-115, 127-128.)

10 Mr. Anderson also acknowledged the study did not take into account what potential  
11 buyers prohibited from purchasing a property encumbered with deed restrictions might pay for  
12 such a property if they were not so excluded. In his opinion, there is no way to measure such a  
13 difference. (TR 1:98-99.)

## 14 **2. Stephen Roach Testimony**

15 Stephen Roach, MAI, testified regarding the appraisals of the subject properties he  
16 prepared on behalf of Walmart (Exhibits 8 and 9.) Mr. Roach is the president and principal of  
17 the real property appraisal firm of Jones, Roach & Caringella. He has been appraising properties  
18 for 40 years and has held the MAI designation since 1986. These appeals involve his first  
19 appraisals of commercial big box properties that he could recall. (TR 2:256.)

20 Mr. Roach provided testimony supporting his finding that the value of leased commercial  
21 properties containing big box stores has increased dramatically over the last 20 years due to the  
22 presence of real estate investment trusts (“REITs”) and institutional investors purchasers who  
23 view such properties as financial assets. (TR 1: 138-144.) He then testified that the definition of  
24 “fee simple estate” contained in AH Section 502 (Ex. 7:2.) is identical to the definition given in  
25 “The Dictionary of Real Estate Appraisal” published by the Appraisal Institute. (TR 1:147.) Mr.  
26 Roach further provided his understanding that the pertinent Tax Rules require that a fee simple  
27 estate be considered as “free of a lease.” (TR 1: 148-149.)

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**a. The Income Approach**

Mr. Roach did not use the income approach to value in either of his appraisals. He determined the approach could not be utilized based on an analysis of a former Sam’s Club property located in North Natomas (“Natomas property”). Walmart developed the Natomas property in 2007 and closed it in January 2010. The Natomas property was sold by Walmart to an investor in 2011. In 2012, the investor sold the property to Ashley Furniture, which subsequently divided the existing building so that approximately half would be used by Ashley and half leased to Burlington Coat Factory. Based on his analysis of the North Natomas, property Mr. Roach testified he could not do an income approach, because it would be highly speculative. An appraiser could not know at the time of the 2011 sale to the investor what tenant might eventually occupy the property, nor whether it could be leased or sold to a single-user or divided for multiple users. (TR 1: 156-162.)

In response to a question from Chairperson Egan, Mr. Roach testified he did consider the possibility of a big box competitor that is not currently in the Sacramento market having an interest in the North Natomas market, as well as Walmart. In Mr. Roach’s view, such a competitor or Walmart would only have to “outbid the next highest bidder.” (TR 1:164-166.)

**b. The Cost Approach**

Mr. Roach used five comparable land sales to support his land value conclusion under the cost approach. (Ex. 15.) He determined the fair market value of the Auburn Boulevard property land was \$9.50 per square foot, as compared to the \$10.75 per square foot determination of the Assessor (TR 1:172, Ex. 8:38 & A-2:37.) Mr. Roach’s land value for the Power Inn Road property was \$11.00 per square foot as compared to the Assessor’s value of \$12 per square foot. (Exhibit 9:38; A-1:37.)

Using reported construction bids from Walmart, Mr. Roach analyzed the replacement costs of the discount store, grocery area, garden center area, and site improvements to arrive at an estimated total of \$11,995,401 for the Auburn Boulevard Walmart property. Adding the calculated land value of \$4,784,000, the total cost approach value of the Auburn Boulevard property before depreciation was \$16,779,401. (Ex. 8: 44.). Mr. Roach estimated the

1 replacement cost of the Power Inn Road property was \$10,252,764. Adding the \$7,000,000 land  
2 value, his total cost approach value of the Power Inn Road location before depreciation was  
3 \$17,252.764. (Ex. 9:44.)

4 Following the cost studies, Mr. Roach analyzed the effect of depreciation on the property  
5 improvements. He noted that Marshall Valuation Service does not account for “atypical  
6 functional obsolescence.” (TR 1:185-186.) As part of the analysis, he reviewed two sales of  
7 former Sam’s Club properties: the aforementioned Natomas property sold by Walmart in 2011  
8 and an additional property in La Quinta, Riverside County, built by Walmart in 2007 and sold in  
9 January 2011. Both properties were vacant and subject to deed restrictions at the time of sale.  
10 Utilizing the market extraction method, Mr. Roach concluded accrued depreciation for the  
11 occupied Auburn Boulevard property of approximately 55 percent, (TR 185-196: Ex. 8: 42-44.)  
12 and 60 percent for the Power Inn Road property (Ex. 9:44.) The depreciation left a total land and  
13 improvements cost value of \$10,180,000 for the Auburn Boulevard property and \$11,470,000 for  
14 the Power Inn Road property.

