

**RESOLUTION NO. 2000-10**

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**RESOLUTION AUTHORIZING TOWNSHIP ADMINISTRATOR TO SIGN SETTLEMENT AGREEMENT AND RELEASE REGARDING PENDING LITIGATION AND RELATED CONTRACT FOR THE PURCHASE OF APPROXIMATELY 150 ACRES OF LAND ON BECKETT ROAD AND DECLARING AN EMERGENCY**

**WHEREAS**, the Board of Trustees, pursuant to Resolution No. 8-99 and 21-99, authorized David Gully, Township Administrator, to negotiate and execute contracts and assignments for the sale of McGinnis Park and the purchase of additional parkland as part of an exchange of parkland; and

**WHEREAS**, contracts for the sale and purchase of real estate along with an exchange agreement were executed on October 15, 1998 regarding the exchange of the McGinnis Park property for approximately 150 acres of land on Beckett Road; and

**WHEREAS**, the exchange was scheduled to occur on March 1, 1999; and

**WHEREAS**, the closing did not take place at that time which resulted in a lawsuit by the Township for specific performance (Board of Trustees of Union Township, Butler County v. Planned Development Company of Ohio); and

**WHEREAS**, the Township and Planned Development Company of Ohio both desire to resolve all issues between them, which resolution would include the purchase by the Township of approximately 150 acres of real estate on Beckett Road for purposes of expanding Township parklands;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES, UNION TOWNSHIP, BUTLER COUNTY, OHIO:**

Section 1. David R. Gully, Township Administrator, is authorized to execute and deliver a Settlement Agreement and Release in the case of Union Township v. Planned Development Company in substantially the same form as Exhibit A attached hereto, but with such modifications as the Township Administrator may approve.

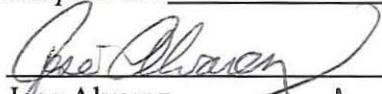
Section 2. David R. Gully, Township Administrator, is also authorized to execute and deliver a Purchase Agreement, substantially in the same form as attached hereto as Exhibit B, but with such modifications as the Township Administrator may approve (the "Purchase Agreement"), for the purchase of approximately 150 acres of property on Beckett Road for \$4,900,000.

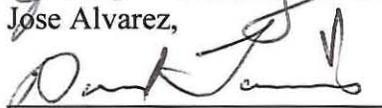
Section 3. David R. Gully, Township Administrator, is also authorized to take all actions and to execute and deliver any and all other documents necessary or desirable for the performance by the Township of its obligations under the terms of the Purchase Agreement, including, without limitation, the payment of a \$250,000 earnest money deposit, the payment of the balance of the purchase price for the property, and the execution and delivery of any instruments required to finance the purchase of the property.

Section 4. This Resolution is hereby declared to be an emergency due to litigation deadlines and because it is in the best interests of Union Township to conclude the above transaction at the earliest possible date. The Resolution shall become effective ten (10) days after passage.

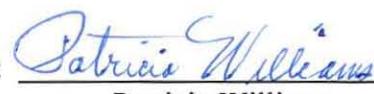
**This resolution shall be adopted as an emergency necessary for the immediate preservation of the public peace, health, safety, or welfare of the community.**

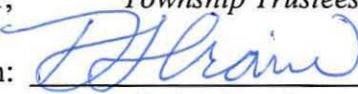
Adopted the 25th day of February, 2000

  
\_\_\_\_\_  
Jose Alvarez, Yes

  
\_\_\_\_\_  
David Tacosik, Yes

  
\_\_\_\_\_  
Catherine Stoker, Yes  
Township Trustees

Attest:   
\_\_\_\_\_  
Patricia Williams  
Township Clerk

Approved as to form:   
\_\_\_\_\_  
Don Crain, Law Director

N/A	First Reading
Date	
February 25, 2000	Emergency Reading
Date	
N/A	Second Reading
Date	
<i>Feb. 29, 2000 Cin. Engineer</i>	First Publication
Date and Newspaper	(After Approval)
<i>March 1, 2000 Pulse Journal</i>	
<i>March 6, 2000 Cin Engineer</i>	Second Publication
Date and Newspaper	(After Approval)
<i>March 8, 2000 Pulse Journal</i>	
<i>Patricia Williams 3/16/00</i>	Certificate of Publication
Clerk Signature & Date	

## PURCHASE AGREEMENT

This Purchase Agreement is executed, delivered and made effective as of the Effective Date (as hereinafter defined) by and between the following two parties: (i) **PLANNED DEVELOPMENT COMPANY OF OHIO**, an Ohio corporation ("Seller") and (ii) **THE BOARD OF TRUSTEES OF UNION TOWNSHIP, BUTLER COUNTY, OHIO** (the "Township").

### Preliminary Statements

A. Seller is the owner of an approximate 62.784± and 86.335± acre tracts of land located in Union Township, Butler County, Ohio, being more particularly described on Exhibit A hereto (together with all improvements thereon, if any, and all easements and other rights and privileges appurtenant thereto, the "Property").

B. There is presently pending in the Court of Common Pleas, Butler County, Ohio, an action (Case No. CV 1999 050953) alleging various claims and counterclaims by Seller and the Township (the "Action"). The parties have entered into a Settlement Agreement and Mutual Release in connection therewith (the "Settlement Agreement").

C. The Township has notified Seller in writing that it intends to acquire the Property by eminent domain proceedings, if necessary. In light of the Township's threats and in order to avoid a taking of the Property should Seller prevail in the Action, Seller is willing to enter into the Settlement Agreement and sell and convey the Property to the Township upon the terms and conditions hereinafter set forth. Seller intends to replace the Property during the period and in the manner prescribed by Section 1033 of the Internal Revenue Code of 1986, as amended.

D. The parties desire to set forth in this Agreement their respective rights, obligations and conditions with respect to the aforementioned transactions.

### Statement of the Agreement

In consideration of the foregoing Preliminary Statements and of the mutual promises herein set forth, the parties make this Agreement on the following terms and conditions, intending to be bound hereby:

#### Section 1 - Purchase Price; Earnest Money Deposit; Seller Financing.

§1(a). Purchase Price. Seller hereby agrees to sell and convey to the Township, and the Township hereby agrees to purchase, pay for and acquire from Seller, the Property for the Purchase Price and on the other terms and conditions set forth in this Agreement. The purchase price to be paid by the Township to Seller for the Property shall be \$4,900,000 (the "Purchase Price"). Subject to the provisions of §1(c) hereof, the Purchase Price shall be due and payable in

immediately available funds at the Closing, subject to adjustments for certain charges and credits as provided in this Agreement.

§1(b). Earnest Money Deposit. On the next business day following the execution and delivery of this Agreement by both parties, the Township shall deposit with Lawyer's Title of Cincinnati, Inc. (the "Escrow Agent") the sum of \$250,000 (such sum, together with any interest earned thereon, is hereinafter collectively referred to as the "Deposit"). Escrow Agent shall deposit the Deposit into a separate interest-bearing trust account. The Township represents, for purposes of reporting the interest earned thereon, that the Township's Federal Taxpayer Identification Number is 31-6010106. If the transaction for the sale, conveyance and purchase of the Property is closed as provided in this Agreement, then the Deposit shall be applied as part of the payment of the Purchase Price for the Property at the Closing. If this transaction is not closed because of a default by the Township hereunder (through no fault of Seller), the Escrow Agent shall pay the Deposit to Seller as fixed and liquidated damages, and in full satisfaction of all causes of action, claims, demands, damages and remedies that Seller might have against the Township as a result of such default; provided, however, the foregoing shall not release the Township from its obligations under, or preclude Seller from enforcing the terms and conditions of the Settlement Agreement. The parties have mutually agreed upon such liquidated damages, not as a penalty but as a mutually agreeable amount to compensate Seller for its damages and expenses, and for the removal of the Property from the marketplace, and to avoid for both parties expensive and vexatious litigation. If this transaction is not closed because either party has the right to terminate and has effectively terminated this Agreement within the applicable time period specified for such right, then the Escrow Agent shall refund and return to the Township the Deposit. If the aforementioned transaction is not closed because of Seller's failure to perform hereunder (through no fault of the Township), the Earnest Money Deposit shall be returned to the Township without prejudice to the rights of the Township in any action for damages or specific performance. In the event of a dispute over the disposition of the Deposit, Escrow Agent shall retain the Deposit until (i) the Township and Seller have settled the dispute; (ii) disposition has been ordered by final court order; or (iii) Escrow Agent deposits the Deposit with a court pursuant to applicable court procedures.

§1(c). Seller Financing. The Township, at its option, may elect to pay the Purchase Price to Seller in accordance with the following described financing (the "Seller Financing") by providing Seller with notice thereof on or before March 10, 2000: (i) 20% of the Purchase Price (\$980,000) shall be paid to Seller at the Closing in cash by wire transfer; and (ii) the remaining unpaid principal balance of the Purchase Price (adjusted for certain charges and credits as herein provided) shall be financed by Seller by means of, and shall be paid by the Township in accordance with the terms of, a Cognovit Promissory Note (the "Note") which shall bear interest at the rate of 9.75% (default interest at 13.75%) until paid. The entire unpaid principal balance of the Note, together with accrued interest thereon and any other sums due thereunder, shall be due and payable to Seller in full on April 20, 2000 (the "Maturity Date"). The Note shall be secured by a purchase money first mortgage lien (the "Mortgage") on the Property. The Note and Mortgage shall be substantially in the form of the Note and Mortgage attached hereto as Exhibits B and C, respectively.

Section 2 - The Closing; Possession. The transaction for the sale and purchase of the Property shall be closed as provided below by the delivery of the deed and other closing instruments specified for the Property and by the payment of the Purchase Price for the Property (the "Closing") on March 15, 2000 (the "Closing Date") at the offices of Vorys, Sater, Seymour and Pease LLP, 2100 Atrium Two, 221 East Fourth Street, Cincinnati, Ohio, 45202. Seller and the Township agree that the Closing Date may be extended pursuant to the provisions of §6(c). The Township shall be entitled to possession of the Property upon Closing, subject to the Permitted Exceptions (hereafter defined).

Section 3 - Condition of the Property. The Property is being purchased by the Township in its present physical condition. Except for the representations of Seller set forth in § 8 hereof, the Township shall rely solely upon its own inspection with regard to the condition of and title to the Property, including its location; size; zoning; applicable flood-plain designation(s); appurtenant rights; ingress and egress; utility size, character, quality, quantity and availability; subsurface, environmental or soil condition and character; and shall purchase the Property "as is," without any representation or warranty whatsoever, express or implied, as to the condition of the Property, or as to its fitness for any particular purpose, all of which are hereby expressly disclaimed by Seller.

Section 4 - Title.

§4(a). Intentionally Omitted.

§4(b). Title Insurance. Should the Township desire title insurance in connection with this transaction, the Township shall order, pay for and obtain such insurance. Provided, however, in the event the Township elects to pay the Purchase Price with the Seller Financing, the Township shall cause a loan policy of title insurance to be issued to Seller, at the Township's expense, insuring the Mortgage as a first mortgage lien on the Property.

Section 5 - Closing Costs.

§5(a). Title Insurance Costs. The Township shall pay any title insurance premium and fees for any title insurance issued in connection with this transaction including the loan policy, if applicable.

§5(b). Conveyance, Recording and Escrow Fees. Seller shall pay the real property conveyance fee applicable to the sale and conveyance of the Property, if any, and any recording fees associated with mortgage or similar lien releases attributable to the Property. The Township shall pay all other recording fees.

§5(c). Real Estate Taxes and Assessments. Seller shall pay or credit against the Purchase Price all assessments (other than the Road Assessment, hereafter defined) which are a lien on the Property and due and payable without acceleration as of the Closing Date and all real estate taxes and assessments, including penalties and interest, for calendar years prior to the year of the Closing. The Township shall assume the entire Road Assessment and any other

assessments which are or may be a lien on the Property and due and payable for periods following the Closing Date. All real estate taxes for the calendar year of the Closing which have not been paid shall be apportioned and prorated between the parties as of the Closing Date, regardless of the collection date therefor. Such pro-ration shall be based upon the number of days in such calendar year or semi-annual period during which each party held title to the Property and shall be based on the most recently available information on tax rate and valuation. Such proration shall be final. The Township shall be responsible for and shall satisfy all agricultural use recoupments relating to the Property.

Section 6 - Closing Instruments.

§6(a). Instruments to be Delivered by Seller. At the Closing, Seller shall execute and deliver to the Township the following instruments:

(i) Deed. A recordable limited warranty deed (the "Deed") which conveys to the Township fee simple title to the Property free and clear of all liens but subject to the following matters which shall be excepted and/or reserved by Seller, as the case may be, in the Deed (collectively, the "Permitted Exceptions"):

(v) the rights of others to use portions of the Property as a driving range and for wells and related improvements, all as disclosed in §8(b) hereof; and matters which would be shown on an accurate ALTA/ACSM survey of the Property;

(w) easements, conditions, restrictions, reservations, options and other matters of record including instruments associated with the widening of Union Centre Boulevard and a related road assessment that were the subject of the "Agreement" between Seller and the Township executed on or about October 22, 1999 and October 26, respectively (the "Road Assessment");

(x) the deed restrictions set forth on Exhibit D which shall run with the land (i.e., the Property) as provided therein; and

(y) real estate taxes and assessments which are a lien but not yet due and payable and the rights of the public to use any portion of the Property located within a public road or right of way; and

(z) the Action.

(ii) Seller's Affidavit. A seller's affidavit (but not indemnity) given by Seller to the Township with respect to the payment of bills for work performed or materials furnished to the Property within 75 days prior to the Closing and, subject to those matters set forth in this Agreement, with respect to any other off-record matter which is required for the issuance of the owner's policy of title insurance without the standard pre-printed exceptions (exclusive of the survey exception) should the Township elect to obtain title insurance for the Property.

(iii) Authority. One or more certificates of Seller regarding the authority of the Person or Persons who sign this Agreement and the other closing instruments on behalf of Seller.

(iv) Other Instruments. A closing and disbursement statement, an IRS Form 1099-B report of proceeds from a real estate transaction [§6045(e), IRC], and a non-foreign person certificate [§1445, IRC, FIRPTA], if required.

