Colleton River Plantation Club
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September 10, 2010

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

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

Dear Mr. Pollard:

I write to express my strong opposition to the Federal Housing Finance Agency's Notice of Proposed Guidance on Private Transfer Fee Covenants published in the *Federal Register* on August 16, 2010. If implemented in its current form, the guidance will have a significantly negative impact on all homeowners living in Colleton River Plantation, Bluffton, SC. I respectfully request the proposed guidance be either withdrawn in its entirety or revised to ensure that the one in five American households living in a community association continue to have access to mortgage credit.

As is the case with the majority of community associations across the country, Colleton River Plantation employs a covenant or deed-based transfer fee to fund critical community operations and to ensure the association is able to sufficiently fund ongoing and unanticipated costs. The elimination of deed-based transfer fees will reduce Colleton River Plantation's operating budget by approximately $300,000 each year. This reduction in association income means our homeowners will face higher association assessments, a reduction in the services that attracted them to our community in the first place, or both. Additionally, this loss of income increases the likelihood of special assessments, which often are a significant and unanticipated financial burden on our homeowners.

Colleton River Plantation was organized in 1991and has used a deed-based transfer fee to finance community operations since this time. The experience of our association is that the fees directly benefit homeowners in the community, as they ensure maintenance of adequate reserves and provide funds for the general obligations of the association. This protects the values of homes in our community for all residents, which is a considerable additional benefit for the individuals purchasing a home in our community. That is why I am troubled by FHFA's unsubstantiated finding that GSE purchases of or investments in "mortgages encumbered by private transfer fee covenants…would be unsafe and unsound practices and contrary to the public mission of the Enterprises and the Banks." From my practical experience, I observe the opposite to be the case. Rather than destabilizing communities by threatening to depress home values, FHFA should support the use of covenant or deed-based transfer fees that benefit homeowners and support home values. Indeed, it is unclear if FHFA contemplated the impact of its proposed guidance on homeowners living in associations with deed-based transfer fees when developing its proposed guidance. Compliance with FHFA's guidelines as proposed would be cumbersome and in

some instances impossible. Covenant or deed-based fees are attached to a property's deed or are contained in the covenant establishing association governance. These fees are, by design and by their nature, difficult to rescind. Some associations require 100 percent agreement between current owners to alter covenants while some require a super-majority vote of all homeowners in the association. In other instances, the fees are recorded in the deed itself. The practice here at Colleton River Plantation is explained in *Exhibit A*, following this letter.

Given the difficulty associations across the country face in removing deed-based restrictions or modifying community covenants, it is likely a significant number of homeowners will no longer have access to mortgage credit if FHFA's proposal is not withdrawn or revised. In its proposed guidance, FHFA suggests the elimination of mortgage financing for properties with a deed-based transfer fee will protect the nation's "still fragile housing markets." Rather than protecting housing markets, this regulatory redlining of healthy associations and creditworthy borrowers will put downward pressure on home values in these communities and cause severe financial hardship on homeowners who have done nothing wrong.

There are certain deed-based transfer fees that I believe do not serve a legitimate purpose and FHFA identified one such fee in its proposed guidance. Fees that are paid at closing directly to a third party that makes no investment in the association serve no other purpose than to enrich the fee recipient at the expense of homebuyers. This is why several state legislatures have considered legislation to void or require disclosure of private transfer fees that solely benefit unrelated third parties. This is the appropriate venue to address private transfer fees, as property law and the practices governing real estate transactions are in the purview of state and local governments. State and local governments are familiar with local real estate markets and are, therefore, able to craft solutions to policy problems appropriate to housing in that state. Finally, deed restrictions and covenants constitute a binding legal agreement between two parties that may only be voided in certain circumstances by Act of Congress or state law. FHFA's attempt to restrict the use of all private transfer fee covenants through guidance does not have the force or effect of law. As a result, the guidance will accomplish little more than to create substantial uncertainty in the community association housing market, which includes one out of every five homeowners nationwide.

I appreciate the opportunity to comment on FHFA's proposed guidance on private transfer fee covenants, and I strongly urge FHFA to reconsider its proposal to ban all covenant or deed-based transfer fees.

Sincerely,

Scott E. Jaeeard, CCE
COO/GM
Colleton River Plantation Club

Enclosures (2)
Exhibit A
Exhibit B

(b) Until Turnover, any Lots within the Phase II Property that are owned by CRDC; and

(c) Any property dedicated to and accepted by any governmental authority or public utility.

12.9. Capitalization of the Club

(a) ***Capital Contribution.*** Any Person purchasing a Lot within Colleton River Plantation shall make a "**Capital Contribution**" to the capital of the Club in an amount equal to $15,000.00 per Lot. This amount shall be in addition to, not in lieu of, the Annual Assessment, Replacement Reserve Assessment and any Special Assessment levied on the Lot and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Club immediately upon transfer of title. As used herein, the term "Capital Contribution" shall include initiation fees collected under the terms of any prior version of the Declaration in effect at the time such fees were collected.

(b) ***Use of Capital Contributions.*** The Capital Contributions shall be maintained by the Club in a separate account not to be commingled with the general operating funds. The Capital Contributions shall only be used for capital expenditures and/or repayment of debt incurred in connection with said capital expenditures and/or the refund of capital fees paid by Owners pursuant to Section 12.11. Further, to the extent that there is tax liability related to the Capital Contributions or any income derived therefrom, the payment of said tax liability shall be an allowed use.