15 Chairperson Egan observed that the former Sam’s Club in North Natomas appeared to be  
16 an investment mistake. In response to Chairperson Egan’s comments that the closed Sam’s Club  
17 properties in North Natomas and La Quinta represented locations essentially rejected by  
18 Walmart, Mr. Roach testified he acknowledged the issues with those properties, but he needed to  
19 go beyond the Marshall Valuation depreciation calculation to show functional obsolescence.  
20 (TR: 189-194.)

### 21 **c. The Sales Comparison Approach**

22 Mr. Roach used six comparable sales under the sales comparison valuation approach.  
23 All of his comparable sales consisted of vacant, formerly owner-occupied commercial big box  
24 properties. Mr. Roach quoted from page 406 of *The Appraisal of Real Estate*, 14th Edition that:  
25 “If the sale of a leased property is to be used as a comparable sale in the valuation of the fee  
26 simple estate of another property, the comparable sale can only be used if reasonable and  
27 supportable market adjustments for the differences in rights can be made.” He therefore did not  
28 include any occupied sales or sales subject to a lease in his comparables, based on his conclusion

1 that the necessary adjustment would be very large speculative. (Ex. 8:45.) The vacant sales he  
2 did use are summarized in a table on page 46 of the Roach appraisals and Walmart Exhibit 17.

3 Sale 1 is a big box property in Bakersfield, California built in 1982 and occupied by  
4 Target until 2010. Target sold the property with deed restrictions in October 2014 after it had  
5 been vacant for approximately 4 years.

6 Sale 2 was a former Kmart site in Colton, California built in 1991. The property had  
7 been vacant for 10 years when it sold in October 2013.

8 Sale 3 was an 86,479 square foot former Kmart site in the Antelope section of  
9 Sacramento County, built in 1991. The property was sold in January 2013.

10 Sale 4 was the previously mentioned former Sam's Club property in North Natomas. The  
11 property was developed by Walmart in 2007 and sold with 10 year deed restrictions to an  
12 investor in 2011, who sold it to Ashley Furniture in 2012. The deed restrictions prohibit a  
13 wholesale distribution store similar to Sam's Club, a discount department store over 50,000  
14 square feet, and a grocery or supermarket larger than 35,000 square feet.

15 Sale 5 was a former Kmart built in Fresno, California in 1992. It was sold to Walmart  
16 without deed restrictions in February 2012. After making improvements, Walmart relocated an  
17 existing store across the street into the Sale 4 location.

18 Sale 6 was the former Sam's Club location in La Quinta, California previously discussed  
19 under the cost approach. This property has an operating Walmart in the same shopping center.  
20 Sale 6 sold in January 2011 with 25 year deed restrictions regarding the same uses prohibited on  
21 the North Natomas property. (TR 1:197-202.)

22 Mr. Roach made adjustments for the three properties built in the 1980s and 1990s. He  
23 also made adjustments for location, size and access. Finally, he included a 5% adjustment for  
24 the comparable properties that were subject to deed restriction – sales 1, 4, and 6. (TR 1:207-  
25 208; Ex. 8:52, Ex. 9:52.) He concluded that under the sales comparison approach the 2015 value  
26 of the Auburn Boulevard Walmart was \$9,890,000 and the value of the Power Inn Road property  
27 was \$10,390,000.

28 Chairperson Egan commented that while Mr. Roach used the word "unencumbered"

1 when testifying about Walmart property sales, such sales were actually deed restricted. Mr.  
2 Roach did not respond why he believed adjustments for properties encumbered with deed  
3 restrictions (or any other non-lease encumbrance) are apparently permitted under the Tax Rules,  
4 while properties encumbered with existing leases can't be considered under Walmart's  
5 interpretation of the Rules and Assessors' Handbook sections. (TR 1:212-213.)

6 **d. Reconciliation and Conclusion**

7 Reconciling his cost and sales comparison approaches, Mr. Roach determined the value  
8 of the Auburn Boulevard property to be \$10,035,000 and the Power Inn Road property to be  
9 \$10,745,000. (Ex. 8:53-54, Ex. 9:52-53.)

10 **B. Assessor's Cross-Examination**

11 With respect to the cost approach, the Assessor noted that Mr. Roach considered the  
12 Auburn Boulevard Walmart property to be of low to average quality under the Marshall  
13 Valuation Service rankings. In so doing, Mr. Roach did not acknowledge in his appraisal that  
14 the property had package A/C which would have boosted the quality ranking to average or good,  
15 resulting in a significantly higher cost approach value. (TR 2:293-294.) Nor did he  
16 acknowledge the existence of package A/C in the Power Inn Road property and corresponding  
17 boost to the quality ranking and value. (TR 2:300-301.) The Assessor also pointed out that the  
18 actual building permit fees collected for the Sam's Club property were 15 percent higher than the  
19 fees estimated by Mr. Roach using Marshall Valuation Service. The actual permit fees cited by  
20 the Assessor would have added about \$1,700,000 to Mr. Roach's cost estimate, which he  
21 conceded would have made his improvement value significantly higher. (TR 2:303-306.)

