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The Honorable Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, NW, 4th Floor
Washington, DC 20552

RE: Proposed Guidance on Private Transfer Fee Covenants: (No. 2010-N-11)

Dear Mr. Pollard:

I am herewith submitting comments on behalf of Weston Lakes Country Club, Inc. and Sierra Golf Corp., regarding the Federal Housing Finance Agency's ("FHFA") Proposed Guidance on Private Transfer Fee Covenants published in the *Federal Register* on August 16, 2010 (the "Proposed Guidance"). Weston Lakes Country Club, Inc. and Sierra Golf Corp. own and operate the Weston Lakes Country Club ("WLCC") in Fort Bend County, Texas. Since 1985, lots within the Weston Lakes development have been encumbered with restrictive covenants that require lot owners to obtain and maintain a membership in the WLCC and pay monthly dues to the WLCC. It is important that the FHFA understand that there are legitimate, long-established transfer fee obligations which benefit communities and lot owners. As currently proposed, FHFA's Proposed Guidance would restrict the financing options available to a person seeking to acquire a lot in the Weston Lakes development, thus having a significant negative impact on property values in this community.

Weston Lakes is a 1400-acre single-family residential development in Fort Bend County, Texas, originally developed in 1985. Weston Lakes contains twenty-one (21) platted subdivisions with approximately 1500 single-family lots. Within this gated development is the Weston Lakes Country Club, which includes an eighteen-hole golf course, tennis courts, swimming pool, club house, and dining and meeting facilities. The WLCC has operated since 1985.

Weston Lakes was developed as a golf-course and country club community, with membership in the club intended to be primarily residents of the community. Accordingly, each of the 21 subdivisions in Weston Lakes is encumbered with covenants, conditions and restrictions (the "CCRs"), which in addition to containing typical residential use and conduct restrictions, require each Lot owner to purchase a membership in WLCC. Additionally, the CCRs require that lot owners pay to the WLCC other fees and charges associated with their membership, such as monthly dues.

Thus, the CCRs contain provisions that would seem to fit within the description of private transfer fees ("PTFs") contained in the Proposed Guidance. There is a covenant (the CCRs), attached to real property by the owner or another private party (the original Declarant under the CCRs) which requires a transfer fee payment (the membership fees and monthly dues) to an identified third party (the Weston Lakes Country Club).

While the intent to address the proliferation of private income stream PTFs is understandable, the Proposed Guidance is much broader, and includes any third party fee that may result from a conveyance of real property, regardless of its legitimacy. Further, FHFA gives no consideration to any benefit that is received as a result of the fee. FHFA should consider how a situation such as that of Weston Lakes differs from the "typical" PTF situation addressed in the Proposed Guidance.

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The Proposed Guidance states that PTF covenants “expose lenders, title companies and secondary market participants to risks from unknown potential liens and title defects”. This argument either assumes that many loan transactions will occur outside of a traditional title company closing, or that title companies are not capable of discovering recorded instruments that encumber the subject real property. In Texas, any legitimate lender is going to close their transaction through a title company, and obtain a Texas mortgagee’s policy of title insurance. The title company handling such transaction would note the existence of the recorded CCRs, and the purchaser and lender then have the opportunity to review the same. Certainly mortgage lenders are capable of reviewing title materials and coming to a reasonable conclusion about the risk of loaning funds against real property burdened by such a covenant. In the case of the Weston Lakes CCRs, the transfer requirements created thereunder could neither be “unknown” or “potential” liens or title defects. All the CCRs are public records, recorded in the real property records of Fort Bend County, Texas, and made available to a purchaser or lender via the title review process.

FHFA contends that PTF covenants “often are not disclosed by sellers and are difficult to discover through customary title searches, particularly by successive purchasers.” Again, the CCRs that create the WLCC transfer fee requirements are recorded in the Official Public Records of Fort Bend County, and available to the public. This is what Texas law requires in order to put potential purchasers and lenders on notice of their contents. Nothing in the Proposed Guidance indicates why such a recorded instrument should be “difficult” to discover through customary title searches.

The Proposed Guidance describes the PTFs as being based on a percentage of the property’s value or sale price, and specifically mentions the “typical one percent fee”. While the undersigned is familiar with the private income stream type of PTF covenant, the obligations under the Weston Lakes CCRs are quite different. The Weston Lakes CCRs do not require a payment of a fee based on the value or sale price of a lot. Rather, the price of a club membership and accompanying monthly dues are set by the Board of Directors based on the market for similar country club memberships, and the WLCC’s internal budgetary conditions. The purpose of the fee is not to enrich a remote, prior grantor, but to finance the operations of the WLCC.

Perhaps the most important distinction to draw between the PTF covenants described in the Proposed Guidance and those of Weston Lakes is that in the case of Weston Lakes, there is a real, tangible, quantifiable benefit provided to the owner in exchange for the fees. FHFA seems to take the position that this is not possible. The Proposed Guidance states that “to the extent private transfer fees benefit unrelated third parties, one cannot claim that a service or value is rendered to the relevant property owner or community”. However, that is exactly the case in Weston Lakes. In exchange for the fees paid by the lot owners to the WLCC, the lot owner acquires a membership in the WLCC. WLCC, in consideration for such payment, operates the country club for the benefit of its members, giving them access to the golf course, tennis courts, swimming pool, meeting and dining facilities.

While the WLCC is a private club, any person who acquires a lot in the development must be accepted as a social member. This potentially opens up country club membership to persons who might otherwise not have such an opportunity. Additionally, maintaining the private, resident member structure of the WLCC enhances property values and makes Weston Lakes special among Fort Bend County neighborhoods. These are all benefits that derive from the mandatory membership structure made possible by the fees required under the CCRs.

It should be noted that were the Proposed Guidance to become effective, the CCRs with transfer fee covenants would not cease to exist, or somehow be deemed legally invalid. The result, whether

intended or not would be to reduce the number of potential purchasers of lots and houses in Weston Lakes. This very likely would lead to lower property values.

The FHFA Proposed Guidance is overly broad. In attempting to address private income stream transfer fee covenants, FHFA is going to have a devastating impact on property values in neighborhoods with established, legitimate, and mutually-beneficial transfer fee covenants. The Proposed Guidance should at least be modified to be inapplicable to PTF covenants where the recipient of the fee provides some form of consideration to the payor, such as community improvement, association management, common area amenities, or recreational or social facilities.

Respectfully Submitted,



JEB BROWN