December 15, 2010

Technical Director
File Reference No. 1850-100
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Via E-mail to director@fasb.org

Re: File Reference No. 1850-100, Proposed Accounting Standards Update, Leases (Topic 840)

Dear Sir/Madam:

Lexington Realty Trust ("Lexington") appreciates the opportunity to comment on Proposed Accounting Standards Update, Leases (Topic 840). Lexington is a publically traded real estate investment trust ("REIT") that owns, invests in and manages office, industrial and retail properties net-leased to major corporations throughout the United States and provides investment advisory and asset management services to investors in the net-lease area.

We understand and appreciate the Board's need to provide financial statement users with the necessary information to make informed investment decisions regarding leasing transactions. We concur with the Board's assessment that financial statement users are more concerned with current lessee accounting than lessor accounting. However, in general, we do not support the proposed lease Accounting Standard Update in its current form, especially as it relates to lessors. The current proposal treats most leasing transactions as financing arrangements whereby the lessee/lessor recognizes interest expense/income. Although this may be true for leasing transactions involving equipment, we strongly disagree with this view as it relates to real estate. As a lessor of real estate, our business is primarily one of investment rather than financing. We are continually involved with our real estate assets throughout their economic life, primarily through asset management and capitalization of strategic opportunities as they arise.

We believe a contractual revenue model would be more representative of the economics of most real estate leasing transactions. In the current real estate environment, many real estate leasing transactions offer varying degrees of complexity and involve various nuances such as renewal, termination and purchase options, tenant improvement allowances, lease incentives and free rent periods. The current proposal does not address all of these nuances in detail, leaving them open

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to interpretation. We believe a contractual revenue model would provide users with better information and clarity in which to perform valuation analysis given the complexity of real estate leases today.

However, if the Board disagrees that a contractual revenue model is appropriate, we urge the Board to proceed with its Investment Property convergence project. We agree with the IASB's position to exclude leased income from investment property measured at fair value from the proposed leasing standard and believe that fair value presents a more accurate representation of the current economics of the lease transaction than the current proposal. We recommend that the Board adopt a definition of investment property in conformity with IAS 40 to ensure global comparability of financial information. In addition, we strongly support the NAREIT position on this matter as detailed in their comment letter of December 15, 2010.

The model as proposed will have significant business implications. Businesses with hundreds or thousands of leases will incur substantial costs in systems and manpower to implement the model as proposed. In addition, creditors and investors will need to adjust their performance models as company metrics will be severely changed.

Below are our comments and suggestions relating to certain questions outlined in the proposed Accounting Standards Update. We have limited our comments to those questions which we believe most affect our business practices.

Question 1: Lessees
(a) Do you agree that a lessee should recognize a right-of-use asset and a liability to make lease payments? Why or why not? If not, what alternative model would you propose and why?
(b) Do you agree that a lessee should recognize amortization of the right-of-use asset and interest on the liability to make lease payments? Why or why not? If not, what alternative model would you propose and why?

(a) We believe that the current accounting model is sufficient to provide users of financial statements the necessary information to make informed decisions. We believe that it is not necessary to recognize a right-of-use asset and a liability to make lease payments. If the Board believes that additional information should be provided to financial statement users, then we believe this can be accomplished through additional disclosures.

b) If the Board approves a model with a right-of-use asset and liability to make lease payments, we believe that both components should be amortized at the same rate. Under the current proposal of using straight-line amortization of the right-of-use asset and using the effective interest method to amortize the lease liability, the lease would appear to be in a net liability position shortly after initial recognition as the right-of-use asset would amortize more quickly than the lease liability.

Question 2: Lessors
(a) Do you agree that a lessor should apply (i) the performance obligation approach if the lessor retains exposure to significant risks or benefits associated with the underlying asset during or after the expected lease term, and (ii) the derecognition approach otherwise? Why or why not? If not, what alternative approach would you propose and why?

(b) Do you agree with the boards' proposals for the recognition of assets, liabilities, income and expenses for the performance obligation and derecognition approaches to lessor accounting? Why or why not? If not, what alternative model would you propose and why?
(c) Do you agree that there should be no separate approach for lessors with leveraged leases, as is currently provided for under US GAAP (paragraph BC15)? If not, why not? What approach should be applied to those leases and why?