22 Mr. Roach acknowledged that the two vacant, deed restricted former Sam's Club  
23 locations used in his depreciation analysis sold in 2011 and 2012, a time of inferior market  
24 conditions resulting from the great recession, as compared to the 2015 date of value in these  
25 appeals, which his market extraction analysis did not account for. (TR 2:308-315.)

26 The Assessor also supplied information to demonstrate that Mr. Roach's comparable  
27 sales numbers 1, 2, 3, and 6 were all vandalized at the time of the noted sale dates. (TR 2:319-  
28 321.) Mr. Roach acknowledged that his adjustments for four of his comparable properties were

1 85 percent, 75 percent, 70 percent and 75 percent, despite the guidance in AH Section 502, page  
2 53 that states the most reliance “is typically placed on the comparable sales that require the  
3 fewest adjustments and/or the smallest gross dollar adjustment.” (TR 2:324-325.)

4       Regarding deed restrictions, the Assessor quoted from *The Appraisal of Real Estate* 14th  
5 Edition, page 406, that: deed restrictions on future users of the property are the type of title or  
6 use restriction which “may limit the transaction’s use to a general market indicator or render the  
7 transaction unusable for direct market comparison because the real property rights conveyed are  
8 less than fee simple.” (Ex. A-3:27.) Mr. Roach was not able to determine how many  
9 prospective buyers may have walked away from his deed restricted sale comparison properties.  
10 (TR 2:339.)

11       In addition to the fact that the former Sam’s Club North Natomas property relied on by  
12 Mr. Roach in his income approach study and cost and comparable sales valuations sold at the  
13 bottom of the recession, the Assessor provided information that the Natomas market was subject  
14 to an effective new building moratorium imposed by the Federal Emergency Management  
15 Agency from December 2008 through June 2015, due to flooding concerns. The Natomas area  
16 had been rapidly growing at the time the Sam’s Club was developed, with thousands of new  
17 homes planned. As a result of the moratorium and recession, all new building essentially ceased  
18 and did not resume until the flood-related restrictions were lifted in June 2015 – six months after  
19 the date of value in these appeals. (TR 2:330-331, Ex. A-7:72.)

#### 20       **C. Assessor’s Rebuttal – Testimony of Peter Korpacz**

21       The Assessor’s rebuttal relied primarily on the testimony and exhibits of Peter F.  
22 Korpacz, MAI, CRE. Mr. Korpacz has been an appraiser for 56 years. He is the founder and  
23 president of Korpacz Realty Advisors, where he currently performs appraisals, cap rate and  
24 methodology studies, appraisal reviews and consultant work. (TR 2:362-366.) Mr. Korpacz’s  
25 assignment for the Assessor in this matter was to provide reviews of the appraisals produced by  
26 Mr. Roach for Walmart (Ex. A-10 and A-11.)

27       Mr. Korpacz was on the committee that changed the definition of “fee simple estate” in  
28 “The Dictionary of Real Estate Appraisal” in 1984. In that year, the phrase “unencumbered by



1 any other interest or estate” was added to the definition for the first time. He further testified that  
2 it was not until about 10 years ago that the term began to be interpreted to mean not subject to a  
3 lease – something the drafting committee never intended. (TR 2:376-377. Ex. A-15.) Thus, the  
4 fee simple definition was meant as an ownership term, not a value term. Accordingly, property  
5 encumbrances such as leases, liens and utility easements can impact value, but don’t take away  
6 from ownership. (TR 2:407.)

7 Mr. Korpacz further testified that big box properties are not limited use properties, as  
8 shown by the hundreds of sales provided in the RERC report and data he gathered in Assessor  
9 Exhibit 12, pages 85-113, are not special limited uses. (TR 2:436-438.)

10 Mr. Korpacz also rebutted Walmart’s claim that the Assessor was “inventing a lease” in  
11 its income approach valuation of the subject properties. Instead, the Assessor followed the  
12 accepted appraisal practice of determining what a property would rent for if it were leased, based  
13 on comparable property market rates. (TR 2: 439-440.)