(c) ***Approval of Use of Capital Contributions.*** Funds generated by the Capital Contributions shall only be used pursuant to the approval of Owners as indicated below. Approval of any expenditure for a capital project over $250,000 shall have the assent of a simple majority of the vote at a duly called meeting of Owners, written notice of which shall be sent to all owners at least 30 days in advance, and shall set forth the purpose of the meeting. All other uses of funds generated by Capital Contributions shall be approved by the Board. All Capital Contributions paid by purchasers of Lots owned by CRDC in Phase II prior to Turnover shall be paid to CRDC. All other Capital Contributions, including those paid on Lots owned by CRDC post-Turnover, shall be paid to the Club.

(d) ***Refund of Capital Contributions.*** A portion of the Capital Contribution shall be used to refund the capital fee, if any, initially paid by the selling Owner. Within 30 days after the Closing, the Club shall pay the selling Owner the balance of the refundable portion of the capital fee as required by Section 12.11. Notwithstanding the above, no refund shall occur if the transaction is exempt under Section 12.9(f)(ii) – (vi).

(e) ***Effect of Non-Payment of Capital Contribution, Personal Obligation of Owner, Lien Remedies of the Club.*** If the Capital Contribution as described herein is not paid on or before the date due, then such Capital Contribution shall become delinquent and shall together with interest thereon at the rate of 18% per annum (or the maximum interest rate allowable by law) from the due date, and the cost of collection as hereinafter provided, become a charge and continuing lien on the land and on improvements thereon against which such Capital Contribution is made. The obligation of the Owner to pay the Capital Contribution, however, shall remain his personal obligation and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

If the Capital Contribution is not paid within 30 days after the due date, the Club may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against his Lot, and there shall be added to the amount of that Capital Contribution the cost of preparing and filing a complaint in such action as well as any other costs and expenses incurred,

and in the event a judgment is obtained, such judgment shall include interest on the Capital Contribution, as provided, and reasonable attorneys fees and costs of action.

(f) ***Exemptions***. The following shall be exempt from payment of a Capital Contribution as set forth in this Section 12.9:

(i) An Owner in good standing of at least a majority interest in a Lot that purchases an additional Lot or Lots;

(ii) Any purchase of a Lot by trade of another Lot, whether or not involving additional consideration;

(iii) In the case of a Lot owned by co-Owners, whether persons or legal entities, the sale of less than all of the ownership interests in the Lot shall be exempt unless such sale changes the majority ownership interest in the Lot, as measured by the cumulative effect of transactions from the later of the last change in majority ownership interest or the effective date of this Declaration, in which case, such transaction shall not be exempt under this Section 12.9(f);

(iv) Any transfer of ownership to a corporation, partnership, or other legal entity, provided there is no change in the effective majority ownership interest;

(v) Any first mortgagee foreclosing on a Lot or taking back a deed in lieu of foreclosure; and

(vi) Any transfer of ownership by inheritance or through conveyance for reasons of estate planning.

12.10. Use and Consumption Fees

The Board may charge use, consumption, and activity fees to any Person using Club services or facilities or participating in Club-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Designated Users and guests).

12.11. Capital Fees

Pursuant to the terms of the Third Amended and Restated Colleton River Plantation Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc., recorded May 24, 2002 in Book 1585, Page 1072, *et seq.*, Beaufort County, South Carolina records (as amended by recorded amendments, collectively, the "**Third Amended and Restated Declaration**"), certain Owners were required to pay a "capital fee" to the Club that was subject to refund as set forth in such Third Amended and Restated Declaration. Lots within Colleton River Plantation are no longer subject to payment of this capital fee, but certain Owners remain eligible for a refund of the capital fee previously paid by them. This Declaration and Section 12.9(d) set forth the conditions under which such refunds will be made.

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Exhibit B

Chapter 21
Termination and Amendment of Declaration

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This chapter sets out procedures by which this Declaration may be amended to address such changes.

21.1. Term and Termination

 There is an old concept of law known as the "Rule Against Perpetuities" that restricts how long covenants can affect the title to land. Many jurisdictions no longer observe such rule; however, where the rule applies, the term of the covenants cannot exceed 21 years after the death of a named person who is living at the time the covenants are recorded.

This Declaration shall be effective for a minimum of 40 years from the date it is recorded. After the initial 40-year period, this Declaration shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that the Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration shall terminate on the date specified in the termination document.

If any provision of this Declaration would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of President George W. Bush.

This section shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

21.2. Amendment

(a) ***By the Club.*** In addition to specific amendment rights granted elsewhere in this Declaration, the Club may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

(b) ***By Owners.*** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent of Owners representing two-thirds (2/3) of the total votes cast.

(c) ***Validity and Effective Date.*** No amendment may remove, revoke, or modify any right or privilege of CRDC or any Founder or Honorary Member without the written consent of CRDC or such Founder and Honorary Member, respectively (or the assignee of such right or privilege). In addition, the approval requirements set forth in Chapter 16 shall be met, if applicable.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the au-

thority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(d) ***Exhibits***. Exhibit "A" is incorporated by this reference, and this chapter shall govern amendment of this exhibit. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Declaration that refer to such exhibits.

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