

Stapleton Foundation

for sustainable urban communities

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October 12, 2010

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW
Washington, DC 20552
Attention: Public Comments “Guidance on Private Transfer Fee Covenants, (No. 2010–N–11)”

Dear Mr. Pollard:

Community Investment Fund, Inc. and the Stapleton Foundation jointly submit these comments regarding the Federal Housing Finance Agency’s notice of proposed guidance regarding private transfer fee covenants and their possible securitization. Community Investment Fund and the Stapleton Foundation use funds from the Stapleton Community Fee, a fee imposed through a private covenant, to promote and increase important programs that benefit the Stapleton community in Denver, Colorado.

We understand FHFA’s concern that certain private transfer fees may be used to fund private continuous streams of income through securitized investment vehicles, and that these types of fees may destabilize the fragile home sales market. However, we believe that the proposed guidance casts too broad a net, needlessly affecting legitimate community fees such as Stapleton’s, which is limited to the support of non-profit programs that benefit the community, including educational and health and wellness programs.

Accordingly, if FHFA implements the guidance, FHFA should revise the guidance to carve out community transfer fees that are imposed through recorded master declarations, transferred to a non-profit organization and used for identified purposes that benefit the community where the fees are imposed.

1. The Stapleton Community

Developed by Forest City Enterprises as master developer, the Stapleton community is Denver's premier sustainable community and one of the largest urban infill projects in the United States. Located ten minutes from downtown Denver, the 4,700 acre community was built on the site of the city’s former airport, which was decommissioned in the mid-1990s.



The Stapleton Master Development Plan, which was created by the citizens of Denver and is known as the “Green Book,” governs development at Stapleton. Pursuant to the Green Book, which is part of Denver’s Comprehensive Plan, Stapleton integrates “new urbanist” land use concepts with the very best features of traditional city life, together with a network of open spaces, parks, schools, community centers, and supporting retail and office to create a true live/work environment. The community is currently home to approximately 11,500 residents, 3,900 single family homes, 480 apartment units, 2 million square feet of retail and 1.5 million square feet of industrial/office development. Stapleton also has more than 500 acres of open space, including a large central park, trails and bike paths promoting healthy outdoor living and the sense of community.

Forest City is developing Stapleton under an agreement with the Stapleton Development Corporation (SDC), a private sector, non-profit entity created by the City of Denver in 1995 to oversee the disposition of the former Stapleton International Airport. Concurrent with that agreement, Forest City agreed to create a source of funding to support the community programs and activities of the Stapleton Foundation, a non-profit foundation whose mission is to support the guiding principles of the Green Book -- environmental responsibility, social equity and economic opportunity. In addition to Forest City’s own contribution, Forest City agreed to create an ongoing, stable revenue stream to support the purposes of the Foundation. The City, as part of its disposition of the Stapleton property, felt that the local community area should benefit from the redevelopment of the Stapleton airport, and thus the community fee concept was born and has been in place for eight years.

II. The Guidance Will Jeopardize the Stapleton Community Fee, which has Provided Significant Benefits to the Stapleton Community

The Stapleton community fee is imposed through the Master Declaration for the Stapleton community and recorded against all residential and commercial property at Stapleton. It requires the transferor of any condominium unit, lot or parcel in Stapleton to pay an amount based on the total purchase price of the unit, lot or parcel less \$100,000 multiplied by one quarter of 1%. For example, a home selling for \$300,000 would be assessed a community fee of \$500 ($\$300,000 - \$100,000 \times .0025$). The community fee is collected by the title company at closing and distributed through an escrow agent 95% to Community Investment Fund, Inc., a nonprofit organization, and 5% to the Master Community Association, a 501(c)4 non-profit community development organization whose mission it is to create and sustain a sense of community within Stapleton through comprehensive parks and recreation management, ongoing community event and cultural programming, and the long-term operation and sustainment of community facilities and assets.

Since its adoption in 2001 and implementation in 2002, the community fee has raised over \$3.6 million, with a yearly average of \$417,000 made available to Community Investment Fund, Inc. Community Investment Fund has used the funds for a

variety of projects that have resulted in substantial benefits for the Stapleton community. For example the community fee has funded:

- the Lifelong Learning Initiative, the Foundation's efforts to help provide quality education for the schools at Stapleton and the schools in neighborhoods that surround Stapleton; and
- a "be well" Health and Wellness Initiative to help residents of Stapleton neighborhoods improve the health and healthy living habits of their friends, family and neighbors.

Descriptions of these programs are provided in the summary attached to this letter.

If implemented, the guidance mostly likely would result in elimination of the community fee, jeopardizing the funding for programs at Stapleton such as those described above. Stapleton homebuyers bought their homes and, in the future, will buy their homes with knowledge of the community fee and reliance on the community benefits that the fee provides.

III. FHFA's Reasons for Adopting the Proposed Guidance Do Not Apply to the Stapleton Community Fee

In its proposed guidance, FHFA raises several concerns about private transfer fee covenants. We do not believe that any of these reasons apply to community fees like that imposed at Stapleton:

- The community fee is one quarter of one percent, costing, for example, \$500 on a \$300,000 home. It does not affect the affordability of housing at Stapleton nor reduce liquidity in the primary and secondary mortgage markets. From the period from 2001 to 2002, when Stapleton's homes first became available for sale, homebuilders routinely enjoyed long waiting lists of willing homebuyers. Those buyers choose the Stapleton community in part because they recognize the significant community benefits provided by the community fee.
- It does not limit property transfers nor render them legally uncertain.
- The community fee is not and cannot be securitized – therefore, it in no way detracts from the stability of the secondary mortgage market. In addition, none of the money generated from the community fee is used to reimburse the Stapleton master developer.
- It does not expose lenders, title companies or secondary market participants to risks from unknown potential liens and title effects. The fee is imposed through the Master Declaration, a document governed by the Colorado Common Interest Ownership Act ("CCIOA") and routinely used in master planned communities in

Colorado. The title effects and risks from potential liens under the Declaration are well settled and established under Colorado law. The community fee requirement is no different from the Declaration's requirements that property owners pay homeowner's association dues and assessments.