14 With respect to valuing the subject properties as vacant, Mr. Korpacz testified that would  
15 involve a hypothetical condition since the properties are currently occupied and utilized for the  
16 intended use. Mr. Roach did not indicate this hypothetical condition in his appraisal reports.  
17 Additionally, the Roach appraisals used comparable properties that had been vacant for many  
18 years, not simply ones which became vacant on the day the sale finalized. The length of time the  
19 comparable sales used in the Roach appraisals remained vacant affects their condition and value,  
20 and thus comparability to the subject occupied Auburn Boulevard and Power Inn Road  
21 properties. (TR 2:441-443.)

22 Mr. Korpacz further testified as to the unreliability of deed restricted sales. Adjustments  
23 for such sales are very difficult because you don’t know what part of the potential market for a  
24 property never came to the negotiating table because they were excluded from doing so. (TR  
25 2:383, 445.)

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1                   **D. The Assessor’s Presentation**

2                           **1. The Cost Approach**

3                   The Assessor emphasized that the highest and best use of the subject properties is to  
4 continue in their current use as first generation big box stores. The Assessor further noted the  
5 good quality and condition of both properties, including a solar panel addition to the Auburn  
6 Boulevard Walmart, with no visible deterioration or observed functional obsolescence. (TR 3:  
7 475-477, Ex. A-2:13.) It was also documented that the Sacramento market for big box stores  
8 was healthy and expanding as of the January 1, 2015 value date. (TR 3: 478-479, Ex. A-2:15.)  
9 In Sacramento County alone, Walmart constructed five new Supercenters between 2013 and  
10 2017. (Ex. A-3:2.)

11                   The Assessor established a land value of \$5,400,000 for the Auburn Boulevard Walmart,  
12 using a \$10.75 per square foot value. Unlike the appraisals by Mr. Roach, the Assessor did a full  
13 independent verification of the construction costs, utilizing Marshall Valuation Service, physical  
14 site inspections, review of building plans, and building permit fees. Both qualitative and  
15 quantitative adjustments were made to the land sales for the following elements of comparison:  
16 property rights conveyed, financing, conditions of sale, market conditions, location, access, site  
17 area, zoning, and shape/utility.

18                   Building permit fee costs for the Auburn Boulevard Walmart were estimated at 10  
19 percent using actual Walmart data for the Sam’s Club store, as opposed to the 1 to 2 percent  
20 estimated costs in the Walmart appraisals. (TR 3: 487-488.)

21                   The Assessor considered all forms of depreciation in its cost approach valuation of the  
22 subject properties. Given their relatively young age and observed good condition, no adjustment  
23 for functional obsolescence or economic obsolescence was determined to be necessary. The  
24 income and market approaches both suggested values equal to or greater than the Replacement  
25 Cost New Less Depreciation, therefore functional and/or economic obsolescence does not exist.

26                   The Assessor’s estimated cost new for the Auburn Boulevard property, less \$1,400,000  
27 for depreciation was \$16,200,000. The Assessor’s physical depreciation amount represented 9  
28 percent of the property value with no additional depreciation for functional or economic

1    obsolescence, as opposed to the 50 percent depreciation used in the Walmart appraisals. (TR 3:  
2    530-540.) With the added land value, the total value of the Auburn Boulevard property under the  
3    cost approach was \$21,600,000. (TR 3:488-489.) The total value of the Power Inn Road Sam's  
4    Club including land value under the Assessor's cost approach was \$21,400,000. (TR 3:542-  
5    543.)

## 6                                   **2. The Sales Comparison Approach**

7           The highest and best use of the subject properties was identified and supported in the  
8    Assessor's appraisals as the current first generation big box retail store use. The Assessor  
9    observed that as of the appraisal date, both properties were being utilized for their original  
10   intended user and this utilization continues as of the date of these findings. Both properties were  
11   noted to be in good condition with regular maintenance and no observed deferred maintenance.

12           The Assessor considered 168 big box sales. 10 of the 168 sales considered were vacant.  
13   The vast majority of the sales were determined to not be useable because the very large  
14   adjustments necessary for age, poor condition, location, and deed restrictions would make them  
15   unreliable. (TR 3:491-492.) 14 sales were eventually chosen for inclusion in the Assessor's  
16   appraisals. The Assessor's office independently verified the conditions of all 14 sales with  
17   interviews of buyers, brokers, and/or the Assessor's Office where the comparable properties are  
18   located. All 14 sales were considered to be comparable properties based on the principle of  
19   substitution.

20           Both qualitative and quantitative adjustments were performed on the comparable sales.  
21   The elements of comparison included property rights conveyed, market conditions, location,  
22   access, store size, year built/renovated, and condition. (Ex. A-1:41-42; Ex. A-41-42.)

