

(b) Due Dates. Neighborhood Association Assessments of the Community Association shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board.

Section 6.12 Community Fee Assessments.

(a) Purposes of the Community Fee. The Development Plan, as initially adopted, identified several key objectives critical for the long term success of the Project Area. As the developer of the Project Area, the Declarant agreed to provide methods and funding for achieving the objectives set forth below, as part of the development and long-term build-out of the Project Area. The purpose of the Community Fee described in this Section is to provide funding to the Community Investment Fund and to the Community Association to help achieve these objectives. Because achieving these objectives is a fundamental goal of the Development Plan and will enhance the overall livability and success of the Project Area, funding for these purposes will inure to the unique benefit of all Owners in the Community and in the Project Area. The objectives of the Development Plan are: (1) providing affordable housing; (2) increasing the availability of jobs training programs for residents, occupants and employees in the Project Area; (3) increasing the availability of educational programs for residents, occupants and employees in the Project Area; (4) promoting sustainable development; and (5) creating open space.

(b) Imposition after Occupancy of Initial Improvements. The obligation to pay the Community Fee is hereby imposed upon a Transferor of each Unit upon which Unit any Improvements have been occupied, or a temporary certificate of occupancy has been issued for the occupancy of any Improvements, or a certificate of occupancy has been issued for the occupancy of any Improvements, whichever occurs first, unless the Transfer in question is excluded under other express exclusion provisions of this section.

(c) Calculation of the Community Fee. The Community Fee shall be payable upon the Transfer of any Unit located in the Community as provided for in this Community Declaration. The Community Fee shall be calculated by multiplying the Purchase Price for the grant or conveyance less \$100,000.00 by .0025. The Community Fee is imposed not as a penalty and not as a tax, but as an Assessment and as a means to provide additional funding to fulfill the purposes of this Community Declaration and the Development Plan as set forth above.

(d) Liability for the Community Fee. If the Transferor does not pay the Community Fee as required by this Section, the Community Fee payment shall become the personal obligation of the Transferee under the Transfer in question and shall be a lien against the Unit, and, if unpaid, shall be handled in accordance with the other provisions of this Section.

(e) Deposit of Community Fee Into Escrow Account. The Community Association shall maintain, at its expense, an escrow account (the "**Escrow Account**") with a reputable financial institution (the "**Escrow Holder**") for purposes of depositing, receiving and distributing the proceeds of the Community Fee. In addition to other customary provisions, the agreement establishing the Escrow Account the ("**Escrow Agreement**") shall contain the following provisions:

(i) that the Escrow Holder shall receive the proceeds of the Community Fee on an ongoing basis and shall invest the amounts collected in an interest bearing account as more particularly described in the Escrow Agreement prior to distribution as provided for by this Community Declaration;

(ii) that the Escrow Holder shall distribute, together with interest thereon and accompanying Community Fee Reports (as defined in this Community Declaration), five percent (5%) of the Community Fee collected to the Community Association, ninety-five percent (95%) of the Community Fee collected, the Community Investment Fund on a monthly or quarterly basis at the addresses specified in the Escrow Agreement, as requested by the Escrow Holder or the Community Investment Fund;

(iii) that the Escrow Agreement shall not be amended unless such amendment is approved and executed by the Community Association and the Community Investment Fund;

(iv) that the Escrow Holder shall not accept from the Association any changes to the Escrow Agreement or the provisions for collection or distribution of the Community Fee unless such change is authorized by an amendment to this subsection approved in accordance with applicable provisions of this section;

(v) that the Escrow Holder promptly shall notify the Association and the Community Investment Fund of any change in the address or the account number of the Escrow Account and that the Association shall promptly record a notice of such change of address or account number in the records; and

(vi) that in distributing the Community Fee to the Community Investment Fund, the Community Investment Fund must continue to acknowledge that the Community Fee may only be used for the purposes set forth in this section, inuring to the unique benefit of the Owners in the Project Area.

(f) Due on Closing, Grace Period and Method for Payment. Payment of the Community Fee shall be made in immediately available, good funds, in U.S. dollars to the Community Association, pursuant to the Escrow Account, at the address and account number specified by the Escrow Holder, upon the closing of the Transfer, with a fifteen (15) day grace period for receipt by the Community Association. With such payment, the Transferor shall provide a written report on forms prescribed by the Community Association, the Community Investment Fund and the Escrow Holder (the "**Community Fee Report**"),

which Community Fee Report shall fully describe the Transfer, shall set forth the Purchase Price for the Transfer, the names and addresses of the parties thereto, the legal description of the Unit or Units transferred, and such other information as the Escrow Holder may reasonably require. If not paid within fifteen (15) days after the Transfer, the applicable Community Fee shall be delinquent and bear interest and otherwise be treated as an Assessment in default, due to the Association. The payment and Community Fee Report shall be deemed received in a timely manner if sent to the address provided above by first class mail, postage prepaid, and postmarked no later than the date such payment and report is due, provided that the Escrow Holder thereby actually receives such payment and Community Fee Report. The Escrow Holder and/or the Association, at its own expense, shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any Owner or Transferor which are reasonably related to the payment of the Community Fee.

