

**INDENTURE OF COVENANTS,
CONDITIONS AND RESTRICTIONS**
Adopted July 29, 1977, amended 1978, December 2001 and November 2006.

THIS INDENTURE, made on the date hereinafter set forth by TOLLGATE, INC., a Virginia Corporation hereinafter referred to as "Tollgate;"

W I T N E S S E T H

WHEREAS, Tollgate, Inc., a Virginia Corporation is the owner of certain property in the City of Falls Church, Virginia, which is more particularly described as:

Lots 1 through 30, and Parcels A through D. Tollgate of Falls Church, as the same as duly platted, dedicated and recorded in Deed Book 4646 at Page 286, Deed Book 5277, at Page 445, Deed Book 5344, at Page 795 and Deed Book 5715, at Page 667 among the land records of Fairfax County, Virginia.

WHEREAS, Declarant is the owner of the real property described in ARTICLE III of this Declaration and desires to create thereon a residential community with permanent open spaces, and other common facilities for the benefit of said community; and

WHEREAS, Declarant desires to provide for the preservation of values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described in ARTICLE III to the covenants, restrictions, easements, conditions, charges and liens, hereinafter set forth. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions and

collecting and disbursing the assessments and charges hereinafter created;

NOW, THEREFORE, the Declarant declares that the real property described in ARTICLE III is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, conditions, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I DEFINITIONS

Section 1. The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to TOLLGATE HOMEOWNERS ASSOCIATION, INC.;

(b) "The Properties" shall mean and refer to that certain real property referred to in ARTICLE III, and such additions thereto as may hereafter be brought within the jurisdiction of the Association;

(c) "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association, subject to easements created thereon;

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of Common Area as heretofore defined;

(e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of The Properties, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation;

(f) "Member" shall mean and refer to all those owners who are members of the Association as provided in ARTICLE IV, SECTION 1, hereof; and

(g) "Declarant" shall mean and refer to Tollgate, Inc., its heirs, successors and assigns, if such heirs, successors or assigns should acquire more than one undeveloped lot from the Declarant for the purposes of development.

ARTICLE II

Mergers

Section 1. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property, except as hereinafter provided.

ARTICLE III

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Falls Church, Virginia and is described more particularly as follows:

Lots 1 though 30 and Parcels "A through D" Tollgate of Falls Church.

Section 2. Additions to Existing Property: Additional lands may become subject to this

Declaration by annexation, or by merger as provided in ARTICLE II.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership:

(a) With the exception of the Declarant, every person, group of persons or entity who is a record owner of a fee interest in any Lot which is or becomes subject by covenants of record to assessment by the Association shall be a Class A member of the Association, provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member and provided, further, that any person, group of persons, or entity who holds such an interest in any Lot designated by Common Area shall not be a member on account thereof. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot; and

(b) The Class B member shall be the Declarant and shall be entitled to three votes for each Lot in which it holds the interest otherwise required for Class A membership, provided, however, that each Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(ii) on December 31, 1980.

Section 2. The Association may, from time to time, extend the benefits of membership in the Association to persons other than those owning Lots, for such fees or considerations as

may from time to time be determined by the Association, provided, however:

(a) that such membership shall not be extended to the general public but only to persons residing in the immediate vicinity of the Property; and

(b) that such members shall not have the right to vote, nor shall have any proprietary interest in the Property of the Association.

ARTICLE V
PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every member shall have a right and easement of enjoyment in and to the common areas and such easement shall be appurtenant to and shall pass with the title to every lot subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure;

(c) The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid;
and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions

as may be agreed to by the Members, provided that no such dedication or transfer determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action there under is sent to every Member at least ten days but not more than fifty days in advance of any action taken; and

- (e) The right of the Association to limit the number of guests of Members.

Section 2. Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for himself, his heirs, assigns, that he will convey fee simple title to the Common Area described as Parcel "A" on the record plat of said subdivision, free and clear of all encumbrances and liens, but subject to easements and rights of way herein, and/or by the attached plat, created, dedicated or reserved prior to the conveyance of the first lot.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the lien and Personal Obligation of Assessments. The Declarant for each lot owned by him within The Properties hereby covenants and each Owner of any lot by acceptance of a Deed therefore, whether or not it shall be so expressed in any such deed or other conveyance is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) and any special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon, costs of collection thereof, including reasonable attorney's fees as hereinafter provided,

shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Properties and in particular for the improvement and maintenance of The Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, and of the homes situated upon The Properties.