§6(b). Instruments to be Delivered by the Township. At the Closing, the Township shall execute and deliver to Seller the following instruments:

(i) Authority. One or more certificates of the Township regarding the authority of the Person or Persons who sign this Agreement and the other closing instruments on behalf of the Township.

(ii) Other Instruments. A closing and disbursement statement and a real property conveyance fee statement.

§6(c). Legal Description. The Township, at its expense, shall be responsible for obtaining any necessary plats, surveys, legal descriptions and governmental approvals associated with the transfer of the Property (collectively, the "Legal Description Approvals"). In the event the Township is unable to obtain the Legal Description Approvals on or before March 14, 2000, the Township shall have the right to extend the Closing Date until March 24, 2000 by delivering a written notice to Seller to that effect.

Section 7 - Township Representations. The Township represents and warrants the following as of the date of this Agreement, which representations and warranties shall survive the Closing and remain in full force and effect for a period of one year after the Closing. Subject only to the Referendum (as hereafter defined), the Township has full power and authority to enter into this Agreement and carry out the transactions contemplated hereby, and is duly authorized to execute this Agreement and any other instruments or documents reasonably necessary to carry out the transactions contemplated by this Agreement including, if applicable, the Note and Mortgage. Neither the execution and delivery of this Agreement, nor the consummation by the Township of the transactions contemplated hereby, nor compliance by the Township with any of the provisions hereof, will (y) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Township is a party, or (z) violate any laws or material license, permit, order, injunction, decree, statute, rule or regulation applicable to the Township.

Section 8 - Seller Representations and Disclosures.

§8(a). Representations. Seller represents and warrants the following as of the date of this Agreement, which representations and warranties shall survive the closing and remain in full force and effect for a period of one year after the Closing:

(i) Authority. Seller has full power and authority to enter into this Agreement and carry out the transactions contemplated hereby, and is duly authorized to execute this Agreement and any deeds, assignments or other instruments or documents reasonably necessary to carry out the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement, nor the consummation by Seller of the transactions contemplated hereby, nor compliance by Seller with any of the provisions hereof, will (y) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Seller is a party or by which any part of the Property may be bound, or (z) violate any Laws or material license, permit, order, injunction, decree, statute, rule or regulation applicable to Seller or any part of the Property.

(ii) Other Interests. Except as may be set forth in the public records and/or in this Agreement, to Seller's knowledge, there are no purchase contracts, options, leases or any other agreements of any kind, oral or written, recorded or unrecorded, whereby any person or entity other than the Township will have acquired or will have any basis to assert any right, title, or interest in, or right to possession of, any part or all of the Property.

(iii) Knowledge. For purposes of this Agreement, the phrase "to Seller's knowledge" means the actual knowledge of Kenneth R. Campbell and/or Daniel M. O'Brien.

§8(b). Disclosures. The Township acknowledges that: (i) there are wells and water lines (the "Wells") on the Property which provide water to Beckett Ridge Country Club, Inc. ("BRCC") and that BRCC has claimed the right and easement to use such wells pursuant to a Grant of Easement filed December 4, 1984 in Volume 1511, Page 616 of the Deed Records, Butler County, Ohio, and (ii) that BRCC has utilized a portion of the Property for a driving range (the "Driving Range"). Notwithstanding, attached hereto as Exhibit E is a letter agreement by and between BRCC and Seller (the "Letter"). At Closing, Seller shall assign, without warranty, to the Township all of Seller's right, title and interest under such Letter.

Section 9 - General and Miscellaneous Provisions.

§9(a). Notice. Any notice or other communication required or permitted to be given to a party under this Agreement shall be in writing, unless otherwise specified in this Agreement. A copy of any notices or other communications to the Escrow Agent shall be simultaneously delivered to the other party to this Agreement. All such notices or other communications shall be given by one of the following methods to such party at the address set forth at the end of this §9(a): (i) it may be sent by registered or certified United States mail, return receipt requested and postage prepaid, or (ii) it may be sent by ordinary US mail or

delivered in person or by courier, telecopier, facsimile transmission, telex or any other means for transmitting a written communication. Any such notice shall be deemed to have been given as follows: (y) when sent by registered or certified United States mail, as of the date of delivery shown on the receipt, or if not determinable, as of the second Business Day after it was mailed; and (z) when sent or delivered by any other means, upon receipt. Either party may change its address for notice by giving written notice thereof to the other party. The address of each party for notice initially is as follows:

Seller:

Planned Development Company of Ohio  
1173 McCleary Ct.  
Columbus, Ohio 43235  
Attention: Daniel M. O'Brien  
Fax Number: 614/885-7832

The Township:

Union Township, Butler County, Ohio  
9113 Cincinnati – Dayton Road  
West Chester, Ohio 45069  
Attn: David R. Gully, Township Administrator  
Fax Number: 513/779-9369

with a copy to:

Vorys, Sater, Seymour and Pease LLP  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Attention: Tom Mason  
Fax Number: 614/464-6350

with a copy to:

Frost & Jacobs LLP  
201 East Fifth Street  
Cincinnati, Ohio 45202  
Attention: Russ Wilson  
Fax Number: 513/651-6981

§9(b). Complete Agreement; Amendment; Waiver; Counterparts. This Agreement and the Settlement Agreement, including all exhibits, constitutes the complete agreement between the parties with respect to the subject matter hereof; it supersedes all previous understandings, if any, between the parties; no oral or implied understandings, representations or warranties shall vary its terms; and neither it nor any of its provisions may be amended or waived other than by a written instrument executed by Seller and the Township. This Agreement or any such amendment or waiver may be executed in several counterparts, each of which shall be considered a duplicate original and the same instrument. This Agreement and any such amendments or waivers may be delivered by facsimile transmission.

§9(c). Governing Law; Severability; Time. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The invalidity or unenforceability of any provision of this Agreement in any particular respect shall not affect the validity and enforceability of any other provision of this Agreement or of the same provision in any other respect. Time is of the essence with respect to the performance of each provision of this Agreement.

§9(d). Successor and Assigns; Assignment; Attorney's Fees. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. This Agreement may not be assigned. In the event that litigation arises between the parties with respect to any breach or

threatened breach of the terms of this Agreement, the prevailing party in such litigation shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, in connection therewith from the non-prevailing party.

§9(e). Survival of the Agreement; Survival of Certain Terms. Except as otherwise limited herein, the promises, terms, conditions, representations, warranties and provisions of this Agreement shall survive the Closing of the transactions and the delivery and recording of the deed and any other instrument for the conveyance of the Property; and if the deed or any other recorded instrument is or may be construed to be inconsistent with any provision of this Agreement, then the applicable provisions of this Agreement shall control and shall not be deemed to have been merged into such deed or other recorded instrument, unless otherwise expressly provided in any such instrument.

§9(f). Brokers; Indemnification. The parties acknowledge that no real estate broker or other Person has been employed for compensation by either party to represent it in this transaction. Each party hereby represents and warrants to the other party that it has no knowledge of any agreement, understanding or fact which would entitle any real estate broker, finder or other Person, to any commission, fee or other compensation as a result of the transaction which is the subject of this Agreement. Each party hereby agrees to indemnify, defend and hold harmless the other party from and against any liability, cost or expense, including attorneys' fees, as a result of any claim for a commission, fee or other compensation made by any real estate broker, finder or other Person and asserted against the other party by reason of an arrangement made or alleged to have been made by the indemnifying party.

§9(g). Certain Defined Terms. For purposes of this Agreement, the term: (i) "Person" means a corporation, association, partnership (general or limited), limited liability company, trust, estate, government, governmental agency or other entity as well as an individual or natural person, unless the context otherwise requires, (ii) "Business Day" shall mean any day that the Office of the Recorder and Auditor in the County in which the Property is located is open to the public for the recordation of the Deed and other instruments executed and delivered by the parties in connection with the Closing, and (iii) "Effective Date" means the date of execution of this Agreement by the last party to execute this Agreement.

§9(h). Schedule of Exhibits. Attached hereto and incorporated herein by this reference are the following exhibits:

Exhibit A	Legal Description
Exhibit B	Note
Exhibit C	Mortgage
Exhibit D	Deed Restrictions
Exhibit E	BRCC Letter Agreement

Section 10 - The Referendum. Seller acknowledges that the Township represents that it is a "home-rule" township as contemplated under Chapter 504 of the Ohio Revised Code and, as such, that the resolutions by the Board of Trustees of the Township authorizing the

execution and delivery of this Agreement and the Settlement Agreement and the performance of the obligations of the Township under this Agreement (the "Resolutions") are subject to a referendum pursuant to Ohio Revised Code §504.14 and related sections. In the event a referendum is filed challenging all or any portion of the Resolutions prior to March 7, 2000 (the "Referendum"), then either Seller or the Township shall have the right to terminate this Agreement upon written notice to the other party, whereupon this Agreement and the Settlement Agreement shall automatically terminate and the Deposit shall be immediately returned to the Township.

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02/28/2000 18:41 FAX  
02/28/2000 18:18 5135730067  
02/28/2000 16:50 FAX 614 464 8378

VSS&P  
PLANNED DEVELOPMENT  
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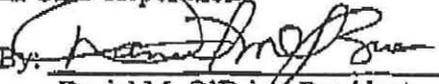
IN WITNESS WHEREOF, each party has executed and delivered this Agreement to the other party to be effective as of the Effective Date.

SELLER:

BUYER:

Planned Development Company of Ohio,  
an Ohio corporation

The Board of Trustees of Union Township,  
Butler County, Ohio

By:   
Daniel M. O'Brien, President

By: \_\_\_\_\_  
(signature)

Date: Feb. 28, 2000

\_\_\_\_\_  
(printed name)

By:   
Kenneth R. Campbell, Chairman

Its: \_\_\_\_\_  
(title)

Date: \_\_\_\_\_, 2000

Date: Feb 28, 2000

IN WITNESS WHEREOF, each party has executed and delivered this Agreement to the other party to be effective as of the Effective Date.

SELLER:

BUYER:

Planned Development Company of Ohio,  
an Ohio corporation

The Board of Trustees of Union Township,  
Butler County, Ohio

By: \_\_\_\_\_  
Daniel M. O'Brien, President

By: David R. Gully  
(signature)

Date: \_\_\_\_\_, 2000

David R. Gully  
(printed name)

By: \_\_\_\_\_  
Kenneth R. Campbell, Chairman

Its: Administrator  
(title)

Date: \_\_\_\_\_, 2000

Date: 28 February, 2000

EXHIBIT A

HENDERSON AND BODWELL, L.L.P.

October 9, 1998  
CC-9 JET

LEGAL DESCRIPTION OF AN 88.7928 ACRE TRACT

Situate in Sections 34 and 35, Town 3, Range 2, B.T.M., Union Township, Butler County, Ohio, being all of the remaining 88.7928 acres, of the original 125.7114 acre tract as conveyed to Planned Development Company of Ohio as Exhibit B-4 by deed filed in the office of the Butler County, Ohio Recorder in Deed Book 1685 at Page 1, etc. which is shown on a plat of survey filed in the Butler County Engineer's Record of Land Division in S.R. Volume 21 at Plat No. 247 and being more particularly described as follows:

Beginning at a found  $\frac{3}{4}$ " iron pin, marking a westerly corner of said Exhibit B-4 lands and an easterly corner of a 62.7844 acre tract as conveyed to Planned Development Company of Ohio as Exhibit B-2 by deed filed in the office of said Recorder in Deed Book 1685 at Page 1, etc which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 21 at Plat 245 and S.R. Volume 25 at Plat 192 being the westernmost common corner of said Sections 34 and 35; thence from said beginning, running with the meridian of the record plan of Beckett Ridge Subdivision Section 46 Phase R-W-2, which is filed in the office of said Recorder in Plat Envelope 2089 at Pages A through E; thence,

- 1) With the westerly line of said Section 35 and a westerly line of said Exhibit B-4 lands, N 03° 43' 24" E, (passing a found 1" iron pipe at 25.11') a total distance of 467.33' to the northernmost corner of said Exhibit B-4 lands, being on a southwesterly line of the lands of Beckett Ridge Country Club, Inc. as conveyed as Parcel 1 by deed filed in the office of said Recorder in Deed Book 1436 at Page 85, etc. which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 13 at Page 150-A; thence,
- 2) Leaving said section line, with said southwesterly line of the land of said Parcel 1 lands and the northeasterly line of said Exhibit B-4 lands, S 31° 02' 29" E, (crossing the common line of said Sections 34 and 35 at 631.34') a total distance of 1271.70' to a common corner of the lands of said Parcel 1 and said Exhibit B-4; thence,
- 3) Continuing along another common line of same, N 82° 59' 53" E, 581.93' to another common corner of the lands of said Parcel 1 and said Exhibit B-4, being on the westerly line of Lot 1016 of Beckett Ridge Subdivision Section 30 Phase R-P, the record plan of which is filed in the office of said Recorder in Plat Envelope 1703 at Pages A through E; thence,
- 4) Leaving the lines of the land of said Parcel 1, with the common lines of said Beckett Ridge Subdivision Section 30 and said Exhibit B-4 lands, S 32° 55' 57" W, 45.09'; thence,

- 5) Continuing along same, S 11° 33' 29" W, 179.59'; thence,
- 6) Continuing along same, S 00° 40' 31" E, 170.68'; thence,
- 7) Continuing along same, S 19° 49' 01" E, 177.41'; thence,
- 8) Continuing along same, S 33° 29' 31" E, 137.65'; thence,
- 9) Continuing along same, S 46° 22' 01" E, 191.87'; thence,
- 10) Continuing along same, S 67° 59' 31" E, 288.38' to the southeast corner of Lot 1023 of said Beckett Ridge Subdivision Section 30, being on the westerly line of Lot 921 of Beckett Ridge Subdivision Section 27 Phase R-V Part 2, the record plan of which is filed in the office of said Recorder in Plat Envelope 1613 at Pages A through D; thence,
- 11) Leaving the lines of said Beckett Ridge Subdivision Section 30, with the westerly line of said Lot 921. and with the lines of said Exhibit B-4 lands, S 28° 26' 50" W, 11.65' to the southwest corner of said Lot 921, being the northwest corner of Lot 1577 of the aforementioned Beckett Ridge Subdivision Section 46 Phase R-W-2, the record plan of which is filed in the office of said Recorder in Plat Envelope 2089 at Pages A through E; thence, leaving the lines of said Beckett Ridge Subdivision Section 27, through said Exhibit B-4 lands, with the westerly lines of said Beckett Ridge Subdivision Section 46 for the following eight courses:
  - 12) S 15° 14' 22" W, 125.52'; thence,
  - 13) S 05° 44' 36" W, 259.70'; thence,
  - 14) S 40° 36' 28" W, 113.24'; thence,
  - 15) S 07° 12' 15" W, 159.64'; thence,
  - 16) S 82° 47' 45" E, 87.82'; thence,
  - 17) S 18° 01' 46" E, 399.60'; thence,
  - 18) S 33° 24' 57" E, 113.25'; thence,