In general, we believe that current US accounting guidance provides users of financial statements with the necessary information needed for investors and other users of financial statements to make informed investment decisions. We further believe that a change to a contractual method of rental revenue recognition would provide real estate investors and creditors with a better understanding of our business and our economic performance.

In response to the questions above, (a) the current exposure draft presents a three-step process for lessors, which would be burdensome and costly to lessors with hundreds or thousands of leases. First a lessor must use significant judgment to determine if a lease is in-substance a sale and thus scoped out of the proposed Accounting Standard Update. Next a lessor must determine which method to use to account for the lease. Given the choice of the two methods outlined in the exposure draft, we believe that the performance obligation approach would be more appropriate for the majority of property leases. We acknowledge that there maybe occasions when the derecognition approach is appropriate as well. However, significant judgment would be required again of lessors to determine whether they retain exposure to significant risks and benefits associated with the leased asset. We urge the Board to provide clearer guidance to aid lessors in determining what are considered "significant risks and benefits." Otherwise, the divergence of practice, estimating techniques and audit firm interpretations will make comparisons between lessor results nearly impossible.

(b) We strongly oppose the proposed recognition of income and expense under the proposed model as the method is further from the reality of the economics of the lease transaction than current US GAAP. For example, for lessors using the performance obligation approach, income declines over the lease term when, in many cases, it is the opposite because the actual rental stream is increasing. We are in favor of recognizing rental income on a contractual basis. We believe that this method is a more appropriate measure for our business as contractual rents are used to value and monitor our business by management as well as outside parties, such as creditors and analysts.

Question 3: Short-term leases
The exposure draft proposes that a lessee or a lessor may apply the following simplified requirements to short-term leases, defined in Appendix A as leases for which the maximum possible lease term, including options to renew or extend, is twelve months or less:

(a) At the date of inception of a lease, a lessee that has a short-term lease may elect on a lease-by-lease basis to measure, both at initial measurement and subsequently, (i) the liability to make lease payments at the undiscounted amount of the lease payments and (ii) the right-of-use asset at the undiscounted amount of lease payments plus initial direct costs. Such lessees would recognize lease payments in profit or loss over the lease term (paragraph 64).
(b) At the date of inception of a lease, a lessor that has a short-term lease may elect on a lease-by-lease basis not to recognize assets and liabilities arising from a short-term lease in the statement of financial position, nor derecognize any portion of the underlying asset. Such lessors

would continue to recognize the underlying asset in accordance with other Topics and would recognize lease payments in profit or loss over the lease term (paragraph 65).

Do you agree that a lessee or a lessor should account for short-term leases in this way? Why or why not? If not, what alternative approach would you propose and why?

We agree with Option b under the proposed accounting for short-term leases. However, we suggest that the Board clarify the definition of short-term leases to exclude renewal options. See question 8 for a discussion on renewal options.

Question 6: Contracts that contain service components and lease components
The exposure draft proposes that lessees and lessors should apply the guidance in proposed Accounting Standards Update, Revenue Recognition (Topic 605): Revenue from Contracts with Customer, to a distinct service component of a contract that contains service components and lease components (paragraphs 6, B5–B8 and BC47–BC54). If the service component in a contract that contains service components and lease components is not distinct:
(a) the FASB proposes the lessee and lessor should apply the lease accounting requirements to the combined contract.
(b) the IASB proposes that:
(i) a lessee should apply the lease accounting requirements to the combined contract.
(ii) a lessor that applies the performance obligation approach should apply the lease accounting requirements to the combined contract.
(iii) a lessor that applies the derecognition approach should account for the lease component in accordance with the lease requirements, and the service component in accordance with the guidance in the exposure draft on revenue from contracts with customers.
Do you agree with either approach to accounting for leases that contain service and lease components? Why or why not? If not, how would you account for contracts that contain both service and lease components and why?