Section 3. Amount of Assessments. The Board shall recommend the amount for annual assessments. Any recommended increases or decreases in the annual assessments will be voted on by the membership at an Annual or Special Meeting. Any such increase or decrease of assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or in proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten days nor more than fifty days in advance of the meeting, setting forth the purpose of the meeting.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or in proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten days nor more than fifty days in advance of the meeting, setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Except as hereinabove provided both annual and special assessments must be fixed at a uniform rate for all lots. The Board of Directors may, at its discretion, require the annual and/or special assessments to be paid on a monthly basis and may require that such payments be made to a mortgagee under the Deed of Trust on the

respective lots or any other collection agent selected by the Board of Directors.

Section 6. Quorum for any Action Authorized under Sections 3 and 4. At the first meeting called, as provided in Section 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum (18 of 29 homeowners). If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 3 and Section 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the first lot to an owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest at the rate of eight percent (8%) per annum from the date of delinquency, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or mortgages. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any first mortgage, pursuant to a decree of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter become due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: all properties dedicated to and accepted by a local public authority.

ARTICLE VII PARTY WALLS

Section 1. Sharing of repair and maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 2. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 3. Right to Contribution Runs with Land. The right of any Owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 4. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators

shall choose one additional arbitrator; and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

Section 5. Venting. Declarant reserves the right to install vent pipes through the exterior of party walls.

ARTICLE VIII COMMITTEES

Section 1. Architecture Committee

Review by Committee. No building, fence, wall or other structure other than those built by the Declarant shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition, including exterior windows and storm doors, or change, alteration or improvement thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and the Article will be deemed to have been fully complied with.

The Board will identify for Association members the names of those individuals on the Architectural Committee to whom Architecture requests should be forwarded in writing. The Architectural Committee will have 30 days to respond in writing to a request from a member informing them of the status of that request. At that time the Committee can approve, disapprove or defer a decision on a request for 30 days. A decision deferred by the Committee for 30 days, must be resolved within the following 30-day period. The total waiting time for a request should never exceed 60 days. However, the Committee or the Board can disapprove based on a lack of sufficient information at any time during the process. It is incumbent upon the member to provide complete information so that a thorough review can be accomplished, and it is incumbent upon the Committee to respond within a total of 60 days. If at the end of this 60-day period neither the Committee nor the Board has responded to the member's request, the request is deemed to be approved.

Section 2. Landscape Committee

The Board will appoint a Landscape Committee. The committee’s responsibilities, subject to Board approval, will include hiring and firing of landscape contractors and the design, implementation and management of improvements to the public space within Tollgate. The landscape committee will have sole discretion, subject to Board approval, for all decisions related to grass, trees, flowers and shrubs in the front and side yards and the common area.

No homeowner shall interfere with, instruct or otherwise influence the landscape contractors. Communications with the landscape contractors shall be done through a member of the landscape committee.

No homeowner shall plant, install or remove any landscape plants, materials or other objects in the common area without the prior approval of the landscape committee.

**ARTICLE IX
EXTERIOR MAINTENANCE**

In the event an Owner of any Lot in The Properties shall fail to maintain the premises in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) decision of the Board of Directors, shall have the right, through its agents and employees, to enter upon said building and make the necessary improvements. The cost of such exterior maintenance shall be added to and become part of the annual assessment to which such Lot is subject.

**ARTICLE X
RESIDENTIAL PROPERTY PROTECTIVE
COVENANTS AND RESTRICTIONS**

1. No portion of The Properties shall be used except for residential purposes and for purposes incidental or accessory thereto.

2. No clothing, laundry or wash shall be aired or dried on any portion of The Properties in an area other than in the rear yards of the Lots.

(a) Stairways located on the interiors of units which abut party walls shall be kept carpeted at all times.

3. No shed or storage building shall be of a greater height than the adjoining fence or wall of that unit.

4. No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic.

5. Except as provided in Paragraph 4, no trees of a diameter of more than four inches measured two feet above ground level, planted outside the approved building and driveway area, shall be removed or planted without the approval of the Board of Directors or the Architectural Control Committee appointed by said Board.

6. No noxious or offensive activity shall be carried on upon any portion of the residential property, nor shall anything be done thereon which may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a Lot.

7. No sign of any kind larger than one foot square shall be displayed to the public view on any Lot, except temporary signs not more than five feet square in area advertising the property for sale or rent and except for temporary signs erected by Declarant in connection with the construction, lease, or sale of buildings and lots.

8. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except where indicated on the attached plat or subsequent plat and except that dogs, cats or other household pets may be kept provided they are not raised, bred or kept for any commercial purpose. No unit shall be permitted more than two pets, unless approved by a majority of the Homeowners Association. Pet owners will be responsible for policing the waste created by their pets in common areas. Homeowners with pets shall be permitted to walk their leashed pets within the Common Area.