- 19) S 04° 28' 15" W, 521.96' to a found stone on the northerly side of Beckett Road, (a 40' right-of-way) marking a southerly corner of said Exhibit B-4 lands; thence,
- 20) Leaving the lines of said Beckett Ridge Subdivision Section 46, with a southerly line of said Exhibit B-4 lands and along said Road, N 78° 08' 50" W, 1268.97' to a P.K. nail marking the southeast corner of a 10.0000 acre tract of land conveyed to Cincinnati Christian Reformed Church as recorded in O.R. Volume 6119, Page 1467, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 32, Plat No. 218; thence,
- 21) Leaving said road and said southerly line, with the easterly line of said 10.0000 acre tract, N 11° 51' 10" E, (passing a ½" iron pin with cap at 50.00') a total distance of 939.42' to a ½" iron pin with cap, marking the northeast corner of said 10.0000-acre tract; thence,
- 22) With the northerly line of said tract, N 78° 08' 50" W, 299.51', to a ½" iron pin with cap, marking the northwest corner of said 10.000 acre tract; thence,
- 23) With the westerly line of said tract, S 31° 07' 08" W, (passing a ½" iron pin with cap at 942.19') a total distance of 995.15' to a P.K. nail in said Road on the aforementioned southerly line of said Exhibit B-4 lands, marking the southwest corner of said 10.0000 acre tract; thence,
- 24) Leaving the lines of said 10.0000 acre tract, with said southerly line of said Exhibit B-4 lands and along said Road, N 78° 08' 50" W, 177.37' to the base of a bent ¾" iron pin found, on the westerly line of said Section 34 at the intersection of said Beckett Road with Mills Road; thence,
- 25) Leaving said intersection, with the westerly line of said Section 34 and in part along said Beckett Road (a 40' right-of-way), N 04° 27' 14" E, (passing a found spike at 887.28', a found P.K. nail at 1626.39' and leaving said Road at 2104.92'), a total distance of 2680.98' to the place of beginning, containing 88.7928 acres of land, more or less, 86.8617 acres of which being in said Section 34 and 1.9311 acres of which being in said Section 35.

Subject to all legal highways, easements, conditions and restrictions of record, and less conveyances by Seller in connection with the Road Assessment (as defined in the Purchase Agreement) totaling approximately 2.458 acres.

October 09, 1998  
CC-9 JET

LEGAL DESCRIPTION OF A 62.7844 ACRE TRACT

Situate in Section 4 and 5, Town 2, Range 2, B.T.M., Union Township, Butler County, Ohio, and being part of the remaining 69.7440 acres of the original 126.2001 acres of the lands conveyed to Planned Development Company of Ohio as Exhibit B-2 in Deed Book 1685, Page 1, etc. of the Butler County, Ohio Recorder's office, which is shown on a plat of survey filed in the Butler County Engineer's Record of Land Division in S.R. Volume 21 at Plat No. 245 and S.R. Volume 25 at Plat No. 192 and being more particularly described as follows:

Beginning at a 3/4" iron pin found in the easternmost common corner of said Sections 4 and 5, being an easterly corner of said Exhibit B-2 lands; thence running with the meridian of said S.R. Volume 25 at Plat No. 192; thence,

- 1) With the easterly line of said Section 4 and in the easterly line of said Exhibit B-2 lands, S 04° 27' 14" W, (passing the centerline of Beckett Road (a 40' right-of-way) at 576.06') a total distance of 1054.59' to a P.K. nail found in said centerline at the southeast corner of said Exhibit B-2 lands and the northeast corner of a 2.835 acre tract of land conveyed to Union Township Board of Trustees as recorded in O.R. Volume 6087, Page 1413, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 31, Plat No. 115; thence,
- 2) Leaving said Section line and said centerline, continuing with the lines of said Exhibit B-2 lands and Township Trustees lands, N 81° 43' 31" W, 435.00' to a point at the northwest corner of said Township Trustees lands, a northeast corner of the remaining 25.667 acre tract of land conveyed to SCI Development Services, Inc. as recorded in O.R. Volume 6165, Page 2322, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in said S.R. Volume 33, Plat No. 148 and the southeast corner of a 6.9596 acre tract of land conveyed to ProLogis Development Services Incorporated, as recorded in O.R. Volume 6272, Page 1650, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in said S.R. Volume 35, Plat No. 97; thence,

Leaving said Exhibit B-2 line, through said Exhibit B-2 lands, the following three courses:

- 3) With the east line of said ProLogis lands, N 23° 51' 29" W, 236.18' to a point at the northeast corner of said ProLogis lands; thence,

- 4) With the north line of said ProLogis lands, N 81° 43' 31" W, 1452.98' to a point at the northwest corner of said ProLogis lands; thence,
- 5) With the west line of said ProLogis lands, S 08° 16' 35" W, 200.00' to a point in the line of said Exhibit B-2 lands and in the north line of a 26.83 acre tract of land conveyed to Reynolds Farm, L.L.C., as recorded in O.R. Volume 6233, Page 1076, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 33, Plat No. 197 and the northwest corner of a 0.576 acre tract conveyed to Prologis Development Services Incorporated, as recorded in O.R. Volume 6272 at Page 1642, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in S. R. Volume 35 at Plat No. 97, witness a stone found, S 81° 43' 31" E, 14.30"; thence,
- 6) With the south line of said Exhibit B-2 lands and the north line of said Reynolds Farm lands (passing a northeast corner of a 44.750 acre tract of land conveyed to Wilma L. and Donald E. Shepherd, as recorded in O.R. Volume 6236, Page 1603, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 34, Plat No. 170), N 81° 43' 31" W, 1223.12' to a stone found at the southwest corner of said Exhibit B-2 lands and a corner of said Shepherd lands; thence,
- 7) With the west line of said Exhibit B-2 lands and the east line of said Shepherd lands, N 04° 48' 56" E, 647.94' to a point in the line of said Exhibit B-2 lands and Shepherd lands and at the southwest corner of a 4.0564 acre tract of land conveyed to Hills Real Estate Group, as recorded in O.R. Volume 5406, Page 159, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 25, Plat No. 192; thence,

Leaving said line of Exhibit B-2 lands and Shepherd lands, through said Exhibit B-2 lands the following nine courses:

- 8) With the south line of said Hills lands, S 82° 31' 03" E, 379.52' to a ½" iron pin at the southeast corner of said Hills lands and a westerly corner of the 31.2931 acre tract of land conveyed to Beckett Ridge Communities, LLC (Tract 1), as recorded in O.R. Volume 6263, Page 1157, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 35, Plat No. 69; thence,

- 9) With the south lines of said (Tract 1) lands, S 35° 36' 44" E, 349.67' to a ½" iron pin at a corner of said (Tract 1) lands; thence,
- 10) S 81° 43' 31" E, 372.59' to a ½" iron pin at the southeast corner of said (Tract 1) lands and in the west line of a 25.3047 acre tract of land conveyed to Royale Point, LTD (Tract 2) lands, as recorded in O.R. Volume 6263, Page 1163, etc. of said Recorder's office, which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 35, Plat No. 69; thence,
- 11) With the west line of said (Tract 2) lands, S 06° 34' 38" W, 35.01' to a ½" iron pin at the southwest corner of said (Tract 2) lands; thence,
- 12) With the south line of said (Tract 2) lands, S 81° 43' 31" E, 810.00' to a ½" iron pin at the southeast corner of said (Tract 2) lands; thence,
- 13) With the east lines of said (Tract 2) lands, N 08° 16' 29" E, 616.51' to a ½" iron pin at a corner of said (Tract 2) lands; thence,
- 14) N 47° 38' 03" W, (passing the common line between said Sections 4 and 5 at 164.00') a total distance of 187.22' to a ½" iron pin at a corner of said (Tract 2) lands; thence,
- 15) N 10° 06' 48" E, (passing the centerline of said Beckett Road at 679.67') a total distance of 746.05' to a point at a corner of said (Tract 2) lands; thence,
- 16) N 38° 44' 14" W, 54.13' to a point in a north line of said Exhibit B-2 lands and in a south line of Lot 1 of Beckett Ridge Subdivision Section 1, as recorded in Plat Envelope 714, Pages a & B of said Recorder's office; thence,
- 17) With the lines of said Exhibit B-2 lands and south lines of said Lot 1, S 69° 48' 21" E, 119.36' to a ½" iron pin at a corner to said Exhibit B-2 lands and said Lot 1; thence,
- 18) S 45° 23' 56" E, 1097.44' to a ½" iron pin at a corner of said Exhibit B-2 lands and said Lot 1; thence,

- 19) N 48° 11' 19" E, 628.38' to a point at a corner of said Exhibit B-2 lands and said Lot 1 and a westerly corner of a 57.085 acre tract of land conveyed to Beckett Ridge Country Club, Inc. (Parcel 1) as recorded in Deed Book 1436, Page 85, etc. of the Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 13, Plat No. 150-A; thence,
- 20) With a west line of said (Parcel 1) lands, S 31° 02' 29" E, 204.41' to a point in said line and northerly corner of a remaining 88.7928 acre of a 125.7114 acre original tract of land conveyed to Planned Development Company of Ohio as Exhibit B-4 as recorded in Deed Book 1685, Page 1, etc. of said Recorder's office which is shown on a plat of survey filed in said Engineer's Record of Land Division in S.R. Volume 21, Plat No. 247 and in the east line of said Section 5; thence,
- 21) With the west line of said Exhibit B-4 lands and said Section, S 03° 43' 24" W, (passing a 1" iron pipe found at 442.22') a total distance of 467.33' to the place of beginning, containing 46.6802 acres in Section 4 and 16.1042 acres in Section 5 for a total of 62.7844 acres, more or less.

Subject to all legal highways and easements, conditions and restrictions of record.

Including, but not limited to, the following Easements:

- 1) Drainage Rights as specified in Deed Book 860, Page 595, etc.
- 2) A 24' Wide Construction Access Road and Permanent Secondary Emergency Access Easement as recorded in O.R. Volume 6263, Page 1127, etc.
- 3) A 24' Electric Easement to C.G. & E. as recorded in Deed Book 1445, Page 183, etc.
- 4) A 24' Electric Easement to C.G. & E. as recorded in Deed Book 1376, Page 466, etc.
- 5) A 15' Electric and Telephone Communication Easement to C.G. & E. and Cincinnati Bell Telephone Co. as recorded in Deed Book 1143, Page 237, etc. of said Recorder's office.

HENDERSON AND BODWELL, L.L.P.

October 09, 1998  
CC-9 JET  
62.7844 Acre Tract  
Page 5 of 5

The above is a complete and proper legal description prepared by James E. Toerner of Henderson & Bodwell Consulting Engineers, Ohio Registered Surveyor No. S-7725, from existing deed and survey records and was the result of an actual field survey made under the direction of Steven R. Pennington of Henderson & Bodwell Consulting Engineers, Ohio Registered Surveyor No. 7215, a plat of survey of which, dated October 09, 1998, is filed in the Butler County Engineer's Record of Land Division in S.R. Volume 35 at Plat No. 162.

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James E. Toerner P.S.

Together with and subject to the Terms and Conditions of a utility easement for storm water discharge and incidental retention and detentions pending and public and private utility lines and related equipment, improvements and services recorded in Official Record Book 6277 page 2161 of the Butler County, Ohio Recorder's Records.

(Note the expiration date of July 1, 2000 if easement improvements have not been constructed.)

COGNOVIT  
PROMISSORY NOTE

\$ \_\_\_\_\_, 19\_\_\_\_

FOR VALUE RECEIVED, the undersigned, jointly and severally if more than one, promise to pay to the order of

at \_\_\_\_\_, Ohio, or at such other address

as the holder hereof may from time to time designate in writing, the principal sum of

Dollars (\$ \_\_\_\_\_ )

with interest thereon at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum.

The principal sum and interest shall be due and payable as follows:

and shall be paid in full on or before \_\_\_\_\_, 19\_\_\_\_. All or any part of the principal sum and accrued interest may be prepaid at any time without penalty.

This note is secured by a mortgage on real property. Upon default in payment of any installment within \_\_\_\_\_ calendar days after the same is due, or upon failure to perform any of the covenants or conditions contained in said mortgage, this note shall, at the option of the holder hereof, bear interest thereafter at the rate of \_\_\_\_\_ percent per annum, and the entire principal hereof then remaining unpaid, together with all accrued interest, shall, at said holder's option, become immediately due and payable without any notice or demand.

All persons now or hereafter liable for the payment of the principal or interest due on this note, or any part thereof, do hereby expressly waive presentment for payment, notice of dishonor, protest and notice of protest, and agree that the time for the payment or payments of any part of this note may be extended without releasing or otherwise affecting their liability on this note, or the lien or any mortgage securing this note.

The undersigned, and each of them, hereby authorize any attorney at law to appear in any court of record in any county in the State of Ohio, or elsewhere, where any of the undersigned resides or signed this note, after the obligation evidenced hereby, or any part thereof, becomes due and is unpaid, and waive the issuance and service of process and confess judgment against any or all of the undersigned in favor of the holder of this note for the amount then appearing due, together with the costs of suit, and thereupon to release all errors and waive all right of appeal and stay of execution, but no judgment or judgments against less than all of the undersigned shall be a bar to any subsequent judgment against those of the undersigned against whom judgment has not been taken.

This note was executed in \_\_\_\_\_ County, Ohio.

**WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE. [Sec. 2323.13. O.R.C.]**

\_\_\_\_\_  
Maker  
\_\_\_\_\_  
Maker

\*Note: This Promissory Note is to be used when the obligation of the Maker is secured by a mortgage on real property.

