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September 8, 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 Sun City Vistoso Community Association. I respectfully request the proposed guidance be either withdraw 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, Sun City Vistoso Community Association 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 Sun City Vistoso's operating and capital budgets by approximately a total of nearly $200,000 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.

Sun City Vistoso Community Association was organized on December 30, 1986 and 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. It would require an affirmative vote of sixty (60) per cent of the Sun City Vistoso members to rescind the vast majority of the transfer fees.

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,

Bob Mariani, PCAM, CMCA, AMS, MCM
General Manager