(g) Reporting on Exclusions from Community Fee. In the event that a Transferor is involved in a Transfer that it believes to be excluded from the requirement to pay the Community Fee under this section, the Transferor shall provide written notice (the "Notice of Claim of Exclusion") to the Board within five (5) days after closing of the Transfer in question, explaining the Transfer, the consideration, if any, involved in such Transfer, and the reason the Transferor believes such Transfer should be excluded. If, after review of the Notice of Claim of Exclusion, the Board does not concur that the Transfer in question should be excluded from the Community Fee, the Board shall notify the Transferor submitting the Notice of Claim of Exclusion of its obligation to pay the Community Fee and the Transferor shall pay the applicable Community Fee within fifteen (15) days after receipt of such notice. Prior to its decision on any Notice of Claim of Exclusion, the Board may request additional information or clarification from the Transferor submitting such Notice of Claim of Exclusion, and the Transferor shall promptly provide the Board with such additional information. Copies of all notices and correspondence between the Transferor and the Community Association under this Section shall be provided to the Transferee of the subject Transfer by the party initiating such notice or correspondence.

(h) Exclusions from the Community Fee. The Community Fee shall not apply to any of the following, except to the extent any of the following are used for the purpose of avoiding the Community Fee:

(i) Transfers to Certain Governmental Agencies. Any Transfer to the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of this state;

(ii) Transfers to the Association. Any Transfer to the Community Association or its successor or assignee;

(iii) Exempt Family or Related Transfers. Any Transfer, whether outright or in trust, that is for the benefit of the transferor or his or her relatives, but only if there is no more than nominal consideration for the Transfer. For the purposes of this exclusion, the relatives of a transferor shall include all lineal descendants of any grandparent of the transferor, and the spouses of the descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion. For the purposes of this exclusion, a distribution from a trust shall be treated as a Transfer made by the grantors of the trust, in the proportions of their respective total contributions of the trust;

(iv) Exempt Partition Transfers. Any Transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership, except to the extent that additional consideration is paid in connection therewith;

(v) Exemption for Transfers On Death. Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution;

(vi) Related Company Transfers. Any Transfer made:

(a) by a majority-owned subsidiary to its parent corporation or by a parent corporation to its majority-owned subsidiary, or between majority-owned subsidiaries of a common parent corporation, in each case for no consideration other than issuance, cancellation or surrender of the subsidiary's stock; or

(b) by a partner, member or a joint venturer to a partnership, limited liability company or a joint venture in which the partner, member or joint venturer has not less than a 50 percent interest, or by a partnership, limited liability company or joint venture to a partner, member or joint venturer holding not less than a 50 percent interest in such partnership, limited liability company or joint venture, in each case for no consideration other than the issuance, cancellation or surrender of the partnership, limited liability company or joint venture interests, as appropriate; or

(c) by a corporation to its shareholders, in connection with the liquidation of such corporation or other distribution of property or dividend in kind to shareholders, if the Unit is transferred generally pro-rata to its shareholders and no consideration is paid other than the cancellation of such corporation's stock; or

(d) by a partnership, limited liability company or a joint venture to its partners, members or joint venturers, in connection with a liquidation of the partnership, limited liability company or joint venture or other distribution of property to the partners, members or joint venturers, if the Unit is transferred generally pro-rata to its partners, members or joint venturers and no consideration is paid other than the cancellation of the partners', members' or joint venturers' interests; or

(e) to a corporation, partnership, limited liability company, joint venture or other association or organization where such entity is owned in its entirety by the persons transferring the Unit and such persons have the same relative interests in the Transferee entity as they had in the Unit immediately prior to such transfer, and no consideration is paid other than the issuance of each such persons' respective stock or other ownership interests in the Transferee entity; or