EXHIBIT B

**MORTGAGE DEED**

(Name of Borrower and Marital Status)

(Address of Borrower)

hereinafter called "Borrower," whether one or more than one, for good and valuable consideration paid by

(Name of Lender)

(Address of Lender)

hereinafter called "Lender," whether one or more than one, the receipt and sufficiency of which are hereby acknowledged, does hereby MORTGAGE, GRANT, BARGAIN, SELL and CONVEY to Lender the following described real estate situated in \_\_\_\_\_

County of \_\_\_\_\_, and State of Ohio:

together with all privileges, easements, appurtenances, and other rights now or hereafter belonging or appertaining thereto, all buildings and other improvements now or hereafter located thereon, all fixtures and equipment now or hereafter attached thereto or used in connection therewith, and all rents and profits therefrom, all of which are hereinafter called the "Premises."

TO HAVE AND TO HOLD the Premises to Lender, Lender's personal representatives, heirs, successors and assigns, forever, subject to the conditions hereinafter set forth.

This Mortgage is given to secure the payment of money as evidenced by a certain promissory note (the "Note") having the same date as this Mortgage, of which Borrower is the maker and Lender is the payee, and which is in the principal amount of \$ \_\_\_\_\_ with interest at the rate of and to be paid as provided for in the Note; provided, however, that if not sooner paid the entire balance of the Note shall be due and payable on or before \_\_\_\_\_.

Borrower, jointly and severally, if more than one, hereby covenants and agrees with Lender as follows:

**§1. PAYMENT OF DEBT.** Borrower shall pay when due the principal of and interest on the indebtedness evidenced by the Note in accordance with the terms thereof.

**§2. STATE OF TITLE; WARRANTY.** Borrower is lawfully seized of the Premises and the Premises are free and clear of all encumbrances whatsoever except: (a) the lien of real property taxes and assessments not yet due and payable; (b) legal highways; (c) zoning ordinances; (d) restrictions, conditions, covenants and utility easements of record; and (e) \_\_\_\_\_.

(none, if nothing stated) and Borrower will forever warrant and defend the Premises except as provided in this §2.

**§3. REAL PROPERTY TAXES; ASSESSMENTS; LIENS AND CHARGES.** Borrower, when the same shall become due and payable, shall pay all real property taxes and installments of assessments which are a lien on the Premises and, upon Lender's request, shall promptly provide Lender with proof of payment for the same. Borrower shall also pay, when the same shall become due and payable, any other governmental (Federal, State or local) levy or charge which is or may become a lien against the Premises superior to this Mortgage and shall promptly discharge any lien which has or may have priority over this Mortgage except as to any mortgage lien set forth in §2, above, which Borrower shall not permit to be in default.

**§4. INSURANCE.** At Borrower's expense, Borrower shall obtain and maintain in full force and effect at all times during the continuance of this Mortgage fire and extended coverage insurance in an amount sufficient to prevent Borrower from being a co-insurer under said policy of insurance, but in no event less than the aggregate unpaid balance of the Note and of all obligations secured by mortgages encumbering the Premises which have priority over this Mortgage. All such insurance policies or renewals thereof shall include a standard mortgage clause in favor of and in form acceptable to Lender. Borrower shall promptly furnish Lender with a copy of said policies and all receipts of paid premiums. The policies of insurance shall provide for written notice to Lender at least 30 days prior to any cancellation, modification or lapse thereof. In the event of loss, Borrower shall give prompt written notice to Lender and Lender may make proof of loss if not promptly made by Borrower.

**§5. MAINTENANCE OF PREMISES.** Borrower shall keep the Premises in good repair and shall not commit waste or permit deterioration to the Premises, reasonable wear and tear excepted, and shall comply with all governmental (Federal, State or local) regulations concerning the Premises. If this Mortgage is on a unit in a condominium, Borrower shall perform all of Borrower's obligations under the constituent condominium documents.

Without Lender's prior consent, Borrower shall not grant any easements affecting the Premises, apply for any change in the current zoning designation for the Premises, change the use of the Premises other than what it is being utilized for as of the date hereof, create or change or modify any existing restrictions, conditions or covenants affecting the Premises, subdivide the Premises, or construct or make any structural or substantial improvements, alterations or modifications to the Premises.

**§6. PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which Lender in Lender's reasonable judgment believes is detrimental to or impairs Lender's security in the Premises, including but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option and upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including but not limited to, disbursement of reasonable attorney's fees and entry upon the Premises to make repairs.

Any amounts disbursed by Lender pursuant to this §6 or for advances made for the payment of real property taxes, assessments, or insurance premiums, with interest thereon as hereinafter provided, shall become additional amounts owed by Borrower which are secured by this Mortgage. Such amounts shall be payable upon notice to Borrower from Lender requesting payment thereof and shall bear interest from the date of disbursement at the rate payable from time to time on the unpaid principal under the Note. Nothing contained herein shall require Lender to incur any expense or take any action hereunder, and Borrower hereby waives any and all claims or right against Lender to any payment on, or offset against, the indebtedness secured hereby by reason of any such payment by Lender.

Lender, or Lender's agents, shall have the right to enter upon the Premises at all reasonable times for the purpose of inspecting the same, provided Lender shall give Borrower adequate and reasonable notice under the circumstances prior to any such entry. The notice provided for herein need not conform with the provisions of §14, below.

**§7. EMINENT DOMAIN.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation proceedings or other taking of the Premises, or a part thereof, or for conveyances in lieu of condemnation, are hereby assigned to Lender and shall be paid to Lender. When there is a total taking of the Premises, the proceeds shall be applied to the sums secured by this Mortgage, and the balance, if any, shall be paid to Borrower. When there is a partial taking of the Premises, unless Lender and Borrower otherwise agree in writing, the proceeds paid for such taking shall be applied to the sums secured by this Mortgage in the proportion which the unpaid principal amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Premises immediately prior to the date of taking, and the balance of such proceeds shall be paid to Borrower.

**EXHIBIT C**

If (a) the Premises are abandoned... (b) after notice by Lender to Borrower that the condemning authority offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date of such notice, Lender is hereby authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Premises or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to the sums secured by this Mortgage shall not extend or postpone the due date of the payment of the Note or change the amount of any installments due under the Note.

§8. TRANSFER OF THE PREMISES. If all or any part of the Premises or any interest therein is sold or transferred by Borrower without Lender's prior written consent, Lender may, at Lender's option, declare all sums secured by this Mortgage to be immediately due and payable; provided, however, that the following transfers or conveyances shall not accelerate the indebtedness secured hereby: (a) the creation of a lien or encumbrance subordinate to this Mortgage, excluding, however, a conveyance by a Land Installment Contract or the granting of a leasehold interest containing an option to purchase, either of which shall require the prior written consent of Lender; (b) the creation of a purchase money security interest for personal property; and (c) a transfer by devise or descent, or a transfer by operation of law upon the death of a co-owner.

§9. SECURITY AGREEMENT; ASSIGNMENT OF RENTS. This Mortgage shall act as and constitute a Security Agreement under the Uniform Commercial Code. Upon Lender's request, Borrower shall execute and deliver to Lender financing statements and other documents required to perfect a security interest in Borrower's personal property located at the Premises. The cost of recording such documents shall be paid by Borrower.

As part of the security granted by this Mortgage, Borrower hereby assigns to Lender the rents of the Premises, provided that Borrower shall, prior to any acceleration of the amounts secured by this Mortgage, have the right to collect and retain such rents. All rents collected by Lender or Lender's agent shall be applied first to the payment of costs of operation and management of the Premises and collection of rents, including but not limited to, receiver's bonds and fees, reasonable attorney's fees, and then to the sums secured by this Mortgage.

§10. DEFAULT; REMEDIES. The entire unpaid principal amount of the Note, together with all unpaid and accrued interest and all other charges and amounts payable to Lender under the Note or this Mortgage, shall, at Lender's option, become immediately due and payable: (a) if Borrower does not promptly and fully pay when due the amounts owed Lender under the Note in accordance with the terms and tenor of the Note; (b) if the Premises or any part thereof or any interest thereon are sold or transferred except as permitted under the provisions of §8 of this Mortgage; (c) if Borrower fails to observe or perform any other provision, covenant or condition required of Borrower under the Note or this Mortgage within 30 days after Lender gives notice to Borrower of Borrower's failure to observe or perform such provision, covenant or condition; (d) if the Premises are abandoned; (e) if an order for relief under any bankruptcy laws of the United States is issued naming Borrower as debtor or if Borrower makes an assignment for the benefit of creditors or enters into a composition agreement with Borrower's creditors; (f) if the interest of Borrower in the Premises is attached, levied upon, or seized by legal process; or (g) if a trustee, receiver or liquidator is appointed on behalf of Borrower. Upon an acceleration of the amounts secured by this Mortgage as provided for in this §10, Lender shall have the right to foreclose this Mortgage lien, have a receiver appointed, take possession of and manage the Premises, collect the rents derived from the Premises, and take any and all other action available to Lender under law.

§11. APPLICATION OF PAYMENTS. All payments received by Lender under the Note or this Mortgage, unless otherwise stated in this Mortgage, shall be applied by Lender first to the payment of any amounts advanced or paid by Lender for the protection of the security granted by this Mortgage, then to expenses incurred by Lender by reason of Borrower's default under this Mortgage, then to interest payable on the Note, and then to the principal of the Note.

§12. FOREBEARANCE; REMEDIES CUMULATIVE. If Lender (a) grants any extension of time or forbearance with respect to the payment of any sums secured by this Mortgage, (b) takes other or additional security for the payment thereof, (c) waives or fails to exercise any right granted in this Mortgage or in the Note, (d) grants any release with or without consideration of the whole or part of the security granted by this Mortgage, or (e) amends or modifies in any respect any of the terms and provisions of this Mortgage or the Note, any such act or omission shall not release Borrower of any obligations under this Mortgage or under the Note, nor preclude Lender from exercising any right granted in this Mortgage or under law for a default by Borrower or for any subsequent default.

Lender's procurement and payment of fire and casualty insurance and Lender's payment of real property taxes and assessments and other governmental charges and liens after Borrower has failed to pay the same shall not be a waiver of Borrower's default or Lender's right to accelerate the indebtedness secured hereby.

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or which are afforded under law and may be exercised concurrently, independently or successively.

§13. SUCCESSORS AND ASSIGNS; JOINT AND SEVERAL LIABILITY; CAPTIONS; GOVERNING LAW; SEVERABILITY. Subject to the provisions of §8, above, the covenants and agreements of this Mortgage shall bind, and the rights hereunder shall inure to, the respective successors and assigns, personal representatives and heirs of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and section headings of this Mortgage are for convenience only and shall not be used to interpret or define the provisions of this Mortgage. This Mortgage shall be governed by the laws of the State of Ohio, and, if any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. The provisions of this Mortgage and the Note are severable.

§14. NOTICES. Except as otherwise set forth in this Mortgage or as may otherwise be required by applicable law, any notice to be given under this Mortgage shall be in writing and mailed with postage prepaid to Lender and Borrower at the addresses set forth at the beginning of this Mortgage or to such other addresses as Lender or Borrower may designate by notice given to the other party as provided for in this §14.

§15. RELEASES. Upon payment of all sums secured by this Mortgage and the observance and performance of each of the covenants and agreements of this Mortgage to be observed and performed by Borrower, Lender shall provide to Borrower a release of this Mortgage, and of any other security interest given to Lender to secure the Note, in recordable form.

§16. OTHER PROVISIONS.

IN WITNESS WHEREOF, the undersigned Borrower and the spouse of the Borrower, who hereby releases such spouse's rights of dower in the Premises, have executed this Mortgage on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned Borrower has executed this Mortgage on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Signed and acknowledged in the presence of: \_\_\_\_\_

STATE OF OHIO COUNTY OF \_\_\_\_\_, SS:

\* Before me, a Notary Public in and for said State and County, personally appeared \_\_\_\_\_ who acknowledged the signing of the foregoing Mortgage and that the same is the free act and deed of such signatories (and if a corporation or a partnership that the same is the free act and deed of said corporation or partnership and the officers or partners signing the same) for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my official seal on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Notary Public My Commission Expires \_\_\_\_\_

\*Note: If Borrower is a corporation or a partnership, insert the name of the corporation or partnership, the type of entity and the name and title of the officer or partner who is signing on behalf of Borrower.

This instrument was prepared by \_\_\_\_\_, attorney at law.

## DEED RESTRICTIONS

1. Architectural and Development Controls. No "Improvements" except "Public Improvements" (as those terms are hereinafter defined) shall be erected, constructed, altered, removed or maintained on the Property: (i) within 200' of the common property line of the Property and that certain 57 ± acre tract of land formerly owned by Planned Development Company of Ohio ("PDC") located contiguous to and northwest of the Property, and/or (ii) until and unless the plans and specifications for the same (the "Plans and Specifications") shall have first been approved in writing by PDC, which approval shall not be unreasonably withheld or delayed. If PDC fails either to approve or disapprove any such Plans and Specifications within 30 days after the same have been delivered to PDC, it shall be presumed that PDC has disapproved any such Plans and Specifications. Notwithstanding, PDC shall not be liable to anyone submitting Plans and Specifications for approval by reasons of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any proposed Improvements. For purposes of these Deed Restrictions, the phrase: (x) "Improvements" shall mean and include all structures or improvements of any kind including, without limitation, any building, foundation, footer, fence, wall, sign, paving, grubbing, grading, site work, clearing, parking area, deck, patio, sewer, utility, drain, disposal system and landscaping, and all material alterations, additions and improvements thereto, (y) "Public Improvements" shall mean and include Improvements the primary purpose of which is to benefit the public (e.g., parks, fire and EMS facilities, police stations, libraries, recreational and sporting fields, etc.) and which provide no direct monetary benefit to any private person or entity (excepting benefits derived from construction of the Public Improvements), and (z) "Public Purpose" means uses of the Property which are public in nature and purpose and are intended to benefit the public in general (e.g., parks, fire and EMS facilities, police stations, libraries, recreational and sporting fields, etc.).