Many leases within the real estate industry contain both a lease and a service component. A service component may take the form of common area maintenance, utilities, insurance, real estate taxes, etc. Determining if these items are distinct or non-distinct can be difficult to assess. Also, these items may be difficult to accurately estimate. We believe these amounts should not be included in the amounts to be included in the leased asset and leased liability on the balance sheet. Further, we believe these amounts should not be recorded with rental revenue but should be separately stated on the income statement. This is not an area that has been questioned onetime by any investor, lender or analyst that follows us. We believe that combining these services will only confuse users and make our financial statements less understandable to these constituents.

Question 7: Purchase options
The exposure draft proposes that a lease contract should be considered as terminated when an option to purchase the underlying asset is exercised. Thus, a contract would be accounted for as a purchase (by the lessee) and a sale (by the lessor) when the purchase option is exercised (paragraphs 8, BC63 and BC64).
Do you agree that a lessee or a lessor should account for purchase options only when they are exercised? Why or why not? If not, how do you think that a lessee or a lessor should account for purchase options and why?

We agree that the lease should be considered terminated when a purchase option is exercised, assuming that the lessor does not have any future obligation under the lease or involvement with the purchased asset. We believe that the existence of a purchase option should be accounted for under the proposed model when determining the probability-weighting of certain outcomes. In general, we disagree with probability – weighting, but if the Board determines that probability-weighting is appropriate, we think the possibility of a purchase should be considered when determining the lease term.

Question 8: Lease term

Do you agree that a lessee or a lessor should determine the lease term as the longest possible term that is more likely than not to occur taking into account the effect of any options to extend or terminate the lease? Why or why not? If not, how do you propose that a lessee or a lessor should determine the lease term and why?

We strongly disagree that the lease term should be the longest possible term that is more likely than not to occur taking into account the effect of any options to extend or terminate the lease. Options to extend or terminate a lease are exactly that: "**options.**" We do not believe that a liability has been incurred unless these are almost assured of being exercised, which would be extremely rare. We agree with the comments in IFRS Basis for Conclusions on Exposure Draft August 2010 by Stephen Cooper. "In his view optional lease periods should be reflected in the measurement of recognised assets and liabilities only when the arrangement includes an incentive to extend the lease period such as penalties payable on cancellation or reduced rentals in the optional period, or where costs of customisation or installation make renewal likely. However, if the exercise of options to extend merely depends on future business conditions it is inappropriate to reflect this in the measurement, even if extension or renewal of the lease is likely. Mr Cooper thinks that options to cancel and extend leases provide a lessee with flexibility to react to changing business circumstances and consequently these features reduce risk. If all lease payments in (more likely than not) optional lease periods are included in the recognition and measurement of the right-of-use asset then the resulting liability and related measures of financial leverage are overstated. Mr Cooper appreciates that the impact of optional lease periods is included in the proposed disclosures, which he supports; however, he does not consider this is enough to mitigate the problem. Mr Cooper thinks that the consequence of including all optional lease periods in the recognition and measurement of the lessor's receivable (under both the performance obligation and derecognition models) is that investors may underestimate the business risk of the lessor. In his view the overstatement of the receivable implies exposure to credit risk when the reality is an exposure to underlying asset risk."

Question 9: Lease payments

Do you agree that contingent rentals and expected payments under term option penalties and residual value guarantees that are specified in the lease should be included in the measurement of assets and liabilities arising from a lease using an expected outcome technique? Why or why not? If not, how do you propose that a lessee or a lessor should account for contingent rentals and expected payments under term option penalties and residual value guarantees and why?

Do you agree that lessors should only include contingent rentals and expected payments under term option penalties and residual value guarantees in the measurement of the right to receive lease payments if they can be measured reliably? Why or why not?

We strongly disagree with the proposal that contingent rentals, expected term option penalties and residual value guarantees should be included in the measurement of the lease assets and lease liabilities. These items are contingent on uncertain outcomes and are difficult to estimate. Including these in the measurement of the lease asset and liability may misrepresent the ultimate reality of the lease contract and falsify earnings or obligations. We agree with the comments of Stephen Cooper in IFRS Basis for Conclusions on Exposure Draft August 2010 on contingent rentals. Mr Cooper thinks that such contingent rental arrangements provide the lessee with additional flexibility and contribute to reduced business risk, whereas for the lessor they increase exposure to asset risk. Reflecting all expected contingent rentals in the measure of the lessee's liability and the lessor's receivable does not provide relevant information about the economics of such leasing arrangements.

