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Technical Director - File Reference No: 1600-100

Financial Accounting Standards Board

401 Merit 7 P.O. Box 5116

Norwalk, Connecticut 06856-5116

RE: Proposed Statement of Financial Accounting Standards – Disclosure of Certain Loss Contingencies – an amendment of FASB Statements No. 5 and 141(R)

Dear Sir:

The National Association of Real Estate Companies (the "Association") is composed of representatives from companies engaged in a broad range of real estate activities, as well as independent accountants, vendors and others associated with the real estate industry. One of the major objectives of the Association since its inception in 1979 is to define and promote the use of sound accounting and financial reporting principles and practices that reflect the economic realities of the real estate business. In such regard, the Association has presented views to the Board on a variety of topics and is pleased to respond to the Board's request for comments on the Exposure Draft to amend FASB Statements 5 and 141(R) (the "Exposure Draft"). We have formatted our responses to correspond to only the questions posed in the "Request for comments" section of the Exposure Draft that have clear implications to our specific members or to the real estate industry as a whole.

1. Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

Response:

The Association does not believe the benefits of the proposal justify the incremental costs to be incurred. Members of the Association would incur significant costs in categorizing and calculating the charted proposed disclosure amounts. These costs would include significant internal preparation costs as well as external costs for outside counsel that would need to be consulted on the disclosures and

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additional independent auditor procedures that would need to be performed to verify the appropriateness of the disclosed amounts. In most cases, these costs would be significant and far outweigh any benefits to real estate companies, which by their nature typically include multiple locations, properties or buildings in numerous jurisdictions that are usually open to public access and could involve a large number of minor claims. Additionally, we believe that the increased costs would outweigh the benefits to the users of the financial statements of real estate companies.

The Association does not understand the benefits of the Exposure Draft to the financial statement users since the proposed standard does not mandate additional recorded amounts, but rather only additional disclosures in the footnotes for such items that have been categorized as 'remote'. The Association does not believe that there are any benefits to financial statement users by adding disclosure of the exposure related to loss contingencies that are remote and most likely not material to the company's financial position. Current standards with respect to disclosures regarding items classified as "possible" (that is, not recorded but with a probability of occurring higher than remote) require quantitative items and the current failing in such standards is more likely in enforcement than in design.

One way of reducing costs would be to eliminate the requirement to disclose any data about loss contingencies which are deemed to be remote. These are not currently disclosed and to require disclosure of these items would result in a significant additional burden.

3. Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity? Why or why not?

Response:

The Association believes that the disclosure of loss contingencies, regardless of the likelihood of loss, will lead to misleading and potentially harmful disclosures and financial statements. Preparers and users of financial statements have adapted since 1975 to the concepts of remote, possible and probable loss contingencies. Statement 5 has used the concept that, if a loss due to a specific contingency is truly remote, the expected value of that loss is small, even if the absolute value of the potential loss is large. Disclosing the amount of the claim or an estimate of the maximum exposure to loss is misleading as the chances of such amounts actually being paid are remote. Disclosing the amounts claimed could be harmful as the mere publishing of the amounts gives credibility to amounts that are typically "trumped up" for negotiating purposes. The option to disclose the best estimate of the maximum exposure to loss is not operational and potentially misleading as such estimate has little relevance when the probability of any loss at all being incurred is remote.

- 4. Paragraph 10 of Statement 5 requires entities to "give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." One of financial statement users' most significant concerns about disclosures under Statement 5's requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity's best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure.
 - a. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?

Response:

As discussed above, the Association believes that the Exposure Draft's disclosure requirements for remote contingencies is overly conservative and not information a reasonable user of financial statements would consider as the possibility of any loss occurring is remote.

However, for loss contingencies deemed possible of occurring, we believe the proposed disclosure requirements will result in an improvement in the reporting of quantitative information regarding loss contingencies. Current standards provide for quantative disclosures but do not mandate them in all cases.

b. Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure? Why or why not?

Response:

The Association believes that disclosing the entity's assessment of the possible loss or range of loss should be an optional disclosure. First, when the probability of occurrence of loss is not probable, the calculation and independent verification of any disclosed information will be very difficult and at best an unlikely outcome. Secondly, the entity should be allowed to assess the validity of claimed loss disclosure and not be mandated to provide additional data. The entity's own estimate of its exposure should not be mandated to be disclosed as the entity should not be required to publish information potentially harmful to its legal position.

c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and

at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?

Response:

The Association does not agree with the proposed requirements and believes that an entity should be allowed to make that judgment in the case of the possible contingencies mentioned in question b. above.

5. If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?

Response:

Although an estimate may be possible, the reliability of such estimate is questionable if no claim amount has been posed. If the claimant has not calculated their damages, most likely because they don't know what damages will be allowed or legally permissible, how can the defendant estimate the maximum that might ultimately be assessed? If the amount provided cannot be deemed reliable, users will find such an estimate to be of limited meaning. Additionally, if an estimate of the maximum range of loss is made by the defendant, this will provide undue validation of the claim. It will potentially provide information to the claimant to the detriment to the defendant.

7. Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements? Why or why not?

Response:

If there are a large number of individual loss contingencies recognized, detail information on whether the change in the aggregate amount recorded comes from new claims, settlements and payments or revised assessments of previous claims loses relevance. Settlement results from prior claims are only predictors as to potential results of existing claims if the existing claims are very similar to previous claims. Otherwise, prior claims results only will indicate an entity's negotiating skill or appetite for accepting settlements. Specific cases are typically independently adjudicated. If the number of individual loss contingencies is small, the most relevant information at the balance sheet date is the remaining recorded amount, not how it had changed over the course of the period. In either case, a reasonable assessment of future cash flows would be difficult to surmise using the tabular reconciliation and therefore would not obtain the desired objective intended for the user of the financial statements.

8. This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?

Response:

This is a critical exemption. An entity should not be required to have its financial statements or footnotes testify against itself. This is a fundamental constitutional protection of a company's rights that the standard setters should not override.

12. Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?

Response:

As mentioned above, the Association believes that the new proposed loss contingency disclosure information will not be useful to the readers of the financial statements and will be extremely costly and time consuming to prepare, therefore we do not believe that it is operational to include such disclosures at an interim or annual reporting period.

14. Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

Response:

The implementation of the proposed Statement as currently presented is not operational for fiscal years ending after December 15, 2008. The Association would recommend an indefinite deferral to reevaluate the impacts of this new proposal and not rush to judgment to change the requirements of the current Statement 5 that have been in place for decades.

The Association appreciates the opportunity to participate in the Board's considerations with respect to the Exposure Draft. As noted above, our response is concentrated on the questions that are of particular interest to the Association and real estate companies. If you should desire further clarification on any of the subjects addressed in these responses, would like input on any of the response questions or have any questions regarding our comments, please contact Scott Nelson at (312) 960-5842 or me at (312) 960-2627.

Sincerely,

John Los

Director – Financial Reporting, General Growth Properties, Inc. Co-Chairman, NAREC Financial Accounting Standards Committee