2. PDC's Option. If, for a period of 10 years following the Closing Date (the "Option Period"), all or any portion of the Property shall be re-zoned and/or used for any purpose other than a Public Purpose (all or any such portion of the Property being hereinafter referred to as the "Option Tract"), PDC shall have the right and option (the "Option") to purchase the Option Tract for an amount equal to the product obtained when: (i) \$ \_\_\_ [insert amount equal to PDC's net closing proceeds from the sale of the Property to the Township as set forth on Closing and Disbursement Agreement] \_\_\_ is multiplied by (ii) a fraction, the numerator of which shall be the number of acres contained within the Option Tract (rounded to the nearest acre) and the denominator of which shall be \_\_\_ [insert total acres within Property, rounded to the nearest acre] \_\_\_. PDC shall exercise the Option by providing the owner(s) of the Option Tract (whether such owner(s) is the Township or the Township's successors and assigns, the "Owner") with written notice (via certified mail, return receipt requested) of PDC's election to exercise the

Option at the tax mailing address for such Owner(s) set forth on the tax duplicate for the Option Tract as maintained in the Butler County public records ("PDC's Notice"). The closing on the purchase and sale of the Option Tract shall occur within 30 days following the date of PDC's Notice at a location in Butler County and on a date and time selected by PDC (or its designee) upon not less than 5 days prior notice to the Owner. At the Closing, the Owner shall execute and deliver to PDC (or PDC's designee) a recordable general warranty deed which conveys to PDC good and marketable title in fee simple to the Option Tract free and clear of all liens, conditions, restrictions, easements, reservations, rights of third parties and encumbrances except the lien for non-delinquent real property taxes which are a lien on the Option Tract but not then due and payable and easements, conditions and reservations affecting the Option Tract prior to the time and date this Deed is recorded in the Office of the Recorder of Butler County (the "Closing Date"). Any interest or encumbrance (e.g., consensual and non-consensual liens, easements, leasehold estates, etc.) in the Property arising after the Closing Date shall be subject and subordinate to the Option and the provisions of this ¶2 and shall be deemed extinguished upon the conveyance of the Option Tract to PDC.

3. Enforcement. PDC shall have the authority to enforce the provisions of and restrictions imposed hereunder in any manner provided by law or equity. As the remedy at law for any breach of any of the provisions and restrictions may be inadequate, PDC shall have the right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding that may be brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. All expenses, including attorneys' fees, incurred by PDC in connection with any such enforcement, at law or equity, shall be deemed a damage hereunder and PDC shall be entitled to recover all such damages, in addition to any other recovery or remedy granted to PDC.

4. Covenants Run With the Land. The covenants, reservations, restrictions, easements, conditions, assessments, charges, liens and other provisions set forth in this Deed (the "Restrictions") shall run with the land (i.e., the Property) and bind Grantee, its successors and assigns, and all occupants of the Property for a period of forty years. Except as otherwise specifically provided in this Deed, the Restrictions are and shall remain the personal rights of Grantor (which Grantor may waive, extinguish and/or terminate in whole or part at any time), its successors and/or assigns, provided those successors and/or assigns are specifically designated in writing by Grantor in an instrument filed in the Public Records as a successor or assign of Grantor's rights, or a portion thereof, under this Deed, as the case may be, and Grantor's rights hereunder shall not be deemed transferred unless so designated by Grantor.

EXHIBIT A

BECKETT RIDGE COUNTRY CLUB, INC.  
6595 Beckett Ridge Boulevard  
West Chester, Ohio 45069  
(513) 874-2710/Fax (513) 874-0633

February 11, 1997

Planned Development Company  
of Ohio  
4564 Morris Court  
Mason, Ohio 45040

Attn: Kenneth R. Campbell

Re: Planned Development Company of Ohio ("Owner") and Beckett Ridge Country Club, Inc. ("Club") regarding access on Owner's property

Gentlemen:

This letter agreement, effective February 1, 1997, (the "Effective Date") serves as the sole authorization and agreement between Owner and Club that Owner does hereby grant to Club the right to enter onto Owner's property (the "PDC Property") which is located adjacent to Club's driving range for the purpose of retrieving any golf balls that have been hit from Club's driving range onto the PDC Property. Any access to the PDC Property is subject to the following conditions:

1. Club agrees to indemnify and hold Owner and/or its officers, directors, agents, servants, and employees from any and all expenses, suits, actions, judgments, attorneys' fees, and costs arising from any suits, actions, or claims resulting from or any character, type or description brought in connection with any injuries resulting from golf balls hit from Club's driving range onto the PDC Property or retrieved from the PDC Property; and

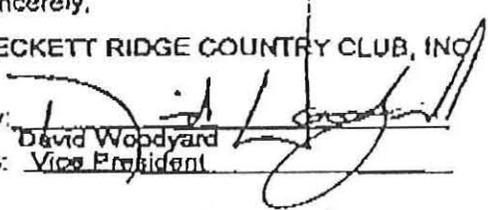
2. Owner agrees to provide Club sixty (60) days written notice prior to terminating Club's right to enter the PDC Property granted under this Letter Agreement. Club agrees to cease allowing golf balls to be hit from Club driving range onto the PDC Property and to cease retrieving any golf balls prior to the termination date.

It is understood and agreed that this Letter Agreement shall not be filed or recorded in the office of County Clerk in and for Butler County, State of Ohio.

If this reflects the agreement between the parties, please indicate your approval in the space provided below.

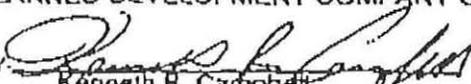
Sincerely,

BECKETT RIDGE COUNTRY CLUB, INC.

By:   
David Woodyard  
Its: Vice President

APPROVED and AGREED to this  
24<sup>th</sup> day of February, 1997.

PLANNED DEVELOPMENT COMPANY OF OHIO

By:   
Kenneth R. Campbell  
Title: Chairman

# New park will cover 150 acres

## Land to be bought March 15

BY MICHAEL D. CLARK  
The Cincinnati Enquirer

**UNION TOWNSHIP** — The greening of this southeastern Butler County community continues as township officials revealed Tuesday they are creating a new, 150-acre park off Beckett Road north of Union Centre Boulevard.

Union Township officials said they plan to purchase the acreage for the new park from private developers on March 15.

The park, which will be located on both sides of Beckett Road, will cost \$4.9 million to purchase and another estimated \$5 million to develop in stages during the next five years.

It will be the township's first park west of Interstate 75 and it is also the second-largest park in the community after the township's 330-acre recreational area at the site of the former Voice of America (VOA) off Tylersville Road.

Union Township Administrator David Gully said the park will serve both residents and employees at nearby industrial parks. The park will also act as a natural buffer between new housing being built off Beckett Road, and nearby office parks.

Union Township Trustee President Jose Alvarez said the township's booming population, which jumped from 39,000 in 1990 to more than 59,000 today, was for years largely concentrated east of I-75 and consequently the township's parks were created there.

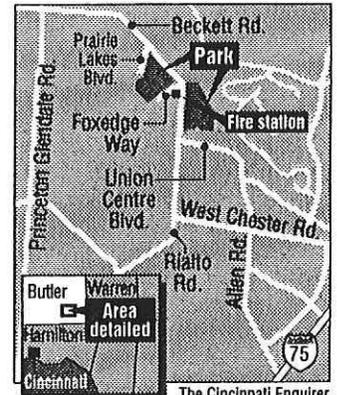
"But it's been a target of ours for years now to try to find a park area on the west side," said Mr. Alvarez. "We are glad to see it come to fruition."

Mr. Alvarez said the first public meeting on the Beckett Road park will be held sometime before the fall.

Besides the park's aquatic features, Mr. Gully said the recreational area will likely include some athletic fields and perhaps an outdoor lodge.

"When people come to (Union Township) to work, we don't just want them to experience concrete and asphalt," said Mr. Gully.

The 150-acre property, which is being bought from Planned Development Co. of Ohio, includes numerous small lakes that Mr. Gully said can be used for fishing and eventu-



The Cincinnati Enquirer



ally will be surrounded by nature trails and picnic areas. The land on the eastern side of Beckett Road is more heavily wooded.

Similar to the development process of the VOA park site, Mr. Gully said township officials will hold public meetings to help determine the final design of the park.

Township officials will hold the second of two public meetings on the VOA park in early May.

# FROST & JACOBS LLP

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2500 PNC CENTER  
201 EAST FIFTH STREET  
CINCINNATI, OHIO 45202-4182  
(513) 651-6800 • FACSIMILE: (513) 651-6981  
WWW.FROJAC.COM  
W. RUSSELL WILSON  
rwilson@frojac.com  
(513) 651-6733

COLUMBUS OFFICE  
ONE COLUMBUS, SUITE 1000  
10 WEST BROAD STREET  
COLUMBUS, OHIO 43215-3467  
(614) 464-1211  
FACSIMILE: (614) 464-1737

MIDDLETOWN OFFICE  
400 FIRST NATIONAL BANK BUILDING  
2 NORTH MAIN STREET  
MIDDLETOWN, OHIO 45042-1981  
(513) 422-2001  
FACSIMILE: (513) 422-3010

KENTUCKY OFFICE  
1100 VINE CENTER TOWER  
333 WEST VINE STREET  
LEXINGTON, KENTUCKY 40507-1634  
(606) 254-1100  
FACSIMILE: (606) 253-2990

March 3, 2000

Mr. David R. Gully  
Administrator  
Union Township, Butler County  
9113 Cincinnati-Dayton Road  
West Chester, Ohio 45069

Re: Beckett Ridge Property

Dear Dave:

I enclose on original counterpart of the Purchase Agreement with Planned Development for the Beckett Ridge property. I have kept another original for my file. I have also enclosed a copy of the recent article in the Cincinnati Enquirer for your edification and amusement. I look forward to working with on the closing.

Please call if you have any questions.

Sincerely,

FROST & JACOBS LLP

By: \_\_\_\_\_



W. Russell Wilson

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is dated and effective this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ between The Board of Trustees of Union Township, Butler, County ("Union Township") and Planned Development Company of Ohio ("PDC"). When referred to collectively, Union Township and PDC shall be referred to as the "Parties."

### Statement of Dispute

A. There is presently pending in the Court of Common Pleas, Butler County Ohio, an action alleging various claims captioned "The Board of Trustees of Union Township, Butler County v. Planned Development Company of Ohio" bearing case number CV 1999 050953 (the "Action");

B. In the Action, Union Township asserted claims against PDC arising out of the sale of certain real property (the "Beckett Ridge Property"), more particularly described in the Complaint filed by Union Township in the Action and in the Purchase Agreement attached as Exhibit 1 to Union Township's Complaint. Union Township alleged that PDC was legally bound to sell the Beckett Ridge Property to Union Township pursuant to the terms of the Purchase Agreement attached as Exhibit 1 of Union Township's Complaint in the Action, but PDC refused to do so. In the Action, Union Township asserted claims against PDC for breach of contract, affirmative injunctive relief, declaratory judgment, and estoppel,

C. PDC answered Union Township's Complaint, denying that it had a legal obligation to sell the Beckett Ridge Property to Union Township. PDC filed Counterclaims against Union Township, asserting that Union Township had violated Ohio's Sunshine Law, Ohio Revised Code § 121.22, and had deprived PDC of its property under 42 U.S.C. § 1983. PDC also filed a Counterclaim for declaratory judgment that Union Township was without right

to enforce the Purchase Agreement attached as Exhibit 1 to Union Township's Complaint in the Action.

D. It is now the desire and intention of the Parties to settle all rights, claims, disputes, differences and demands between and/or among the Parties existing prior to the date of this Agreement including those that arise out of the Action.

NOW, THEREFORE, in consideration of the mutual promises, representations, acknowledgments, agreements, covenants and commitments set forth herein below, the Parties hereby agree as follows:

**SECTION ONE.**

**Terms of Settlement**

In consideration of the full and complete settlement of the above-described dispute, and in further consideration of the mutual covenants and other good and valuable consideration set forth in this Agreement, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. PDC agrees to execute and deliver to Union Township the Purchase Agreement attached and incorporated to this Agreement as Exhibit A (the "Purchase and Sale Agreement") and such other documents or instruments more particularly described in the Purchase and Sale Agreement.
2. Upon execution and delivery of the documents described in paragraph 1 above, Union Township agrees to pay to PDC the consideration stated in the Purchase and Sale Agreement attached and incorporated hereto as Exhibit A.
3. The Parties further understand and agree that the Resolution authorizing the execution of the Purchase and Sale Agreement attached hereto and incorporated

hereto as Exhibit A and the execution of this Agreement is subject to a ten (10) day statutory Referendum Period and challenge (the "Referendum Period"). The Parties further understand and agree that if the Resolution authorizing the execution of the Purchase and Sale Agreement attached hereto and incorporated hereto as Exhibit A and the execution of this Agreement is challenged during this Referendum Period, this Agreement shall be null and void, and the parties shall retain all claims that have been asserted against one another in the Action.

4. Upon execution of the Purchase and Sale Agreement attached and incorporated hereto as Exhibit A, execution of all documents necessary for the conveyance of the real estate described therein from PDC to Union Township, payment of the consideration described therein by Union Township to PDC, and the expiration of the Referendum Period without challenge, the Parties agree to execute and file immediately the Agreed Stipulation of Dismissal with Prejudice in the Action attached hereto as Exhibit B. The Parties agree to bear their own costs and attorneys' fees incurred in the Action.
5. Upon execution of the Purchase and Sale Agreement attached and incorporated hereto as Exhibit A, execution of all documents necessary for the conveyance of the real estate described therein from PDC to Union Township, payment of the consideration described therein by Union Township to PDC, expiration of the Referendum Period without challenge, and the execution and filing of the Agreed Stipulation of Dismissal with Prejudice attached hereto as Exhibit B, Union Township and PDC do hereby jointly and severally release and forever discharge each other, and their respective past, present and future dependents, heirs,

executors, administrators, assigns, attorneys, agents, legal representatives, officers, directors, employees, predecessor-, successor-, affiliated-, subsidiary-, and parent-corporations (and the officers, directors and employees of said corporations) from any and all manner of claims, actions, causes of action, rights, judgments, debts, contracts, promises, allegations, demands, obligations, duties, suits, expenses, assessments, penalties, charges, injuries, losses, costs, damages and liabilities (hereinafter all referred to collectively as "Claims") of every kind and manner whatsoever, in law or in equity, civil or criminal, administrative or judicial, which each has had or now has against the other, whether now known, claimed, asserted, suspected or discoverable by each, including, but expressly not limited to, all Claims set forth in the Action; provided, however, that this release shall not apply to, and nothing contained in this Agreement shall be construed to release, compromise, settle, waive or satisfy any Claims by either Party that the other Party has breached the terms of this Agreement or the Purchase and Sale Agreement attached and incorporated hereto as Exhibit A.

