

Orangewood Homes Association

Declaration of Covenants and Restrictions

ORANGEWOOD  
A PLANNED COMMUNITY OF QUALITY HOMES

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## ORANGEWOOD HOMES ASSOCIATION

Established by the developers of Orangewood as a vehicle for maintaining Orangewood's high standards of community design and amenity, and to preserve and maintain its common land and facilities, the Orangewood Homes Association provides added assurance that property value will be maintained and that the residents of Orangewood will be able to have the type of service facilities and amenities they deserve. In purchasing a home in Orangewood, you automatically become a voting member of the Association and a part owner of the common land and facilities within Orangewood. In addition, you agree to share in the maintenance cost of the common land and facilities, as well as to certain limitations to the use of property within Orangewood.

Home owners associations are not new. They originated in England in the seventeenth century when the Earl of Leicester built his London townhouse and laid out Leicester Square in front of it. By 1700, the Square was surrounded by buildings, and by 1743, the property owners had employed a legal device to assure the exclusive use and maintenance of this park.

A century later, the idea was introduced to America in Gramercy Park, on Manhattan Island, and was quickly followed in Boston where in 1826, the famed Louisburg Square was developed and the various owners of the homesites surrounding it in 1844, signed a recorded land agreement establishing the Committee of the Proprietors of Louisburg Square. This, the oldest known American "homes association", continues to exert a positive influence on the neighborhood and the well-seasoned properties have retained and increased in value and appeal.

The Orangewood Homes Association was incorporated as a non-profit corporation under the laws of Ohio, to assume responsibility for ownership of the over 17 acres of common parkland, and to provide for its continued maintenance and improvement. It is provided in the Declaration of Covenants and Restrictions which follow, that each owner of a subplot in Orangewood shall be a member of the Orangewood Homes Association. The developer will guide and control the Association until Orangewood is developed to a point where the Association is established and can operate efficiently on its own. This has been judged to be at a point where three-fourths of the lots in Orangewood have been conveyed to private owners.

Until January of 1976, which is considered the initial development period, the basic annual assessment will be limited to \$48.00 per year after which time, the assessment may be increased by a vote of the members at three year intervals.

The Orangewood Homes Association, in addition to being responsible for the continued maintenance of the common parkland and recreational areas, will also be responsible for enforcing the restrictive covenants which have been placed on the developer and on each individual property owner, to assure that the character of Orangewood will be maintained.

An Architectural Control Committee has also been created to approve the design and location of all of the homes being built in Orangewood and to maintain the high standards being set. This committee will also approve any addition to any home, as well as fences, walls and other structures.

A complete and full text of the Declaration of Covenants and Restrictions follows this summary which is not, in any way, a substitute for the Declaration and should, in no way, affect the construction, interpretation or application of that instrument.

## DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this first day of August, A.D. 1971, by ORANGEWOOD MANOR, INC., and The Estate of HAROLD W. ABELL, Deceased, by Harold W. Abell, Jr., Co-executor, and June A. Abell, Co-executor; Corabelle Flowers and John S. Flowers, wife and husband; Helen L. Everly and Kenneth B. Everly, wife and husband; Virginia Curtis and E. Charles Curtis, wife and husband, by Norman Paynter, their Attorney-in-fact, hereinafter collectively referred to as OWNERS.

### WITNESSETH:

WHEREAS, OWNERS are the owner of the real property described in Article II of this declaration and intend to convey said property after this declaration of covenants and restrictions to PVF Service Corporation, an Ohio corporation, hereinafter called Developer, which will create thereon a residential community with permanent parks, playgrounds, open spaces and other common facilities for the benefit of the said community; and

WHEREAS, OWNERS desire to allow Developer to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer 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 the community properties and facilities, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, there has been incorporated under the laws of the State of Ohio, as a non-profit corporation, ORANGEWOOD HOMES ASSOCIATION, INC., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the OWNERS declare that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, 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 or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Orangewood Homes Association, Inc.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties, and intended to be devoted to the common use and enjoyment of the owners of The Properties.

(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 Properties as heretofore defined.

(e) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties, designed and intended for use and occupancy as a residence by a single family.

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any Lot or Living Unit, situated upon The Properties, but notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION:

#### ADDITIONS THERETO

*Section 1. Existing Property.* The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Village of Orange, County of Cuyahoga and State of Ohio, and is more particularly described as follows:

Being part of Original Orange Township Lot No. 8, Tract No. 3, 3rd Division, and known as Orangewood Subdivision No. 1 recorded in Volume 208, Pages 40-43 and re-recorded in Volume 209, Pages 3-6 of Cuyahoga County Map Records; and Orangewood Subdivision No. 2 recorded in Volume 208, Pages 44-46 of Cuyahoga County Map Records,

all of which real property shall hereinafter be referred to as "Existing Property."