23           Extended discussion focused on comparable sale 4, a big box property in Torrance,  
24   California which contained a Costco with four years remaining on its lease at the time of sale.  
25   Costco did not renew the lease. The property was sold without deed restrictions. The Assessor  
26   made a 42 percent adjustment for the superior Torrance location. (TR 3: 500-503, Ex. A-1: 50-  
27   51; A-2:51-52.)

28           In response to the claim that the subject Walmart could not be converted to a Home

1 Depot or Lowe's because of floor strength, the Assessor provided data to show the floors could  
2 be appropriately strengthened for such uses for about \$6 a square foot. Considering the superior  
3 quality and condition of the subject Walmart property, the Assessor determined a net adjustment  
4 was not needed in this regard. (TR 3:509-511.)

5 The Assessor considered, but did not make any adjustments to the comparables for tenant  
6 improvement allowances because such information is difficult to obtain. Had the information  
7 been available, it likely would have increased the value of the comparable sales because it would  
8 show the tenant spending the allowance to improve the property. (TR 3:518-521.)

9 After adjustments were made to all the comparable sales, they were arranged in a grid to show the  
10 indicated range for the subject properties. A fair market value of \$160 per square foot was estimated for  
11 the Auburn Boulevard property and \$155 per square foot for the Power Inn Road property. (Ex. A-2:41,  
12 A-1:42.)

### 13 **3. The Income Approach**

14 The Assessor's income approach followed the AH Section 502 guidance on page 69, that  
15 "In the case of owner occupied properties, rental income can often be imputed by reference to  
16 rental data from comparable properties." (Ex. A-3:11)

17 The Assessor used eight comparable properties with market rate leases to determine the  
18 rent to be applied to the subject properties. Six of the eight were single-tenant big box stores.  
19 Rent comparable 1 (a Bass Pro Shop), was given little weight after further information was  
20 received on the lease structure. Rent comparable 8 was a recently negotiated ground lease at  
21 \$0.69 per square foot for the land under a Sam's Club store. A blended rent value for the subject  
22 properties of \$0.90 per square foot was used for the Auburn Boulevard property and \$0.85 per  
23 square foot for the Power Inn Road property. (TR 3: 522-526; Ex. A-1:72-89; A-2: 71-88.)

24 Overall rates from the 14 market sales was compared to data from Price Waterhouse  
25 Cooper's Investor Survey 4th Quarter 2014 and The Boulder Group February 2015 Net Lease  
26 Big Box Report. The Assessor concluded an overall capitalization of 6.75 percent. These figures  
27 resulted in an indicated income approach value of \$22,600,000 for the Auburn Boulevard  
28 Walmart property and \$20,940,000 for the Power Inn Road Sam's Club. (TR 3:523-525, Ex. A-

1 2:89; A-1:90.)

#### 2 **4. Reconciliation and Conclusion**

3 Reconciling the cost, income, and sales comparison approaches, the Assessor determined  
4 the value of the Auburn Boulevard property to be \$22,000,000, compared to the existing  
5 Proposition 8 value on appeal of \$21,835,000. (TR 3:526-527.) Using the same three  
6 approaches, the Assessor determined value of the Power Inn Road property to be \$22,000,000,  
7 compared to the factored Proposition 13 value of \$20,388,759. (TR 3:543.)

#### 8 **E. Walmart Cross-Examination**

9 Following the Assessor's valuation summaries, Walmart chose to use its cross-  
10 examination time for a discussion between its counsel and Chief Appraiser Larry Grose  
11 regarding the Assessor's approach to appraising the subject properties. Mr. Grose explained the  
12 Assessor's position that market rent can be imputed to the subject properties because they are  
13 currently occupied, maintained and utilized for their intended use as first generation big box  
14 stores. The Assessor's approach in this regard is supported by reading the pertinent Tax Rules  
15 and Assessors' Handbook sections in their totality, as intended, rather than a piecemeal fashion.  
16 (TR 3:546-556.)

#### 17 **F. Walmart Rebuttal**

18 Mr. Roach reviewed the Assessor's comparable sales to show the enhanced value  
19 attributable to the property leases. (TR 3:568-592, Ex. 18.) He also gave his opinion that the  
20 Assessor really only performed one approach to value – the income approach. According to Mr.  
21 Roach, the Assessor picked sales in its sales comparison approach to match its income approach  
22 valuation. (TR 3:600-605.)