6. Each of the Parties understands and acknowledges to the other the significance and consequence of releasing all of its Claims (including presently existing, but unknown, unasserted, unsuspected or undiscovered Claims) and hereby assumes full risk and responsibility for any and all injuries, losses, damages, assessments, penalties, charges, expenses, costs and/or liabilities that it may hereafter incur or discover which in any way arise out of or relate to such Claims. To the extent that any statute, law, ordinance, rule, regulation, case or other such legal provision or authority may purport to preserve either Parties' right hereafter to assert presently

existing but unknown, unasserted, unsuspected or undiscovered Claims which would otherwise be barred by the terms of this Agreement, each Party hereby specifically and expressly waives its rights under such statute, law, ordinance, rule, regulation, case or other such legal provision or authority.

7. Union Township and PDC each hereby further warrants, represents and acknowledges to the other that:
- (a) it has the right and authority to execute this Agreement and to give and receive the consideration given for this Agreement;
  - (b) it has not sold, assigned, transferred, conveyed or otherwise disposed of any of the Claims covered by this Agreement;
  - (c) the consideration received by it for this Agreement is fair, reasonable, sufficient, just and adequate and constitutes lawful consideration supporting the execution of this Agreement;
  - (d) through its duly authorized representative, it has read all provisions of this Agreement in full, has reviewed those provisions with its attorney, and understands them and voluntarily agrees to be bound thereby;
  - (e) it is entering into this Agreement based solely and exclusively upon its and/or its counsel's own analysis of the facts and/or information of which it and/or its counsel is independently aware and not based upon or in reliance upon any statements and/or representations of the other Party (except to the extent such statements and/or representations are fully and expressly set forth herein).

(f) Union Township has complied with all procedures mandated by law, statute, or regulation of any kind, including, but not limited to, the Ohio Sunshine Law (O.R.C. § 121.22) to the extent applicable and necessary for the approval of this Agreement and the Purchase and Sale Agreement and that no basis exists to invalidate any such Agreement under any such law, statute or regulation. Notwithstanding this representation, PDC understands that the resolution authorizing this Agreement and the Purchase and Sale Agreement will not be effective until after the Referendum Period.

8. It is further understood and agreed by the Parties to this Agreement that the facts pursuant to which this Agreement is made may hereafter prove to be other than or different from the facts now understood and/or believed by the Parties to be true. Except as provided herein, each Party expressly agrees that it is its express and specific intent to assume and accept the risk of the facts proving to be different, and each of the Parties agrees that all the terms of the Agreement shall be in all respects effective and not subject to reformation, termination or rescission on account of any such difference in facts.

9. It is further understood and agreed by the parties hereto that:

- (a) This Agreement shall be governed by the laws of the State of Ohio.
- (b) Any action or other proceeding of any kind, civil or criminal, legal or equitable, based upon or in any way related to the subject matter of this Agreement shall be brought in an appropriate court of competent jurisdiction (state or federal) within the State of Ohio within one year.

- (c) Any action brought within such courts shall not be transferred or removed to any court outside the State of Ohio.

**SECTION TWO.**

**Effect of Agreement**

1. It is understood and agreed to by Union Township and PDC that this Agreement:
- (a) is in settlement and compromise of disputed Claims and that nothing contained in this Agreement (including but not limited to any consideration referred to in or which is required by this Agreement) is to be construed as an admission of liability;
  - (b) shall be binding on and shall inure to the benefit of the parties and their respective past, present and future dependents, heirs, executors, administrators, assigns, attorneys, agents, legal representatives, officers, directors, employees, predecessor-, successor-, affiliated-, subsidiary-, and parent-corporations (and the officers, directors and employees of said corporations);
  - (c) contains the entire agreement between the parties with respect to the subject matter of this Agreement and any agreement hereafter made shall be ineffective to change, modify or discharge this Agreement unless such subsequent agreement is in writing and signed by the party to be charged.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate with the intent to be legally bound on the dates set forth opposite their respective signatures.

(A) THE BOARD OF TRUSTEES OF  
UNION TOWNSHIP, BUTLER  
COUNTY, OHIO

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

(B) PLANNED DEVELOPMENT  
COMPANY OF OHIO

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

744354.01

**PURCHASE AGREEMENT**

This Purchase Agreement is executed, delivered and made effective as of the Effective Date (as hereinafter defined) by and between the following two parties: (i) **PLANNED DEVELOPMENT COMPANY OF OHIO**, an Ohio corporation ("Seller") and (ii) **THE BOARD OF TRUSTEES OF UNION THE TOWNSHIP, BUTLER COUNTY OHIO** (the "Township").

**Preliminary Statements**

A. Seller is the owner of an approximate \_\_\_ ± and \_\_\_ ± acre tracts of land located in Union the Township, Butler County, Ohio, being more particularly described on Exhibit A hereto (together with all improvements thereon, if any, and all easements and other rights and privileges appurtenant thereto, the "Property").

B. There is presently pending in the Court of Common Pleas, Butler County, Ohio, an action (Case No. CV 1999 050953) alleging various claims and counterclaims by Seller and the Township (the "Action"). The parties have entered into a Settlement Agreement and Mutual Release in connection therewith (the "Settlement Agreement").

C. The Township has notified Seller in writing that it intends to acquire the Property by eminent domain proceedings, if necessary. In light of the Township's threats and in order to avoid a taking of the Property should Seller prevail in the Action, Seller is willing to enter into the Settlement Agreement and sell and convey the Property to the Township upon the terms and conditions hereinafter set forth. Seller intends to replace the Property during the period and in the manner prescribed by Section 1033 of the Internal Revenue Code of 1986, as amended.

D. The parties desire to set forth in this Agreement their respective rights, obligations and conditions with respect to the aforementioned transactions.

**Statement of the Agreement**

In consideration of the foregoing Preliminary Statements and of the mutual promises herein set forth, the parties make this Agreement on the following terms and conditions, intending to be bound hereby:

**Section 1 - Purchase Price; Earnest Money Deposit; Seller Financing.**

§1(a). Purchase Price. Seller hereby agrees to sell and convey to the Township, and the Township hereby agrees to purchase, pay for and acquire from Seller, the Property for the Purchase Price and on the other terms and conditions set forth in this Agreement. The purchase price to be paid by the Township to Seller for the Property shall be \$4,900,000 (the "Purchase Price"). Subject to the provisions of §1(c) hereof, the Purchase Price shall be due and payable in

immediately available funds at the Closing, subject to adjustments for certain charges and credits as provided in this Agreement.

§1(b). Earnest Money Deposit. Upon execution of this Agreement, Purchaser shall deposit with Lawyer's Title of Cincinnati, Inc. (the "Escrow Agent") the sum of \$250,000 (such sum, together with any interest earned thereon, is hereinafter collectively referred to as the "Deposit"). Escrow Agent shall deposit the Deposit into a separate interest-bearing trust account. Purchaser represents, for purposes of reporting the interest earned thereon, that Purchaser's Federal Taxpayer Identification Number is \_\_\_\_\_. If the transaction for the sale, conveyance and purchase of the Property is closed as provided in this Agreement, then the Deposit shall be applied as part of the payment of the Purchase Price for the Property at the Closing. If this transaction is not closed because of a default by Purchaser hereunder, the Escrow Agent shall pay the Deposit to Seller as fixed and liquidated damages, and in full satisfaction of all causes of action, claims, demands, damages and remedies that Seller might have against Purchaser as a result of such default; provided, however, the foregoing shall not release Purchaser from its obligations under, or preclude Seller from enforcing the terms and conditions of the Settlement Agreement. The parties have mutually agreed upon such liquidated damages, not as a penalty but as a mutually agreeable amount to compensate Seller for its damages and expenses, and for the removal of the Property from the marketplace, and to avoid for both parties expensive and vexatious litigation. If this transaction is not closed because either party has the right to terminate and has effectively terminated this Agreement within the applicable time period specified for such right, then the Escrow Agent shall refund and return to Purchaser the Deposit. If the aforementioned transaction is not closed because of Seller's failure to perform hereunder (through no fault of the Township), the Earnest Money Deposit shall be returned to the Township without prejudice to the rights of the Township in any action for damages or specific performance. In the event of a dispute over the disposition of the Deposit, Escrow Agent shall retain the Deposit until (i) Purchaser and Seller have settled the dispute; (ii) disposition has been ordered by final court order; or (iii) Escrow Agent deposits the Deposit with a court pursuant to applicable court procedures.

§1(c). Seller Financing. The Township, at its option, may elect to pay the Purchase Price to Seller in accordance with the following described financing (the "Seller Financing") by providing Seller with notice thereof on or before March 10, 2000: (i) 20% of the Purchase Price (\$980,000) shall be paid to Seller at the Closing in cash by wire transfer; and (ii) the remaining unpaid principal balance of the Purchase Price (adjusted for certain charges and credits as herein provided) shall be financed by Seller by means of, and shall be paid by the Township in accordance with the terms of, a Cognovit Promissory Note (the "Note") which shall bear interest at the rate of 9.75% (default interest at 13.75%) until paid. The entire unpaid principal balance of the Note, together with accrued interest thereon and any other sums due thereunder, shall be due and payable to Seller in full on April 20, 2000 (the "Maturity Date"). The Note shall be secured by a purchase money first mortgage lien (the "Mortgage") on the Property. The Note and Mortgage shall be substantially in the form of the Note and Mortgage attached hereto as Exhibits B and C, respectively.

Section 2 - The Closing; Possession. The transaction for the sale and purchase of the Property shall be closed as provided below by the delivery of the deed and other closing instruments specified for the Property and by the payment of the Purchase Price for the Property (the "Closing") on March 15, 2000 (the "Closing Date") at the offices of Vorys, Sater, Seymour and Pease LLP, 2100 Atrium Two, 221 East Fourth Street, Cincinnati, Ohio, 45201. The Township shall be entitled to possession of the Property upon Closing, subject to the Permitted Exceptions (hereafter defined).

Section 3 - Condition of the Property. The Property is being purchased by the Township in its present physical condition. Except for the representations of Seller set forth in § 8 hereof, the Township shall rely solely upon its own inspection with regard to the condition of and title to the Property, including its location; size; zoning; applicable flood-plain designation(s); appurtenant rights; ingress and egress; utility size, character, quality, quantity and availability; subsurface, environmental or soil condition and character; and shall purchase the Property "as is," without any representation or warranty whatsoever, express or implied, as to the condition of the Property, or as to its fitness for any particular purpose, all of which are hereby expressly disclaimed by Seller.

Section 4 - Title.

§4(a). Title Review. The obligations of the Township under this Agreement are contingent on and subject to the Township's review and approval of title to the Property on or before February 29, 2000 (the "Deadline"); provided, however, title to the Property shall be deemed acceptable to the Township in the event there have been no changes thereto since \_\_\_\_\_, 1999 other than that certain Road Assessment [insert recording information for road assessment] (the "Road Assessment"). If the Title Contingency is not satisfied or waived by the Deadline, then the Township shall have the right, at its option, to terminate this Agreement by giving to Seller written notice of such termination. If the Township should fail to give to Seller such notice on or before the Deadline, then the Township shall be deemed to have satisfied and/or waived the Title Contingency.

§4(b). Title Insurance. Should the Township desire title insurance in connection with this transaction, the Township shall order, pay for and obtain such insurance. Provided, however, in the event the Township elects to pay the Purchase Price with the Seller Financing, the Township shall cause a loan policy of title insurance to be issued to Seller, at the Township's expense, insuring the Mortgage as a first mortgage lien on the Property.

Section 5 - Closing Costs.

§5(a). Title Insurance Costs. The Township shall pay any title insurance premium and fees for any title insurance issued in connection with this transaction including the loan policy, if applicable.

§5(b). Conveyance, Recording and Escrow Fees. Seller shall pay the real property conveyance fee applicable to the sale and conveyance of the Property, if any, and any

recording fees associated with mortgage or similar lien releases attributable to the Property. The Township shall pay all other recording fees.

§5(c). Real Estate Taxes and Assessments. Seller shall pay or credit against the Purchase Price all assessments (other than the Road Assessment) which are a lien on the Property and due and payable as of the Closing Date and all real estate taxes and assessments, including penalties and interest, for calendar years prior to the year of the Closing. The Township shall assume the entire Road Assessment and any other assessments which are or may be a lien on the Property and due and payable for periods following the Closing Date. All real estate taxes for the calendar year of the Closing which have not been paid shall be apportioned and prorated between the parties as of the Closing Date, regardless of the collection date therefor. Such pro-ration shall be based upon the number of days in such calendar year or semi-annual period during which each party held title to the Property and shall be based on the most recently available information on tax rate and valuation. Such proration shall be final. The Township shall be responsible for and shall satisfy all agricultural use recoupments relating to the Property.

Section 6 - Closing Instruments.

§6(a). Instruments to be Delivered by Seller. At the Closing, Seller shall execute and deliver to the Township the following instruments:

(i) Deed. A recordable limited warranty deed (the "Deed") which conveys to the Township fee simple title to the Property free and clear of all liens but subject to the following matters which shall be excepted and/or reserved by Seller, as the case may be, in the Deed (collectively, the "Permitted Exceptions"):

(v) the rights of others to use wells located on the Property and the driving range as disclosed in §8(b) hereof and matters which would be shown on an accurate ALTA/ACSM survey of the Property;

(w) easements, conditions, restrictions, reservations, options and other matters of record including the Road Assessment;

(x) the deed restrictions set forth on Exhibit D which shall run with the land (i.e., the Property) as provided therein; and

(y) real estate taxes and assessments which are a lien but not yet due and payable and the rights of the public to use any portion of the Property located within a public road or right of way; and

(z) the Action.

(ii) Seller's Affidavit. A seller's affidavit (but not indemnity) given by Seller to the Township with respect to the payment of bills for work performed or materials furnished to the Property within 75 days prior to the Closing and with respect to any other off-

record matter which is required for the issuance of the owner's policy of title insurance without the standard pre-printed exceptions (exclusive of the survey exception) should the Township elect to obtain title insurance for the Property.