*Section 2. Additions to Existing Property.* Additional lands may become subject to this Declaration in the following manner:

(a) Additions in Accordance with a General Plan of Development. The Developer, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development, provided that such additions are in accord with a General Plan of Development prepared prior to the sale of any Lot and made known to every purchaser (which may be done by brochure delivered to each purchaser) prior to such sale.

Such General Plan of Development shall show the proposed additions to the Existing Property and contain: (1) a general indication of size and location of additional development stages and proposed land uses in each; (2) the approximate size and location of common properties proposed for each stage; (3) the general nature of proposed common facilities and improvements; (4) a statement that the proposed additions, if made, will become subject to assessment for their just share of Association

expenses; and (5) a schedule for termination of the Developer's right under the provisions of this sub-section to bring additional development stages within the scheme. Unless otherwise stated therein, such General Plan shall not bind the Developer, its successors and assigns, to make the proposed additions or to adhere to the Plan in any subsequent development of the land shown thereon and the General Plan shall contain a conspicuous statement to this effect.

The additions authorized under this and the succeeding sub-section, shall be made by filing of record and a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

(b) Other additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration, and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions, as described in sub-section (a) hereof.

(c) Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, 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 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

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

**Section 1.** Membership. Every person or entity who is a record owner of a fee or undivided fee, interest in any Lot which is subject by covenants of record to assessment by the Association, shall be a member of the Association, provided that any such person or entity, who holds such interest merely as a security for the performance of an obligation, shall not be a member.

**Section 2.** Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for 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 such Lot.

Class B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot in which it holds the interest required for membership by Section 1, provided that the Class B membership shall cease and become converted to Class A membership, when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

From and after the happening of this, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interests required for membership under Section 1.

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

*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 Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot.

*Section 2. Title to Common Properties.* The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision herein, the Developer hereby covenants for itself, its successors and assigns that it shall convey the Common Properties to the Association, free and clear of all liens and encumbrances, not later than August 1, 1977.

*Section 3. Extent of Members' Easements.* The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Developer and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties, and in aid thereof, to mortgage said properties. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association, and all rights of the Members hereunder shall be fully restored; and

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

(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; and

(d) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(e) the right of the Association to dedicate or transfer all or any part of the Common Properties 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 of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1.** Creation of the Lien and Personal Obligation of Assessments. The Developer for each Lot owned by him within The Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) 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 cost 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, and cost of collection thereof 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.

**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 properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, and of the homes situated upon The Properties, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

**Section 3.** Basis and Maximum of Annual Assessments. Until the year beginning January, 1976, the annual assessment shall be FORTY-EIGHT (\$48.00) DOLLARS per lot. From and after January 1, 1976, the annual assessment may be increased by vote of the Members as hereinafter provided for the next succeeding three years, and at the end of each such period of three years for each succeeding period of three years.

The Board of Trustees of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

**Section 4.** Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, 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 Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

*Section 5. Change in Basis and Maximum of Annual Assessments.* Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period, provided that any such change shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further, that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2 hereof.

*Section 6. Quorum for Any Action Authorized Under Sections 4 and 5.* The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) per cent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that 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 on the date (which shall be the first day of the month) fixed by the Board of Trustees of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of March of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment, provided for in Section 3 hereof, as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment, under Section 4 hereof, shall be fixed in the resolution authorizing such assessment.

*Section 8. Duties of the Board of Trustees.* The Board of Trustees of the Association shall fix the date of commencement, and the amount of the assessment, against each Lot for each assessment period of at least thirty (30) days in advance of such date or period, and shall at that time prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

*Section 9. Effect of Non-Payment of Assessment:* The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, (together with such interest thereon and cost of collection thereof) as hereinafter provided; thereupon, become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 8 per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the cost of the action.

*Section 10. Subordination of the Lien to Mortgages.* The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

*Section 11. Exempt Property.* The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I, Section 1 hereof; (c) all properties exempted from taxation by the laws of the State of Ohio, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

## ARTICLE VI

### ARCHITECTURAL CONTROL COMMITTEE

*Section 1. Review by Committee.* No building, fence, wall or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein 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

Trustees 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 fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE VII

### GENERAL PROVISIONS

*Section 1. Duration.* The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, The Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of 25 years from the date this Declaration is recorded, after which time, said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then-Owners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

*Section 2. 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.

*Section 3. Enforcement.* Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

*Section 4. 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.