23 Mr. Roach also introduced a table of all Walmart sales in the United States for the last  
24 seven years, which he claimed support his appraised values for the subject properties. (TR  
25 3:606-609, Ex. 26.) The information was reportedly provided by Walmart to show the time it  
26 sold the stores and the prices it received. However, the marketing time information for both the  
27 previously mentioned former Sam's Club locations in North Natomas and La Quinta showed  
28 dates of sale a year and a half after the sales by Walmart to investors, which actually reflected

1 when they were later re-sold by the investors. Mr. Roach acknowledged that he had no  
2 information regarding the sales prices, local market conditions, deed restriction impacts, or  
3 original development costs on any of the listed 57 sales outside of California. (TR 3:639-642.)

#### 4 **IV. BOARD ANALYSIS AND RULING**

5 The Board has weighed all of the evidence presented by the parties, both documentary  
6 and oral, and considered the parties' respective arguments. The Board notes it is presumed under  
7 California Property Tax Rule 321 that the Assessor's Office has correctly performed its duties.

8 This is a dispute between Walmart and the Assessor over the proper method to assess  
9 "big box stores." The Assessor values all big box stores uniformly assuming they are rented to  
10 a tenant even if they are owner occupied. Walmart asserts that its ownership structure is  
11 materially different and therefore requires a different appraisal method. Walmart owns its stores  
12 in fee simple. Most other big box stores are leased from real estate investors.

13 Walmart asserts that assuming the store is rented violates California law and  
14 regulations and does not correctly value the store. Walmart's stores are never sold to  
15 investors with Walmart as a tenant and Walmart therefore asserts that its stores must be valued  
16 as if empty on the valuation date.

17 Both the Assessor and the taxpayer here propose valuation methods that assume a  
18 fiction. The Assessor assumes a market rate lease in its valuation whereas the Walmart  
19 assumes a vacant store.

20 We adopt the Assessor's position and find that it is proper to uniformly assume the  
21 presence of a hypothetical market rate lease when assessing the value of an occupied big box  
22 store.

23 We reach this conclusion for several reasons as set forth below. An occupied Walmart  
24 and Sam's Club stores are fundamentally the same land use, building type and occupancy as  
25 other big box stores. Assessing them differently because their ownership structure without  
26 evidence that such structure requires a different appraisal method makes no sense. California  
27 law requires the Assessor to value the property on the lien date as it exists and these stores were  
28 occupied on the lien date.

1           **A. Analysis of the Legal Issues**

2           The analysis of these appeals must begin with a review of the two principal legal  
3 arguments advanced by Walmart to support its asserted lower values of the subject properties.  
4 The dramatic differences in the parties’ respective appraised values of the properties are  
5 primarily attributable to their opposing views of the Tax Rules and corresponding Assessors’  
6 Handbook provisions examined in these matters.

7                           **1. Walmart’s Value as if Vacant Claim Is Not Supported by the Controlling**  
8                           **California Authority or the Evidence.**

9           Walmart emphasized selected portions of Tax Rules 2, 4 and 8, along with corresponding  
10 provisions of Assessors’ Handbook Sections 501 and 502 in support of its claim that the subject  
11 occupied, operating first-generation Walmart and Sam’s Club properties must be assessed as if  
12 vacant. This view rests on the belief that the term “unencumbered or unrestricted fee simple  
13 interest” or “fee simple unencumbered” as used in the Tax Rules must mean that a fee simple  
14 property interest cannot be subject to a lease for assessment purposes. Therefore, leases are an  
15 encumbrance the Tax Rules and Assessors’ Handbook sections purportedly tell the appraiser  
16 must be disregarded when valuing a fee simple property. No published case authority was  
17 provided by Walmart to support this view.

18           The Board notes that the references in Tax Rules 2, 4 and 8 to unencumbered fee interest  
19 are similar to the reference to “unencumbered by any other interest or estate” language contained  
20 in the definition of fee simple contained in The Dictionary of Real Estate Appraisal. Peter  
21 Korpacz testified that the unencumbered language was added to The Dictionary of Real Estate  
22 Appraisal in 1984 without any intention to mean that a property subject to a lease was no longer  
23 a fee simple estate.

24           Moreover, the Tax Rules and Assessors’ Handbook section references to treating fee  
25 simple as unencumbered do not only refer to leases as encumbrances. AH Section 501, page 34,  
26 states that: “The property tax appraiser, with few exceptions, must estimate the fair market value  
27 of the unrestricted fee simple estate, unencumbered by liens or leases, based on the highest and  
28 best use of the property.” AH Section 502, page 6 further provides: “With few exceptions, an

1 appraisal for California property tax purposes involves the valuation of the entire fee simple  
2 estate unencumbered by any private interests (e.g., leases, liens, easements, etc.).” No evidence  
3 was provided to show a distinction or differentiation is made in these sections between lease, lien  
4 or easement encumbrances. Nor was any evidence given of any statement or suggestion in the  
5 Assessors’ Handbook that liens or easements must be disregarded when valuing a fee simple  
6 estate. Walmart apparently did not disregard any liens or easements that encumbered any of the  
7 comparable properties used in its appraisals.