(f) by any person(s) or entity(ies) to any other person(s) or entity(ies), whether in a single transaction or a series of transactions where the transferor(s) and the Transferee(s) are and remain under common ownership and control as determined by the Board or by the Community Investment Fund, in their sole discretion applied on a consistent basis; provided, however, that no such transfer or series of transactions shall be exempt unless either Board finds that such transfer or series of transactions (1) is for no consideration other than the issuance, cancellation or surrender of stock or other ownership interest in the transferor or Transferee, as appropriate, (2) is not inconsistent with the intent and meaning of this subsection; and (3) is for a valid business purpose and is not for the purpose of avoiding the obligation to pay Community Fee. For purposes of this subsection, a Transfer shall be deemed to be without consideration if (x) the only consideration is a book entry made in connection with an inter company transaction in accordance with generally accepted accounting principles, or (y) no person or entity that does not own a direct or indirect equity interest in the Unit immediately prior to the Transfer becomes the owner of a direct or indirect equity interest in the Unit (an 'Equity Owner') by virtue of the Transfer, and the aggregate interest immediately prior to the transfer of all Equity Owners whose equity interest is increased on account of the Transfer does not increase by more than 20 percent (out of the total 100 percent equity interest in the Unit), and no individual is entitled to receive directly or indirectly any consideration in connection with the Transfer. In connection with considering any request for an exception under this subsection, either Board may require the applicant to submit true and correct copies of all relevant documents relating to the Transfer and an opinion of the applicant's counsel (such opinion and counsel to be reasonably acceptable to the Board) setting forth all relevant facts regarding the Transfer, stating that in their opinion the transfer is exempt under this subsection, and setting forth the basis for such opinion;

(vii) Exempt Technical Transfers. Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses, and any exchange of Units between Declarant and any original purchaser from Declarant of the one or more Units being transferred to Declarant in such exchange. To the extent that consideration in addition to previously purchased Units is paid to Declarant in such an exchange, the additional consideration shall be a Transfer subject to Assessment. To the extent that Declarant, in acquiring by exchange previously purchased from Declarant, pays consideration in addition to transferring Units, the amount of such additional consideration shall be treated as reducing the original assessable Transfer and shall entitle an original purchaser that previously purchased from Declarant, to a refund from the Association of the amount of the Community Fee originally paid on that portion of the original Transfer;

(viii) Exempt Court Ordered Transfers. Any Transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second assessable Transfer in a series of transactions which includes only one effective Transfer of the right to use or enjoyment of a Unit;

(ix) Exempt Ground Leases. Any lease of any Unit (or assignment or Transfer of any interest in any such lease) for a period of less than 30 years;

(x) Exempt Transfers On Conveyance To Satisfy Certain Debts. Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including Transfers in connection with foreclosure of a deed of trust or mortgage or Transfers in connection with a deed given in lieu of foreclosure;

(xi) Exemption For Conveyance To a Tax Exempt Entity. The Transfer, as a donation not for monetary value, of a Unit to an organization which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended (or any comparable statute), provided that either the Board or the Community Investment Fund specifically approves such exemption in each particular case;

(xii) Holding Company Exemption. Any Transfer made by a corporation or other entity, for consideration (1) to any other corporation or entity which owns 100 percent of its equity securities (a 'Holding Company'), or (2) to a corporation or entity whose stock or other equity securities are owned, directly or indirectly, 100 percent by such Holding Company;

(xiii) Subsidiary Conveyance Exemptions. Any Transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where consideration is paid for, or in connection with, such Transfer; however, unless such Transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the Transferee in the Transferor immediately prior to the Transfer. For example, if corporation A owns 60 percent of corporation B, and corporation B owns 100 percent of corporation C and corporation C conveys a Unit to corporation A for \$2,000,000, 60 percent of the Community Fee would be exempt and a Community Fee would be payable only on \$800,000 (i.e., 40 percent of the \$2,000,000 consideration); and

(xiv) Exemption For Certain Conveyances of Convenience. The consecutive Transfer of a Unit wherein the interim owner acquires such Unit for the sole purpose of immediately reconveying such Unit to the interim owner and such interim owner receives no right to use or enjoyment of such Unit, provided the Board specifically approves such exemption in each particular case. To the extent that consideration is paid to, or for the benefit of, the interim owner, the additional consideration shall be a Transfer subject to Assessment. In these cases, the first Transfer is subject to the Community Fee and subsequent Transfers will only be exempt as long as a Community Fee has been paid in connection with the first Transfer of such Unit in such consecutive transaction and only to the extent there is no consideration to the interim owner.

(i) Amendment of the Community Fee Provisions of this Community Declaration. No provision of this Community Declaration related to or supporting the Community Fee and no provision of this section may be amended without:

(i) the affirmative approval of all votes, by allocation of votes or voting groups, including Delegate Districts, in the Community Association; and

(ii) the affirmative approval of Community Investment Fund;

(iii) for a period of sixty (60) years following the date of initial recording of this Community Declaration, either the written consent of Forest City Enterprises, Inc., or Forest City Stapleton, Inc., or either of their express successors or assignees, which express successor or assignee has been transferred and has accepted this right in writing.

Section 6.13 Other Assessments. The Community Association shall also have the authority to assess Units, pursuant to and as allocated, under other provisions of this Declaration, the Act, or as allowed by Court Order or law.