(iii) Authority. One or more certificates of Seller regarding the authority of the Person or Persons who sign this Agreement and the other closing instruments on behalf of Seller.

(iv) Other Instruments. A closing and disbursement statement, an IRS Form 1099-B report of proceeds from a real estate transaction [§6045(e), IRC], and a non-foreign person certificate [§1445, IRC, FIRPTA], if required.

§6(b). Instruments to be Delivered by the Township. At the Closing, the Township shall execute and deliver to Seller the following instruments:

(i) Authority. One or more certificates of the Township regarding the authority of the Person or Persons who sign this Agreement and the other closing instruments on behalf of the Township.

(ii) Other Instruments. A closing and disbursement statement and a real property conveyance fee statement.

Section 7 – Township Representations. The Township represents and warrants the following as of the date of this Agreement which representations and warranties shall survive the Closing and remain in full force and effect for a period of one year after the Closing. Subject only to the Referendum (as hereafter defined), the Township has full power and authority to enter into this Agreement and carry out the transactions contemplated hereby, and is duly authorized to execute this Agreement and any other instruments or documents reasonably necessary to carry out the transactions contemplated by this Agreement including, if applicable, the Note and Mortgage. Neither the execution and delivery of this Agreement, nor the consummation by the Township of the transactions contemplated hereby, nor compliance by the Township with any of the provisions hereof, will (y) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Township is a party, or (z) violate any laws or material license, permit, order, injunction, decree, statute, rule or regulation applicable to the Township.

#### Section 8 - Seller Representations and Disclosures.

§8(a). Representations. Seller represents and warrants the following as of the date of this Agreement which representations and warranties shall survive the closing and remain in full force and effect for a period of one year after the Closing:

(i) Authority. Seller has full power and authority to enter into this Agreement and carry out the transactions contemplated hereby, and is duly authorized to execute

this Agreement and any deeds, assignments or other instruments or documents reasonably necessary to carry out the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement, nor the consummation by Seller of the transactions contemplated hereby, nor compliance by Seller with any of the provisions hereof, will (y) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Seller is a party or by which any part of the Property may be bound, or (z) violate any Laws or material license, permit, order, injunction, decree, statute, rule or regulation applicable to Seller or any part of the Property.

(ii) Other Interests. Except as may be set forth in the public records and/or in this Agreement, to Seller's knowledge, there are no purchase contracts, options, leases or any other agreements of any kind, oral or written, recorded or unrecorded, whereby any person or entity other than the Township will have acquired or will have any basis to assert any right, title, or interest in, or right to possession of, any part or all of the Property.

(iii) Knowledge. For purposes of this Agreement, the phrase "to Seller's knowledge" means the actual knowledge of Kenneth R. Campbell and/or Daniel M. O'Brien.

§8(b). Disclosures. The Township acknowledges that: (i) there are wells and water lines (the "Wells") on the Property which provide water to Beckett Ridge Country Club, Inc. ("BRCC") and that BRCC has claimed the right and easement to use such wells pursuant to a Grant of Easement filed December 4, 1984 in Volume 1511, Page 616 of the Deed Records, Butler County, Ohio, and (ii) that BRCC has utilized a portion of the Property for a driving range (the "Driving Range"). Notwithstanding, attached hereto as Exhibit E is a letter agreement by and between BRCC and Seller establishing Seller's right to terminate BRCC's use of a portion of the Property for a driving range. At Closing, Seller shall assign, without warranty, to the Township all of Seller's right, title and interest under such letter agreement.

#### Section 9 - General and Miscellaneous Provisions.

§9(a). Notice. Any notice or other communication required or permitted to be given to a party under this Agreement shall be in writing, unless otherwise specified in this Agreement, and shall be given by one of the following methods to such party at the address set forth at the end of this §9(a): (i) it may be sent by registered or certified United States mail, return receipt requested and postage prepaid, or (ii) it may be sent by ordinary US mail or delivered in person or by courier, telecopier, facsimile transmission, telex or any other means for transmitting a written communication. Any such notice shall be deemed to have been given as follows: (y) when sent by registered or certified United States mail, as of the date of delivery shown on the receipt, or if not determinable, as of the second Business Day after it was mailed; and (z) when sent or delivered by any other means, upon receipt. Either party may change its address for notice by giving written notice thereof to the other party. The address of each party for notice initially is as follows:

Seller:

The Township:

Planned Development Company of Ohio  
1173 McCleary Ct.  
Columbus, Ohio 43235  
Attention: Daniel M. O'Brien  
Fax Number: 614/885-7832

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

with a copy to:

with a copy to:

Vorys, Sater, Seymour and Pease LLP  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Attention: Tom Mason  
Fax Number: 614/464-6350

Frost & Jacobs LLP  
\_\_\_\_\_  
Cincinnati, Ohio \_\_\_\_\_  
Attention: Russ Wilson  
Fax Number: 513/ \_\_\_\_\_

§9(b). Complete Agreement; Amendment; Waiver; Counterparts. This Agreement, including all exhibits, constitutes the complete agreement between the parties with respect to the subject matter hereof; it supersedes all previous understandings, if any, between the parties; no oral or implied understandings, representations or warranties shall vary its terms; and neither it nor any of its provisions may be amended or waived other than by a written instrument executed by Seller and the Township. This Agreement or any such amendment or waiver may be executed in several counterparts, each of which shall be considered a duplicate original and the same instrument.

§9(c). Governing Law; Severability; Time. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The invalidity or unenforceability of any provision of this Agreement in any particular respect shall not affect the validity and enforceability of any other provision of this Agreement or of the same provision in any other respect. Time is of the essence with respect to the performance of each provision of this Agreement.

§9(d). Successor and Assigns; Assignment; Attorney's Fees. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. This Agreement may not be assigned. In the event that litigation arises between the parties with respect to any breach or threatened breach of the terms of this Agreement, the prevailing party in such litigation shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, in connection therewith from the non-prevailing party.

§9(e). Survival of the Agreement; Survival of Certain Terms. Except as otherwise limited herein, the promises, terms, conditions, representations, warranties and provisions of this Agreement shall survive the Closing of the transactions and the delivery and recording of the deed and any other instrument for the conveyance of the Property; and if the deed or any other recorded instrument is or may be construed to be inconsistent with any provision of this Agreement, then the applicable provisions of this Agreement shall control and

shall not be deemed to have been merged into such deed or other recorded instrument, unless otherwise expressly provided in any such instrument.

§9(f). Brokers; Indemnification. The parties acknowledge that no real estate broker or other Person has been employed for compensation by either party to represent it in this transaction. Each party hereby represents and warrants to the other party that it has no knowledge of any agreement, understanding or fact which would entitle any real estate broker, finder or other Person, to any commission, fee or other compensation as a result of the transaction which is the subject of this Agreement. Each party hereby agrees to indemnify, defend and hold harmless the other party from and against any liability, cost or expense, including attorneys' fees, as a result of any claim for a commission, fee or other compensation made by any real estate broker, finder or other Person and asserted against the other party by reason of an arrangement made or alleged to have been made by the indemnifying party.

§9(g). Certain Defined Terms. For purposes of this Agreement, the term: (i) "Person" means a corporation, association, partnership (general or limited), limited liability company, trust, estate, government, governmental agency or other entity as well as an individual or natural person, unless the context otherwise requires, (ii) "Business Day" shall mean any day that the Office of the Recorder and Auditor in the County in which the Property is located is open to the public for the recordation of the Deed and other instruments executed and delivered by the parties in connection with the Closing, and (iii) "Effective Date" means the date of execution of this Agreement by the last party to execute this Agreement.

§9(h). Schedule of Exhibits. Attached hereto and incorporated herein by this reference are the following exhibits:

Exhibit A	Legal Description
Exhibit B	Note
Exhibit C	Mortgage
Exhibit D	Deed Restrictions
Exhibit E	BRCC Letter Agreement

Section 10 – The Referendum. Seller and the Township acknowledge that the Township is a "home-rule" township as contemplated under Chapter 504 of the Ohio Revised Code and that the resolutions by the Board of Trustees of the Township authorizing the execution and delivery of this Agreement and the Settlement Agreement and the performance of the obligations of the Township under this Agreement (the "Resolutions") are subject to a referendum pursuant to Ohio Revised Code §504.14 and related sections. In the event a referendum is filed challenging all or any portion of the Resolutions within the time prescribed by Ohio law (the "Referendum"), then either Seller or the Township shall have the right to terminate this Agreement upon written notice to the other party, whereupon this Agreement and the Settlement Agreement shall automatically terminate and the Deposit shall be immediately returned to the Township.

IN WITNESS WHEREOF, each party has executed and delivered this Agreement to the other party to be effective as of the Effective Date.

SELLER:

BUYER:

PLANNED DEVELOPMENT COMPANY  
OF OHIO, an Ohio corporation

The Board of Trustees of Union Township,  
Butler County, Ohio

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_  
(title)

Its: \_\_\_\_\_  
(title)

Date: \_\_\_\_\_, 2000

Date: \_\_\_\_\_, 2000

## EXHIBIT D

### DEED RESTRICTIONS

1. Architectural and Development Controls. No "Improvements" except "Public Improvements" (as those terms are hereinafter defined) shall be erected, constructed, altered, removed or maintained on the Property: (i) within 200' of the common property line of the Property and that certain 57 ± acre tract of land formerly owned by Planned Development Company of Ohio ("PDC") located contiguous to and northwest of the Property, and/or (ii) until and unless the plans and specifications for the same (the "Plans and Specifications") shall have first been approved in writing by PDC, which approval shall not be unreasonably withheld or delayed. If PDC fails either to approve or disapprove any such Plans and Specifications within 30 days after the same have been delivered to PDC, it shall be presumed that PDC has disapproved any such Plans and Specifications. Notwithstanding, PDC shall not be liable to anyone submitting Plans and Specifications for approval by reasons of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any proposed Improvements. For purposes of these Deed Restrictions, the phrase: (x) "Improvements" shall mean and include all structures or improvements of any kind including, without limitation, any building, foundation, footer, fence, wall, sign, paving, grubbing, grading, site work, clearing, parking area, deck, patio, sewer, utility, drain, disposal system and landscaping, and all material alterations, additions and improvements thereto, (y) "Public Improvements" shall mean and include Improvements the primary purpose of which is to benefit the public (e.g., parks, fire and EMS facilities, police stations, libraries, recreational and sporting fields, etc.) and which provide no direct monetary benefit to any private person or entity (excepting benefits derived from construction of the Public Improvements), and (z) "Public Purpose" means uses of the Property which are public in nature and purpose and are intended to benefit the public in general (e.g., parks, fire and EMS facilities, police stations, libraries, recreational and sporting fields, etc.).

2. PDC's Option. If, for a period of 10 years following the Closing Date (the "Option Period"), all or any portion of the Property shall be zoned and/or used for any purpose other than a Public Purpose (all or any such portion of the Property being hereinafter referred to as the "Option Tract"), PDC shall have the right and option (the "Option") to purchase the Option Tract for an amount equal to the product obtained when: (i) \$        [insert amount equal to PDC's net closing proceeds from the sale of the Property to the Township as set forth on Closing and Disbursement Agreement]        is multiplied by (ii) a fraction, the numerator of which shall be the number of acres contained within the Option Tract (rounded to the nearest acre) and the denominator of which shall be        [insert total acres within Property, rounded to the nearest acre]       . PDC shall exercise the Option by providing the owner(s) of the Option Tract (whether such owner(s) is the Township or the Township's successors and assigns, the "Owner") with written notice (via certified mail, return receipt requested) of PDC's election to exercise the Option at the tax mailing address for such Owner(s) set forth on the tax duplicate for the Option Tract as maintained in the Butler County public records ("PDC's Notice"). The closing on the

purchase and sale of the Option Tract shall occur within 30 days following the date of PDC's Notice at a location in Butler County and on a date and time selected by PDC (or its designee) upon not less than 5 days prior notice to the Owner. At the Closing, the Owner shall execute and deliver to PDC (or PDC's designee) a recordable general warranty deed which conveys to PDC good and marketable title in fee simple to the Option Tract free and clear of all liens, conditions, restrictions, easements, reservations, rights of third parties and encumbrances except the lien for non-delinquent real property taxes which are a lien on the Option Tract but not then due and payable and easements, conditions and reservations affecting the Option Tract prior to the time and date this Deed is recorded in the Office of the Recorder of Butler County (the "Closing Date"). Any interest or encumbrance (e.g., consensual and non-consensual liens, easements, leasehold estates, etc.) in the Property arising after the Closing Date shall be subject and subordinate to the Option and the provisions of this ¶2 and shall be deemed extinguished upon the conveyance of the Option Tract to PDC.

3. Enforcement. PDC shall have the authority to enforce the provisions of and restrictions imposed hereunder in any manner provided by law or equity. As the remedy at law for any breach of any of the provisions and restrictions may be inadequate, PDC shall have the right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding that may be brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. All expenses, including attorneys' fees, incurred by PDC in connection with any such enforcement, at law or equity, shall be deemed a damage hereunder and PDC shall be entitled to recover all such damages, in addition to any other recovery or remedy granted to PDC.

4. Covenants Run With the Land. The covenants, reservations, restrictions, easements, conditions, assessments, charges, liens and other provisions set forth in this Deed (the "Restrictions") shall run with the land (i.e., the Property) and bind Grantee, its successors and assigns, and all occupants of the Property. Except as otherwise specifically provided in this Deed, the Restrictions are and shall remain the personal rights of Grantor (which Grantor may waive, extinguish and/or terminate in whole or part at any time), its successors and assigns, provided those successors and assigns are specifically designated in writing by Grantor in an instrument filed in the Public Records as a successor or assign of Grantor's rights, or a portion thereof, under this Deed, as the case may be, and Grantor's rights hereunder shall not be deemed transferred unless so designated by Grantor.