8 It also did not disregard deed restrictions, which are another form of fee simple  
9 encumbrance. Three of Walmart’s six sales used in its sales comparison approach featured deed  
10 restrictions which prohibit acquiring the properties for a competitor discount department store or  
11 large grocery/supermarket. Rather than not use such sales, Walmart’s appraiser made  
12 adjustments for them in the sales comparison analysis. Deed restricted properties were also part  
13 of Walmart’s cost approach valuation and used in its determination not to use the income  
14 approach.

15 Additionally the Tax Rules and Assessors’ Handbook sections do not make any  
16 distinction between types of property uses encumbered by a lease. No special provisions are  
17 made for big box commercial properties that are leased to investment grade tenants. Under  
18 Walmart’s interpretation, owner occupied multitenant office and industrial buildings would also  
19 have to be appraised as vacant properties, even if fully leased and occupied.

20 Under the circumstances, the Board finds that the more reasonable interpretation of the  
21 pertinent Tax Rules and Assessors’ Handbook sections in this regard is contained in the  
22 Assessor’s method of adjusting sales of leased properties to market rent, along with other  
23 necessary adjustments for comparison purposes with owner-occupied properties. Such practice  
24 is expressly recognized in the Assessors’ Handbook. Guidance in this regard is provided on page  
25 69 of AH Section 502, which states that: “In the case of owner-occupied properties, rental  
26 income can often be imputed by reference to rental data from comparable properties.” Under the  
27 sales comparison approach, page 34 of AH Section 501, notes that the law requires an appraisal  
28 for assessment purposes be based on the unencumbered fee simple interest, therefore, with



1 respect to the sale price of the subject or comparable properties, “where contract rents differ from  
2 current market rents- must be adjusted in order to reflect the market value of the fee simple  
3 interest.”

4 Finally, the Board needs to point out that standard appraisal practice for real property is  
5 to use three methods in appraising a real estate asset. The comparable sales approach, the  
6 income approach and the cost approach. The income approach requires the use of a hypothetical  
7 lease as used by the appraiser here.

8 The use of leased big box properties as comparables by the Assessor in its valuations was  
9 thus appropriate.

10 **2. Leases of Big Box Properties Featuring Investment Grade Tenants Are**  
11 **Not an Intangible Asset Exempt From Taxation.**

12 Walmart did not provide any actual evidence in support of its claim that a lease of a big  
13 box property to an investment grade tenant is an intangible asset, exempt from taxation under  
14 Revenue and Taxation Code section 212(c) and therefore not comparable to the properties at  
15 issue here. Given the evidence presented at the hearing, it appears that leases of properties  
16 comparable to the subject properties to investment grade tenants constitutes the normal market.

17 While leased big box stores may be touted by investors as the fundamental equivalent of  
18 grade A corporate bonds they are still real estate investments and Walmart produced no  
19 evidence (other than Mr. Roach’s testimony about how they are looked as investment vehicles by  
20 some market participants) to show that occupied big box properties are something other than real  
21 estate. Its well know that in the market an investor will give greater value to a property occupied  
22 by a credit tenant than one occupied by a non-credit tenant. Indeed, the presence of a credit tenant  
23 may enhance the value of surrounding properties in the eyes of some investors.

24 Because the evidence shows that leases of first-generation big box properties to credit  
25 tenants represents the market for this type of property, the Board finds such leases are not an  
26 intangible assets and the properties with such leases can be comparable to the properties at issue.

27 **B. Analysis of the Appraisals**

28

1 Walmart is essentially seeking to have both of the subject properties valued according to  
2 how an unknown subsequent occupant may use them in the future, utilizing pre-date of value,  
3 recession era sales. In contrast, the Assessor has valued the properties according to their current  
4 occupied, operating highest and best use.

5 The Board finds that both the Auburn Boulevard Walmart and Power Inn Road Sam's  
6 Club properties are occupied by good quality, first-generation big box stores. The properties  
7 have been continuously operated and maintained by the original occupants since they were  
8 constructed in 2007 and 2009, respectively.

9 Walmart interpreted fee simple unencumbered to mean that both subject properties must  
10 be valued as if vacant and available to be leased. This hypothetical assumption in essence  
11 changes the occupancy level from 100 percent utilized or occupied to 100 percent vacant. This  
12 assumption fundamentally skews the appraisals toward lower values, contrary to the guidance in  
13 AH Section 502, page 49, which states: "Occupancy level has a significant effect on market  
14 value. All else being equal, a property at stabilized occupancy is more valuable than a property at  
15 a lower level of occupancy." Section 502 also states, "A property in stabilized condition has  
16 reached the level of utility for which it was designed. For income-producing property, this  
17 generally means stabilized occupancy. Stabilized occupancy is a level of occupancy that is  
18 expected to continue over the remaining economic life of the property." (Ex. A-3:49.)

