



September 13, 2013

Ms. Susan Cospers
Technical Director
File Reference No. 2013-270
Financial Accounting Standards Board
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International Accounting Standards Board
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Delivered Electronically

Re: File Reference No. 2013-270, *Leases (Topic 842)*, a revision of the 2010 proposed FASB Accounting Standards Update, *Leases (Topic 840)*

Dear Sir/Madam:

This letter is submitted by Kimco Realty Corporation ("Kimco") in response to the Proposed Accounting Standards Update (Proposed ASU or the Proposal) from the Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) combined (the Boards) *Leases*.

Kimco is one of the nation's largest publicly-traded owners and operators of neighborhood and community shopping centers. Kimco is a self-administered real estate investment trust ("REIT") and manages its properties through present management, which has owned and operated neighborhood and community shopping centers for over 50 years. The Company believes its portfolio of neighborhood and community shopping center properties is the largest (measured by gross leaseable area) currently held by any publicly-traded REIT.

Kimco has approximately 13,800 leases in its combined operating portfolio with approximately 7,300 tenants. Kimco's income consists primarily of rent received under long-term leases. Most of the leases provide for the payment of fixed-base rentals monthly in advance and for the payment by tenants of an allocable share of the real estate taxes, insurance, utilities and common area maintenance expenses incurred in operating the shopping centers.

Additionally, Kimco has interests in 47 consolidated shopping center properties and interests in 20 shopping center properties in unconsolidated joint ventures that are subject to long-term

ground leases where a third party owns and has leased the underlying land to the Company (or an affiliated joint venture) to construct and/or operate a shopping center. The Company or the joint venture pays rent for the use of the land and generally is responsible for all costs and expenses associated with the building and improvements. At the end of these long-term leases, unless extended, the land, together with all improvements, reverts to the landowner.

Kimco commends and supports the Board's efforts to continue to develop high-quality accounting standards that improve the transparency, usefulness and credibility of financial reporting. While we have a number of suggested improvements to the proposed accounting and reporting model, we strongly support the Boards' conclusions with respect to the property Type B mode. We believe that this model would provide financial statement users with information that faithfully represents the underlying economics of property leases for both lessor/landlords and lessee/tenants.

Recommended Modification to the Proposed Standard

Accounting and Reporting for Tenant Reimbursements for Landlord Costs

Background

A significant issue raised by the Proposed ASU is how the Proposal would impact the accounting for *tenant reimbursables* paid to a landlord for the landlord's costs of maintaining *landlord's property* – property required to allow tenants to benefit from space leased from landlord. These costs represent a portion of the tenant's total cost to occupy his/her specific space – the right-of-use asset. The Proposed ASU defines *lease payments* as *payments made by a lessee to a lessor relating to the right to use an underlying asset during the lease term*. Tenant reimbursements of landlord's costs to maintain the common elements of a commercial real estate property are directly related to the tenant's right to use ("ROU") the tenant's space. For example, a tenant could not achieve the economic benefits of his specific space in a retail center without the property's parking lot, common areas of the center, elevators and the like. None of these tenant reimbursables represent payments for services to the tenant or to the tenant's space – the asset underlying the ROU. Kimco therefore believes that these tenant reimbursements of landlord's costs to maintain common elements of the property represent *lease payments* and should be reported as lease income.

These tenant reimbursables of landlord's costs to maintain the landlord's property would not include payments to the landlord for non-lease services. For example, payments by the tenant for landlord services to maintain *tenant's space* (the underlying asset) or to provide services that are not directly related to the tenant's occupancy of space would represent non-lease income and be accounted for under the Boards' revenue recognition standard.

It is also important to recognize that the tenant would not lease space in a commercial property without access to the parking lot and other common elements of the property. The tenant/lessee does not have the option to lease the space alone and the economic benefits of the leased space are dependent on the existence of and access to well-maintained common elements of the building.

Why we are Concerned

There has been significant debate among industry participants and accounting firms as to the accounting for tenant reimbursables of landlord costs under the Proposed ASU. As mentioned previously, we are a landlord under approximately 13,800 leases, all of which contain language surrounding tenant reimbursables of landlord's costs to maintain the landlord's property.

Recommendation

Since there has been significant debate among industry participants and accounting firms as to the accounting for tenant reimbursables of landlord costs under the proposed ASU, Kimco strongly urges that the Boards clarify the accounting for these reimbursements of *landlord's costs associated with landlord's property*.

Reporting under Both Type A and Type B Leases

While the great majority of property leases would qualify as Type B leases, a real estate company may lease some properties under leases that meet the definition of a Type A lease. This situation raises two significant issues.

First, the model of applying the receivable and residual approach to a simple multi-tenant office building, which we created and shared with the Boards' Leases staff, clearly illustrated to us and to the staff that this approach to lessor accounting would not be operational for multi-tenant properties. This situation would be exacerbated if the investment property is carried at fair value.

Second, the reporting for leases based on two lessor accounting models in a company's financial statements would be very confusing to financial statement users.

Recommendation

We recommend that the Boards eliminate this potential reporting issue by requiring that all leases of property be considered Type B leases.

Accounting for Land-Only Leases

It is common for real estate companies to lease land under land-only leases, especially in central business districts and other areas where land is owned by local governments. Many of these long-term land-only leases may meet the proposed criteria that define a Type A lease based on the relationship between the present value of the lease payments and the fair value of the land at the lease commencement date. However, classifying these long-term land leases as Type A leases is clearly contrary to the overarching consumption principle in the Proposal.

The conclusion that a lease of land should be accounted for in accordance with the guidance provided for Type B leases is fully supported by the following discussion taken from the Snapshot: Leases published by IFRS in May 2013:

A lessee that enters into a Type A lease, in effect, acquires the part of the underlying

asset that it consumes, which is typically paid for over time in the form of lease payments. Accordingly, a lessee would present amortization of the right-of-use asset in the same line item as other similar expenses (for example, depreciation of property, plant, and equipment) and interest on the lease liability in the same line item as interest on other, similar financial liabilities.

In contrast, the lease payments made in a Type B lease would represent amounts paid to provide the lessor with a return on its investment in the underlying asset, ie a charge for the use of the asset. That return or charge would be expected to be relatively even over the lease term. Accordingly, those payments for use are presented as one amount in a lessee's income statement and recognised on a straight-line basis.

The presentation of cash outflows in the cash flow statement is consistent with the presentation of expenses in the income statement. For Type A leases, the principal portion of cash payments is presented within financing activities and the interest portion within operating or financing activities. Cash payments for Type B leases are presented as one.

Kimco believes that the accounting described above supports the conclusion that land leases represent Type B leases based on the consumption principle.

Further, under current US GAAP, land only leases are considered operating leases unless it is probable that a purchase option will be exercised. One indication that this will occur would be the existence of a bargain purchase option at the end of the lease term.

Recommendation

We understand that the Boards discussed the accounting for long-term land-only leases at some point in the process of developing a converged leases standard. We believe that the conclusion reached at that time was made prior to the Boards' conclusion to use the consumption principle to distinguish Type A and Type B leases. We urge the Boards to reconsider its conclusion with respect to accounting for land-only leases and strongly recommend that the final standard require that all ground leases be classified and accounted for as Type B leases consistent with the Proposal's consumption principle.

We thank the Board for its consideration of our recommendations and would be pleased to discuss these issues in more detail with the Board or staff at your convenience.

Respectfully submitted,

Paul Westbrook
Chief Accounting Officer
Kimco Realty Corporation