# MORTGAGE DEED

(Name of Borrower and Marital Status)

(Address of Borrower)

hereinafter called "Borrower," whether one or more than one, for good and valuable consideration paid by

(Name of Lender)

(Address of Lender)

hereinafter called "Lender," whether one or more than one, the receipt and sufficiency of which are hereby acknowledged, does hereby MORTGAGE, GRANT, BARGAIN, SELL and CONVEY to Lender the following described real estate situated in \_\_\_\_\_

County of \_\_\_\_\_, and State of Ohio

together with all privileges, easements, appurtenances, and other rights now or hereafter belonging or appertaining thereto, all buildings and other improvements now or hereafter located thereon, all fixtures and equipment now or hereafter attached thereto or used in connection therewith, and all rents and profits therefrom, all of which are hereinafter called the "Premises."

TO HAVE AND TO HOLD the Premises to Lender, Lender's personal representatives, heirs, successors and assigns, forever, subject to the conditions hereinafter set forth.

This Mortgage is given to secure the payment of money as evidenced by a certain promissory note (the "Note") having the same date as this Mortgage, of which Borrower is the maker and Lender is the payee, and which is in the principal amount of \$ \_\_\_\_\_ with interest at the rate of and to be paid as provided for in the Note; provided, however, that if not sooner paid the entire balance of the Note shall be due and payable on or before \_\_\_\_\_

Borrower, jointly and severally, if more than one, hereby covenants and agrees with Lender as follows:

**§1. PAYMENT OF DEBT.** Borrower shall pay when due the principal of and interest on the indebtedness evidenced by the Note in accordance with the terms thereof.

**§2. STATE OF TITLE WARRANTY.** Borrower is lawfully seized of the Premises and the Premises are free and clear of all encumbrances whatsoever except: (a) the lien of real property taxes and assessments not yet due and payable; (b) legal highways; (c) zoning ordinances; (d) restrictions, conditions, covenants and utility easements of record; and (e) \_\_\_\_\_

(none, if nothing stated) and Borrower will forever warrant and defend the Premises except as provided in this §2.

**§3. REAL PROPERTY TAXES; ASSESSMENTS; LIENS AND CHARGES.** Borrower, when the same shall become due and payable, shall pay all real property taxes and installments of assessments which are a lien on the Premises and, upon Lender's request, shall promptly provide Lender with proof of payment for the same. Borrower shall also pay, when the same shall become due and payable, any other governmental (Federal, State or local) levy or charge which is or may become a lien against the Premises superior to this Mortgage and shall promptly discharge any lien which has or may have priority over this Mortgage except as to any mortgage lien set forth in §2, above, which Borrower shall not permit to be in default.

**§4. INSURANCE.** At Borrower's expense, Borrower shall obtain and maintain in full force and effect at all times during the continuance of this Mortgage fire and extended coverage insurance in an amount sufficient to prevent Borrower from being a co-insurer under said policy of insurance, but in no event less than the aggregate unpaid balance of the Note and of all obligations secured by mortgages encumbering the Premises which have priority over this Mortgage. All such insurance policies or renewals thereof shall include a standard mortgage clause in favor of and in form acceptable to Lender. Borrower shall promptly furnish Lender with a copy of said policies and all receipts of paid premiums. The policies of insurance shall provide for written notice to Lender at least 30 days prior to any cancellation, modification or lapse thereof. In the event of loss, Borrower shall give prompt written notice to Lender and Lender may make proof of loss if not promptly made by Borrower.

**§5. MAINTENANCE OF PREMISES.** Borrower shall keep the Premises in good repair and shall not commit waste or permit deterioration of the Premises, reasonable wear and tear excepted, and shall comply with all governmental (Federal, State or local) regulations concerning the Premises. If this Mortgage is on a unit in a condominium, Borrower shall perform all of Borrower's obligations under the constituent condominium documents.

Without Lender's prior consent, Borrower shall not grant any easements affecting the Premises, apply for any change in the current zoning designation for the Premises, change the use of the Premises other than what it is being utilized for as of the date hereof, create or change or modify any existing restrictions, conditions or covenants affecting the Premises; subdivide the Premises, or construct or make any structural or substantial improvements, alterations or modifications to the Premises.

**§6. PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which Lender in Lender's reasonable judgment believes is detrimental to or impairs Lender's security in the Premises, including but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option and upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including but not limited to, disbursement of reasonable attorney's fees and entry upon the Premises to make repairs.

Any amounts disbursed by Lender pursuant to this §6 or for advances made for the payment of real property taxes, assessments, or insurance premiums, with interest thereon as hereinafter provided, shall become additional amounts owed by Borrower which are secured by this Mortgage. Such amounts shall be payable upon notice to Borrower from Lender requesting payment thereof and shall bear interest from the date of disbursement at the rate payable from time to time on the unpaid principal under the Note. Nothing contained herein shall require Lender to incur any expense or take any action hereunder, and Borrower hereby waives any and all claims or right against Lender to any payment on, or offset against, the indebtedness secured hereby by reason of any such payment by Lender.

Lender, or Lender's agents, shall have the right to enter upon the Premises at all reasonable times for the purpose of inspecting the same, provided Lender shall give Borrower adequate and reasonable notice under the circumstances prior to any such entry. The notice provided for herein need not conform with the provisions of §14, below.

**§7. EMINENT DOMAIN.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation proceedings or other taking of the Premises, or a part thereof, or for occupancies in lieu of condemnation, are hereby assigned to Lender and shall be paid to Lender. When there is a total taking of the Premises, the proceeds shall be applied to the sums secured by this Mortgage, and the balance, if any, shall be paid to Borrower. When there is a partial taking of the Premises, unless Lender and Borrower otherwise agree in writing, the proceeds paid for such taking shall be applied to the sums secured by this Mortgage in the proportion which the unpaid principal amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Premises immediately prior to the date of taking, and the balance of such proceeds shall be paid to Borrower.

EXHIBIT C

... (b) after notice by Lender to Borrower that the condemning authority offers to make an award or settle a claim for damages, Borrower shall respond to Lender within 30 days after the date of such notice and apply the proceeds, at Lender's option, either to restoration or repair of the Premises or to sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to the sums secured by this Mortgage shall not extend or postpone the due date of the payment of the Note or change the amount of any installments due under the Note.

**§8. TRANSFER OF THE PREMISES.** If all or any part of the Premises or any interest therein is sold or transferred by Borrower without Lender's prior written consent, Lender may, at Lender's option, declare all sums secured by this Mortgage to be immediately due and payable; provided, however, that the following transfers or conveyances shall not accelerate the indebtedness secured hereby: (a) the creation of a lien or encumbrance subordinate to this Mortgage, including, however, a conveyance by a Land Installment Contract or the granting of a leasehold interest containing an option to purchase, either of which shall require the prior written consent of Lender; (b) the creation of a purchase money security interest for personal property; and (c) a transfer by devise or descent, or a transfer by operation of law upon the death of a co-owner.

**§9. SECURITY AGREEMENT; ASSIGNMENT OF RENTS.** This Mortgage shall act as and constitute a Security Agreement under the Uniform Commercial Code. Upon Lender's request, Borrower shall execute and deliver to Lender financing statements and other documents required to perfect a security interest in Borrower's personal property located at the Premises. The cost of recording such documents shall be paid by Borrower.

As part of the security granted by this Mortgage, Borrower hereby assigns to Lender the rents of the Premises, provided that Borrower does not prior to any acceleration of the amounts secured by this Mortgage, have the right to collect and retain such rents. All rents collected by Lender or Lender's agent shall be applied first to the payment of costs of operation and management of the Premises and collection of rents, including but not limited to, receiver's bonds and fees, reasonable attorney's fees, and then to the sums secured by this Mortgage.

**§10. DEFAULT; REMEDIES.** The entire unpaid principal amount of the Note, together with all unpaid and accrued interest and all other charges and amounts payable to Lender under the Note or this Mortgage, shall, at Lender's option, become immediately due and payable: (a) if Borrower does not promptly and fully pay when due the amounts owed Lender under the Note in accordance with the terms and tenor of the Note; (b) if the Premises or any part thereof or any interest thereon are sold or transferred except as permitted under the provisions of §8 of this Mortgage; (c) if Borrower fails to observe or perform any other provision, covenant or condition required of Borrower under the Note or this Mortgage within 30 days after Lender gives notice to Borrower of Borrower's failure to observe or perform such provision, covenant or condition; (d) if the Premises are abandoned; (e) if an order for relief under any bankruptcy laws of the United States is issued naming Borrower as debtor or if Borrower makes an assignment for the benefit of creditors or enters into a composition agreement with Borrower's creditors; (f) if the interest of Borrower in the Premises is attached, levied upon, or seized by legal process; or (g) if a trustee, receiver or liquidator is appointed on behalf of Borrower. Upon an acceleration of the amounts secured by this Mortgage as provided for in this §10, Lender shall have the right to foreclose this Mortgage lien, have a receiver appointed, take possession of and manage the Premises, collect the rents derived from the Premises, and take any and all other action available to Lender under law.

**§11. APPLICATION OF PAYMENTS.** All payments received by Lender under the Note or this Mortgage, unless otherwise stated in this Mortgage, shall be applied by Lender first to the payment of any amounts advanced or paid by Lender for the protection of the security granted by this Mortgage, then to expenses incurred by Lender by reason of Borrower's default under this Mortgage, then to interest payable on the Note, and then to the principal of the Note.

**§12. FOREBEARANCE; REMEDIES CUMULATIVE.** If Lender (a) grants any extension of time or forbearance with respect to the payment of any sums secured by this Mortgage, (b) takes other or additional security for the payment thereof, (c) waives or fails to exercise any right granted in this Mortgage or in the Note, (d) grants any release with or without consideration of the whole or part of the security granted by this Mortgage, or (e) amends or modifies in any respect any of the terms and provisions of this Mortgage or the Note, any such act or omission shall not release Borrower of any obligations under this Mortgage or under the Note, nor preclude Lender from exercising any right granted in this Mortgage or under law for a default by Borrower or for any subsequent default.

Lender's procurement and payment of fire and casualty insurance and Lender's payment of real property taxes and assessments and other governmental charges and liens after Borrower has failed to pay the same shall not be a waiver of Borrower's default or Lender's right to accelerate the indebtedness secured hereby.

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or which are afforded under law and may be exercised concurrently, independently or successively.

**§13. SUCCESSORS AND ASSIGNS; JOINT AND SEVERAL LIABILITY; CAPTIONS; GOVERNING LAW; SEVERABILITY.** Subject to the provisions of §8, above, the covenants and agreements of this Mortgage shall bind, and the rights hereunder shall inure to, the respective successors and assigns, personal representatives and heirs of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and section headings of this Mortgage are for convenience only and shall not be used to interpret or define the provisions of this Mortgage. This Mortgage shall be governed by the laws of the State of Ohio, and, if any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. The provisions of this Mortgage and the Note are severable.

**§14. NOTICES.** Except as otherwise set forth in this Mortgage or as may otherwise be required by applicable law, any notice to be given under this Mortgage shall be in writing and mailed with postage prepaid to Lender and Borrower at the addresses set forth at the beginning of this Mortgage or to such other addresses as Lender or Borrower may designate by notice given to the other party as provided for in this §14.

**§15. RELEASE.** Upon payment of all sums secured by this Mortgage and the observance and performance of each of the covenants and agreements of this Mortgage to be observed and performed by Borrower, Lender shall provide to Borrower a release of this Mortgage, and of any other security interest given to Lender to secure the Note, in recordable form.

**§16. OTHER PROVISIONS.**

IN WITNESS WHEREOF, the undersigned Borrower and the spouse of the Borrower, who hereby releases such spouse's rights of dower in the Premises, have executed this Mortgage on this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned Borrower has executed this Mortgage on this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Signed and acknowledged in the presence of:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF OHIO  
COUNTY OF \_\_\_\_\_, SS:

\* Before me, a Notary Public in and for said State and County, personally appeared \_\_\_\_\_.

who acknowledged the signing of the foregoing Mortgage and that the same is the free act and deed of such signatories (and if a corporation or a partnership that the same is the free act and deed of said corporation or partnership and the officers or partners signing the same) for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my official seal on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

\*Note: If Borrower is a corporation or a partnership, insert the name of the corporation or partnership, the type of entity and the name and title of the officer or partner who is signing on behalf of Borrower.

This instrument was prepared by \_\_\_\_\_, attorney at law.

COGNOVIT  
PROMISSORY NOTE

§ \_\_\_\_\_, 19\_\_\_\_

FOR VALUE RECEIVED, the undersigned, jointly and severally if more than one, promise to pay to the order of

at \_\_\_\_\_, Ohio, or at such other address

as the holder hereof may from time to time designate in writing, the principal sum of

Dollars (\$ \_\_\_\_\_ )

with interest thereon at the rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum.

The principal sum and interest shall be due and payable as follows:

and shall be paid in full on or before \_\_\_\_\_, 19\_\_\_\_. All or any part of the principal sum and accrued interest may be prepaid at any time without penalty.

This note is secured by a mortgage on real property. Upon default in payment of any installment within \_\_\_\_\_ calendar days after the same is due, or upon failure to perform any of the covenants or conditions contained in said mortgage, this note shall, at the option of the holder hereof, bear interest thereafter at the rate of \_\_\_\_\_ percent per annum, and the entire principal hereof then remaining unpaid, together with all accrued interest, shall, at said holder's option, become immediately due and payable without any notice or demand.

All persons now or hereafter liable for the payment of the principal or interest due on this note, or any part thereof, do hereby expressly waive presentment for payment, notice of dishonor, protest and notice of protest, and agree that the time for the payment or payments of any part of this note may be extended without releasing or otherwise affecting their liability on this note, or the lien or any mortgage securing this note.

The undersigned, and each of them, hereby authorize any attorney at law to appear in any court of record in any county in the State of Ohio, or elsewhere, where any of the undersigned resides or signed this note, after the obligation evidenced hereby, or any part thereof, becomes due and is unpaid, and waive the issuance and service of process and confess judgment against any or all of the undersigned in favor of the holder of this note for the amount then appearing due, together with the costs of suit, and thereupon to release all errors and waive all right of appeal and stay of execution, but no judgment or judgments against less than all of the undersigned shall be a bar to any subsequent judgment against those of the undersigned against whom judgment has not been taken.

This note was executed in \_\_\_\_\_ County, Ohio.

**WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE. [Sec. 2323.13, O.R.C.]**

\_\_\_\_\_  
Maker

\_\_\_\_\_  
Maker

\*Note: This Promissory Note is to be used when the obligation of the Maker is secured by a mortgage on real property.