19 The Board finds the hypothetical assumption that both properties are vacant is factually  
20 incorrect and contrary to California property tax rule and general appraisal theory.

21 With respect to the sales comparison approach, the Board finds the properties used by  
22 Walmart for sales comparison purposes were markedly different than the Auburn Boulevard and  
23 Power Inn Road properties on appeal. All of the comparable properties relied on by Walmart in  
24 its appraisals had been vacant at the time of sale for over a year. Four of the six properties  
25 (comparable sales 1, 2, 3, and 5) were constructed between 1982 and 1992 and considered to be  
26 near the end of their economic lives without upgrades to current standards. Walmart's appraisals  
27 acknowledge these four sales are not very comparable at all with substantial adjustments of 85,  
28 75, 70 and 75 percent. Including these four sales in the market approach of the subject properties

1 with even the low weight given to them by Walmart skews the market approach sharply  
2 downward.

3 Three of the six compared properties had been vacant for years and were heavily  
4 vandalized at their respective sale dates. Three of the properties were also sold with deed  
5 restrictions that prohibited their future use as a large discount department store or supermarket  
6 similar to Walmart or Sam's Club.

7 Walmart's comparable sale 4 had deed restrictions for 10 years and apparently suffered  
8 from inadequate population growth in the North Natomas area due to the effective building  
9 moratorium in effect there from the year after the former Sam's Club opened until June 2015.  
10 When this property sold in 2011, the market had not recovered from the recession and the  
11 moratorium was still in place.

12 Walmart's comparable sale 6 had deed restrictions for 25 years or as long as Walmart  
13 was operational at a nearby location and was heavily vandalized at the time of sale.

14 California law recognizes that deed restrictions provide a "distorted notion of value."  
15 (*Carlson v. Assessment Appeals Bd. 1* (1985) 167 Cal.Ap.3d 1004, 1013.) The Appraisal  
16 Institute also recognizes this effect by concluding that deed restrictions "may limit the  
17 transaction's use to a general market indicator or render the transaction unusable for direct  
18 market comparison because the real property rights conveyed are less than fee simple." (*The*  
19 *Appraisal of Real Estate* 14th Edition, page 406, Ex. A-2:27.)

20 The Board finds that little weight should be given to Walmart's deed restrictions effect  
21 analysis. The RERC report information presented by Dane Anderson did not specifically  
22 identify any properties included in the survey results or provide information regarding the market  
23 conditions affecting their sales. The survey did not ask any of the respondents about the details  
24 of any deed restricted sales, nor provide the respondents with any sample deed restriction  
25 language for comparison purposes.

26 The actual sale of the former Sam's Club property in La Quinta, used as Walmart's  
27 comparable sale 6, documents the real world consequences of deed restrictions on potential  
28 buyers, (Ex. A-7:111.) As this example and the testimony of Peter Korpacz showed, deed

1 restrictions prevent an appraiser from knowing what other potential buyers may have entered the  
2 market or what they would have paid for such encumbered properties. The 5 percent adjustment  
3 given by Walmart for deed restrictions does not adequately reflect this effect.

4 The Board finds the Assessor properly completed three independent approaches to value  
5 under California property tax law. Under the cost approach, the Assessor considered all forms of  
6 depreciation when it valued the Sam's Club and Walmart properties. The Board further finds the  
7 Assessor properly determined that both properties suffered from physical depreciation but  
8 neither property suffered from either functional or economic obsolescence. The Assessor also  
9 completed the income approach utilizing market rental data and market overall rates and investor  
10 surveys. The market approach was completed using comparable market data and utilized two  
11 forms of quantitative adjustment grids and one qualitative adjustment grid. The Assessor made  
12 the necessary adjustments to the 14 comparable sales used in its appraisals to account for market  
13 rent, which the Assessors' Handbook guidance provides can be imputed to non-leased properties.

14 **V. CONCLUSION**

15 Based on the foregoing findings and analysis, the Applicant's appeals are denied with  
16 respect to all issues raised therein. The Assessor's values of \$21,835,000 for the Auburn  
17 Boulevard Walmart property and \$20,388,759 for the Power Inn Road Sam's Club property are  
18 sustained.

19  
20  
21 DATED: *Nov 21, 2019*

22  
23   
24 \_\_\_\_\_  
25 Gordon Egan, Chairperson  
26 Assessment Appeals Board  
27  
28