Question 10: Reassessment

Do you agree that lessees and lessors should remeasure assets and liabilities arising under a lease when changes in facts or circumstances indicate that there is a significant change in the liability to make lease payments or in the right to receive lease payments arising from changes in the lease term or contingent payments (including expected payments under term option penalties and residual value guarantees) since the previous reporting period? Why or why not? If not, what other basis would you propose for reassessment and why?

Yes we agree that a remeasurement of the asset and liability only for "significant" changes in the lease contract would result in a better reflection of the current lease arrangement. However, we stress that assessing each lease for significant changes at each reporting date and tracking changes to determine if cumulatively they are significant, in addition to the reassessment, may be costly and time consuming for companies. If the Board's purpose of the reassessment is to provide financial statement users with accurate information about the current economic characteristics of a leasing arrangement then we feel that the Board should adopt a contractual revenue model. A contractual revenue model would provide financial statement users with a current reflection of the lease arrangement.

Question 11: Sale and leaseback

Do you agree with the criteria for classification as a sale and leaseback transaction? Why or why not? If not, what alternative criteria would you propose and why?

We agree that a transaction should be treated as a sale and leaseback only if the transfer meets the conditions for a sale of the underlying asset. However, we disagree with the definition of sale in this proposal and urge the Board to adopt a definition that is based on control of the underlying asset and is in conformity with the proposed revenue recognition exposure draft. In addition, we do not believe that a purchaser/lessor should be held to the same criteria as a seller/lessee to assess whether a purchase has taken place as a purchaser of an asset without a leaseback will recognize an asset even if a seller is unable to recognize a sale under other guidance. However, if the Board determines it appropriate for a purchaser/lessor to be held to the same criteria as a seller/lessee, we strongly request that the Board grandfather existing transactions for lessors. The information necessary to perform a reassessment of the sale and leaseback transaction may be difficult to obtain, especially for older transactions. In addition, the derecognition of these assets on the books of the lessor could have a significant impact on the performance of lessors who enter into several of these transactions.

Question 12: Statement of financial position

(a) Do you agree that a lessee should present liabilities to make lease payments separately from other financial liabilities and should present right-of-use assets as if they were tangible assets within property, plant and equipment or investment property as appropriate, but separately from assets that the lessee does not lease (paragraphs 25 and BC143–BC145)? Why or why not? If not, do you think that a lessee should disclose this information in the notes instead? What alternative presentation do you propose and why?

(b) Do you agree that a lessor applying the performance obligation approach should present underlying assets, rights to receive lease payments and lease liabilities gross in the statement of financial position, totalling to a net lease asset or lease liability (paragraphs 42, BC148 and BC149)? Why or why not? If not, do you think that a lessor should disclose this information in the notes instead? What alternative presentation do you propose and why?

(c) Do you agree that a lessor applying the derecognition approach should present rights to receive lease payments separately from other financial assets and should present residual assets separately within property, plant and equipment (paragraphs 60, BC154 and BC155)? Why or why not? Do you think that a lessor should disclose this information in the notes instead? What alternative presentation do you propose and why?

(d) Do you agree that lessors should distinguish assets and liabilities that arise under a sublease in the statement of financial position (paragraphs 43, 60, BC150 and BC156)? Why or why not? If not, do you think that an intermediate lessor should disclose this information in the notes instead?

Although we completely disagree with the accounting that would be required by this proposal if it is implemented, we feel that:

(a) a lessee should present liabilities to make lease payments separately from other financial liabilities only if those liabilities are significant, such as 10% or more of total liabilities. We disagree that the right-of-use asset should be presented as a component of property, plant and equipment. The right-of-use asset does not have the same characteristics as traditional property, plant and equipment and should be presented separately, if significant, within the other assets.

(b) a lessor should present a net lease asset or a net lease liability separately in the statement of financial position only if the total is significant (10% or more of assets or liabilities). We do not believe it is necessary to present this information gross on the balance sheet as this information can be reported in the notes to the financial statements.

(c)(d) the reporting of this information in the notes would be sufficient.