- The community fee is not "hidden" from the buyer. It is described clearly in the Master Declaration, which Forest City records against all residential property at Stapleton before it is transferred to a homebuilder. Obtaining a copy of all recorded documents, including in this instance that Master Declaration, is a routine part of any residential home transaction. The fee can be easily discovered and understood by the homebuyer upon reading the Declaration. It also is described in detail on the Master Association website. In addition, title companies who provide title insurance for property transfers at Stapleton are very familiar with the existence of the community fee and include it among the charges to be imposed at residential closings.
- It does not represent a dramatic, last minute, non-financeable out of pocket cost to the consumer. It is paid by the seller at closing and therefore does not deprive subsequent homeowners of any equity value in their homes.
- It does not complicate residential real estate transactions or introduce confusion or uncertainty for homebuyers. Again, the title company simply lists the community fee on the buyer's and seller's settlement statements used at closing and withholds the fee amount along with other closing costs from the seller's final settlement.

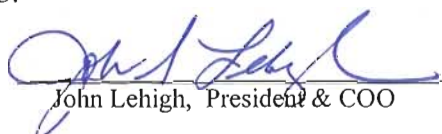
We appreciate FHFA's efforts to take measures aimed at stabilizing the housing market. Nevertheless, for the reasons explained above, we urge FHFA to reconsider its proposed guidance in light of community fees like Stapleton's. The Stapleton community fee actually promotes FHFA's goals by providing a revenue source for activities that benefit the Stapleton community as a whole, thereby bolstering residential property values. Accordingly, if FHFA chooses to adopt the guidance, we request that FHFA revise the guidance to provide a clear carve-out for community fees that are imposed through recorded master declarations, transferred to a non-profit organization and used for identified purposes that benefit the community where the fees are imposed.

Thank you for your consideration.

Respectfully,

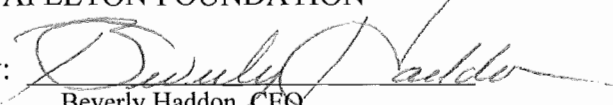
COMMUNITY INVESTMENT FUND,
INC.

By:


John Lehigh, President & COO

STAPLETON FOUNDATION

By:



A handwritten signature in cursive script, appearing to read 'Beverly Haddon', written over a horizontal line.

Beverly Haddon, CEO

Stapleton Foundation *for sustainable urban communities*
Community Fee Projects

1. Lifelong Learning Initiative

The Foundation has used Community Fee funds to help provide quality education for the schools at Stapleton. Results:

- A DPS charter high school at Stapleton, the Denver School of Science and Technology, opened its doors six years ago, and is now one of the top performing high schools in the State of Colorado. The Foundation assisted the school with outreach to help it achieve a diverse student body during its first few years. The Foundation also has led fundraising efforts to help close the gap between public school funds and the school budget.
- The Foundation has supported Odyssey Elementary school, another DPS charter school now located in Park Hill right next to Stapleton and planning to return to Stapleton. The Foundation's Director of Lifelong Learning served on the board of directors of the school, assisting the school with head of school searches, strategic planning and fund raising strategies. The Foundation also funded grant requests from the school.
- Denver Public Schools has two elementary schools at Stapleton, and the Foundation has funded grants for both schools. These grants have enabled the schools to hire a part-time arts teacher, a Spanish teacher and a gym teacher. The Foundation also has supported the Parent /Teacher organizations with funds and other resources.
- Most recently the Foundation provided the organizing and financial assistance to create another Stapleton charter school. The Denver Language Immersion School (K-8) opened its doors this Fall, beginning with three grades (K-2). The school had over 400 applications for 225 student slots within the school.

2. **“Be Well”** Health and Wellness Initiative

The Foundation kicked off a healthy living initiative for Stapleton four years ago because the residents wanted to improve the health and healthy living habits of their friends, family and neighbors. This initiative is a grassroots movement of residents coming together to take charge of the health and wellness. The Foundation hired a Director for the program who has focused full time on assisting the residents with funding and resources. This program is quite unique, because its mission, goals and implementation has come from residents and employees who will benefit from it. The Foundation provides staff support and funding. Results:

- A **be well** Neighborhood Council is the “on the ground” resident group that has served as the guiding voice of the be well health and wellness initiative. The Neighborhood Council first introduced health programs and more recently has completed a comprehensive community plan for health and wellness. It is a 13 member advisory group to the Foundation.
- Be well “Passport to Healthy Living” was introduced just over four years ago. It is a free summer program offered at community recreation centers to help residents learn how to become more active in their daily lives with yoga, kick ball, fit ball, and funky dancing instructional classes. In addition to these activities, free educational forums were presented on good nutrition and the value of more active living.
- “Be well” Block Captains is a pilot program established to test the idea of recruiting residents to become be well Block Captains. These captains would distribute information to their neighbors regarding free health screenings, free healthy living programs, and general literature on healthy living. The pilot has been very successful, because we have learned that neighbors trust their neighbors more than voices unfamiliar to them. As a result, more and more residents are going to health forums and talking about changing their life styles.
- “Be well” neighbor to neighbor is a community based program that was sponsored by the Block Captains to connect residents to free

heart health screenings. This project grew out of discussions by the Neighborhood Council, and the Block Captain meetings. It is just completing its first year where over 900 residents attended screenings, the majority of which were screened for the very first time.