9. No material or refuse shall be placed or stored where it could be viewed by neighboring property owners.

10. No person shall paint the exterior of any building a color different than the original color of said building without the proposed color thereof having been approved by the Board of

Directors, or by an Architectural Control Committee approved by the Board.

11. No Lot within this subdivision shall be used for the conduct of any business, nor shall anything be done on any of the said Lots which will constitute a nuisance. However, at the discretion of the Homeowners Association, as evidenced by written approval, professional offices in conjunction with residential use, as permitted by the City of Falls Church Zoning Regulations, may be allowed. Nothing contained herein shall be construed as prohibiting such business activities as may be required for the development of the Lots, construction of the residences and the sale or resale of residences erected upon the Lots.

12. Each Homeowner shall be responsible for the maintenance of his fenced-in yard.

13. Declarant reserves the right to amend, modify, add to or vacate any restrictions herein contained whenever under the circumstances the Declarant in his sole opinion deems such amendment, modification or vacation advisable, provided, however, that said right to amend shall terminate after the sale of 12 houses in such subdivision.

14. Each house without a garage shall be assigned two parking spaces for the exclusive use of said homeowner.

15. No TV antenna shall be erected on the exterior of a house.

16. No boats, trailers, campers, trucks or old cars not regularly used shall be parked in parking areas, driveways or on the streets of said subdivision.

ARTICLE XI EASEMENTS

Section 1. Utility Easements. There is hereby created an easement upon, across, over, through and under the Lots on said plat for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Declarant or the providing utility or service company to install and maintain facilities and equipment of The Property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in and under the

roofs and exterior wall of Living Units providing such company restores disturbed areas to the condition in which they were found.

Section 2. Declarant's Easement to Correct Drainage. For a period of two years from the date of conveyance of each Lot, the Declarant reserves an easement and right on, over and under the ground within that Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to its original condition as near as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice.

Section 3. Construction Easements and Rights. Notwithstanding any provision of the Declaration or of any Supplementary Declaration, so long as the Declarant is engaged in developing or improving any portion of The Properties, such persons shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for occupancy for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs and (3) conduct of sales activities, including maintenance of model Living Units. Such easement shall be subject to such rules as may be established by the Declarant to maintain reasonable standards of safety, cleanliness and general appearance of The Properties.

ARTICLE XII

Section 1. Enforcement. The Association, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full

force and effect.

Section 3. Amendment. The covenants and restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns. The covenants and restrictions of the declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

IN WITNESS WHEREOF, the undersigned Tollgate, Inc. by its President has hereunto set its hand and seal this _____ day of November, 2006.

TOLLGATE, INC.

By _____(SEAL)
Marie Murray
President

ATTEST:

Stephen Lyons
Secretary

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to wit:

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that Marie Murray, President and Stephen Lyons, Secretary of Tollgate, Inc., a Virginia Corporation, whose names as such are signed to the foregoing instrument dated the ____ day of November, 2006, personally appeared before me in my State and County aforesaid and acknowledged the same.

GIVEN under my hand this _____ day of November, 2006.

Notary Public

My Commission Expires:

The following homeowners of Tollgate Association hereby agree to amend the Indenture of Covenants:

1. # 100 David Rivkin
2. # 101 Michael Vlahos.....
3. # 102 Melhem or Margaret Melhem
4. # 103 Tony or Jacque D’Ermes
5. # 104 Greer Norton.....
6. # 105 Sherry Beyer.....
7. # 106 Mark or Brigitte Kay
8. # 107 Keith or Janet Powell
9. # 108 Eric Kirschner or Rachel Talamonti.....
10. # 109 Paul or Anki Ehmer
11. # 110 Kevin or Karen Stephenson.....
12. # 111 James Guyette.....
13. # 112 Helga Johnson
14. # 113 Bob or Terry Zawacki
15. # 114 Garry Sauner or Gayle Phillips
16. # 115 Tom Hammer or Anne Hurley
17. # 116 Joe or Theresa Romer.....
18. # 117 Jay or Pat Franklin.....
19. # 118 Bob or Cindy Donaldson.....
20. # 121 Ed Bronikowski or Julia Bayzie
21. # 122 Julie McNamara
22. # 123 Matt or Rebecca Kahn.....
23. # 124 Chuck or Marie Murray.....
24. # 125 Bill Arthur or Kathy Doherty
25. # 127 Philippe or Tracy Casteuble
26. # 129 Steve or Ella Lyons
27. # 131 Jack McCahill.....
28. # 133 Chuck Connor.....
29. # 135 Tom or Edie Smolinski.....