Question 13: Income statement

Do you think that lessees and lessors should present lease income and lease expense separately from other income and expense in profit or loss (paragraphs 26, 44, 61, 62, BC146, BC151, BC152, BC157 and BC158)? Why or why not? If not, do you think that a lessee should disclose that information in the notes instead? Why or why not?

We believe that lessees and lessors should present lease income and lease expense separately from other income and expense in profit or loss only if it is a significant component of the lessee's or lessor's income or expense. Otherwise, disclosure in the notes would be appropriate.

Question 14: Statement of cash flows
Do you think that cash flows arising from leases should be presented in the statement of cash flows separately from other cash flows (paragraphs 27, 45, 63, BC147, BC153 and BC159)? Why or why not? If not, do you think that a lessee or a lessor should disclose this information in the notes instead? Why or why not?

If the leased asset or leased liability is significant and separately stated on the face of the balance sheet, then we believe the cash flows arising from these leases should be presented separately.

Question 15: Disclosure
Do you agree that lessees and lessors should disclose quantitative and qualitative information that: (a) identifies and explains the amounts recognized in the financial statements arising from leases; and (b) describes how leases may affect the amount, timing and uncertainty of the entity's future cash flows (paragraphs 70–86 and BC168–BC183)? Why or why not? If not, how would you amend the objectives and why?

We agree that lessees and lessors should disclose both quantitative and qualitative information. We applaud the Board for allowing companies to determine the level of detail needed to meet the disclosure objectives as each company's level of leasing activity can vary significantly. We do acknowledge, however, that these disclosures may be costly to companies in terms of manpower and systems needed to capture the information necessary.

Question 16: Transition
(a) The exposure draft proposes that lessees and lessors should recognize and measure all outstanding leases as of the date of initial application using a simplified retrospective approach (paragraphs 88–96 and BC186–BC199). Are these proposals appropriate? Why or why not? If not, what transitional requirements do you propose and why?
(b) Do you think full retrospective application of lease accounting requirements should be permitted? Why or why not?
(c) Are there any additional transitional issues the boards need to consider? If yes, which ones and why?

We support the simplified retrospective approach.

Question 17: Benefits and costs
Paragraphs BC200–BC205 set out the boards' assessment of the costs and benefits of the proposed requirements. Do you agree with the boards' assessment that the benefits of the proposals would outweigh the costs? Why or why not?

We strongly disagree with the assessment that the benefits of the proposals in their current form outweigh the costs. The proposed Accounting Standard Update would require extensive and costly data gathering, manpower hours, information technology updates and a significant increase in fees charged by auditors for both Sarbanes Oxley compliance and financial statement audit work. In fact, we do not believe that any benefits, which we cannot easily point to, will come close to even matching the costs, which are easily identifiable, numerous and recurring annually. In this economy, spending precious financial resources on the adoption of this proposal does not seem to be a good use of shareholder money.

Companies would also need to inform and educate investors, analyst and creditors regarding the impact of the proposals on company performance metrics. In addition, analysts and creditors may require companies to provide information on a historic basis of accounting thus companies may be faced with keeping two sets of records. For example, our line of credit lenders have already informed us that all compliance metrics will need to be calculated by ignoring the impact of this exposure draft.

We request that the Board adapt a simplified, less costly solution to provide investors, creditors and other financial statement users with additional information. We believe this can be accomplished through the adoption of a contractual revenue model and through additional disclosures.

Question 18: Other Comments
Do you have any other comments on the proposals?

How will the proposed lease Accounting Standard Update interplay with the current requirements under purchase accounting relating to leased property? Currently, a purchaser may recognize an above- or below-market lease intangible upon acquisition. This intangible is amortized over the life of the estimated lease life as an increase or decrease to rental income. Would this intangible be eliminated in favor of a leased asset and a lease liability? If not, how would income be presented in the income statement?

In summary, we do not support the proposed Accounting Standard Update in its current form for the reasons stated above. Again, we appreciate the opportunity to comment on this matter. If you would like to discuss this further or have any questions, please do not hesitate to contact me at 212-692-7267.

Sincerely,

Beth Boulerice
Vice President of Finance and Reporting