No. 2014-CI-11636

LOWE'S HOME CENTERS, INC.	*	IN THE DISTRICT COURT
	*	
VS.	*	BEXAR COUNTY, TEXAS
	*	
BEXAR APPRAISAL DISTRICT	*	57th JUDICIAL DISTRICT

No. 2015-CI-13547

LOWE'S HOME CENTERS, INC.	*	IN THE DISTRICT COURT
	*	
VS.	*	BEXAR COUNTY, TEXAS
	*	
BEXAR APPRAISAL DISTRICT	*	166th JUDICIAL DISTRICT

DECISION OF ARBITRATORS

I. FACTS AND PROCEDURAL HISTORY.

In these two lawsuits, Lowe's challenges the District's appraisals of four "Big Box" properties for tax years 2014 and 2015. Lowe's owns and occupies each of the subject properties.

After the cases were mediated without success, the parties agreed to submit the matter to the undersigned panel of arbitrators for an advisory decision. The parties agreed that the panel's decision will be admissible in court, subject to details known to the parties and not relevant here.

The arbitration hearing took place from Monday morning until noon Friday, October 17-21, 2016. There was full examination and cross-examination of witnesses. Thorough expert reports and other exhibits were admitted. The arbitrators asked numerous questions. The parties submitted post-hearing briefs. The panel has studied the statutes and case law, the

expert reports and articles and other exhibits, and the briefs and arguments of counsel.

Lowe's evidence consisted primarily of the expert testimony of Jim Amorin, Brett Harrington, and David Lennhoff (on methodology). Their opinions emphasized comparable properties that were *vacant* big box properties.

The District's evidence consisted primarily of the expert testimony of Joshua Wood. His opinions emphasized comparable properties that were *occupied* big box properties.

The parties agreed there should be limits and boundaries on the panel's decision. They asked that the panel not give them its own appraisal numbers. Instead this was characterized as a "baseball arbitration," in which the panel would choose one side's appraisal figures or the other. The District asked for a decision limited to bottom-line appraisal figures. Lowe's asked for a decision as to which side's methodology is proper. Each side's proposed decisions, submitted after the hearing, consist of suggested findings of fact and conclusions of law. The panel's decision falls within all these boundaries.

II. LOWE'S' ARGUMENT.

Lowe's argues as follows:

(1) An appraiser must value the fee simple interest, not a leased-fee interest. "When a property is leased, the property owner holds a 'leased-fee interest,' not a fee-simple interest." (Lowe's Proposed Arbitration Award, page 4, ¶ 12). Mr. Amorin (p. 19) made essentially the same point in different words: "A lease destroys the fee interest and by definition becomes a leased fee estate no matter the duration of the lease or its rates and terms."

(2) The definition of "market value" requires that the taxable property and improvements be *available* for lease. That is, a tax appraiser must assume that the property is not under an existing lease, but is available for lease, which means vacant.

(3) This means that the leasehold interest (which the appraiser is entitled to value as part of the fee under the case law below) will be minimal because the big box building is useful