

**RESOLUTION NO. 2000-29**

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**A RESOLUTION AUTHORIZING THE TOWNSHIP ADMINISTRATOR  
TO NEGOTIATE AND EXECUTE A CONTRACT FOR THE SALE OF MCGINNIS PARK AND  
DISPENSING WITH THE SECOND READING AND DECLARING AN EMERGENCY**

**WHEREAS**, in November 1980, the United States Government, Department of the Interior conveyed to the West Chester Township Board of Trustees approximately 45 acres ("McGinnis Park") for exclusive use of public park or public recreation purposes; and

**WHEREAS**, in February 2000, the United States Government, Department of the Interior conveyed to the West Chester Township Board of Trustees approximately 308 acres ("the VOA Property"), which is located directly across the street from McGinnis Park for the establishment of a community park; and

**WHEREAS**, with the acquisition of the VOA Property for the establishment of a community park and its close proximity to McGinnis Park and with the recent purchase of an approximate 151 acre parcel for additional park property, (known as the "Beckett Park"), the Board of Trustees has determined that West Chester Township's park needs would better be served by consolidating the current uses of McGinnis Park with the park to be established on the VOA Property, and can easily be absorbed by and transferred to the VOA property; and

**WHEREAS**, pursuant to a previous resolution approved by the West Chester Township Board of Trustees, the Township has agreed with the United States Government, Department of the Interior to remove the deed restrictions currently encumbering McGinnis Park, for the exclusive use as a public park or for public recreation purposes, in exchange for placing those same restrictions on "Beckett Park"; and

**WHEREAS**, with that agreement, the United States Government, Department of the Interior has agreed to allow West Chester Township to sell McGinnis Park for commercial uses and use the proceeds as the Township deemed fit; and

**WHEREAS**, pursuant to Resolution 2000-24, the West Chester Township Board of Trustees declared McGinnis Park surplus and approved the auction and sale of McGinnis Park; and

**WHEREAS**, on June 23, 2000, West Chester Township conducted a live auction, as set forth in the advertisements required pursuant to the Ohio Revised Code (ORC), Section 505.10 and the restrictions outlined in Resolution 2000-24

**WHEREAS**, no potential purchaser attended the live auction and subsequently no bids were received; and

WHEREAS, pursuant to the ORC, Section 505.10 B, "when the Board has offered property at public auction under this section and has not received an acceptable offer, the Board, by resolution may enter into a contract without advertising or bidding for the sale of that property."

NOW THEREFORE BE IT RESOLVED, that the West Chester Township Board of Trustees do hereby agree to:

**Section 1:** Authorize the Township Administrator to negotiate and execute a contract for the sale of McGinnis Park in accordance with the specifications of the Township for a purchase price of not less than Four Million Nine Hundred Thousand Dollars (\$4,900,000), in substantially the same form as attached to this Resolution, which purchase contract is incorporated herein by reference.

**Section 2.** Authorize and direct the Township Administrator and Law Director to take such action as may be reasonably necessary to perform the obligations of the Township under the attached sale contract, including, without limitation, to execute and deliver on behalf of West Chester Township such documents and instruments (including, without limitation, a deed conveying title to McGinnis Park) that the Township Administrator or Law Director considers necessary or appropriate.

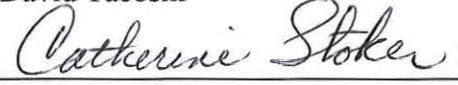
**Section 3.** In order for the sale proceeds to be available for use by the Township at a time consistent with the established financial plans of the Township, the proposed purchaser must immediately begin to seek the satisfaction of the conditions included in the proposed contract, and, as a result of that schedule, the Board of Township Trustees has determined that this Resolution should be declared an emergency measure necessary for the immediate preservation of the public safety and welfare of the citizens of West Chester Township.

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

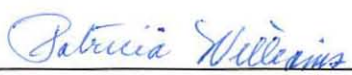
Adopted the 22ND day of August, 2000

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

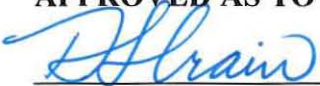
  
\_\_\_\_\_  
David Tacosik Yes

  
\_\_\_\_\_  
Catherine Stoker Yes

ATTEST:

  
\_\_\_\_\_  
Patricia Williams, Township Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Donald L. Crain, Law Director

Date	August 22, 2000	First Reading
Date		Emergency Reading
Date		Second Reading
Date and Newspaper	<i>8/28/00 Journal News</i>	First Publication (After Approval)
Date and Newspaper	<i>8/30/00 Pulse Journal</i>	
Date and Newspaper	<i>9/4/00 Journal News</i>	Second Publication (After Approval)
Date and Newspaper	<i>9/6/00 Pulse Journal</i>	
Clerk Signature & Date	<i>10/17/00 Patricia Williams</i>	Certificate of Publication

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (the "Agreement") is executed as of the 23<sup>rd</sup> day of August, 2000 by **WEST CHESTER TOWNSHIP**, Butler County, Ohio, a political subdivision of the State of Ohio ("Seller") and **UNIVERSITY OF CINCINNATI PHYSICIANS, INC.**, an Ohio nonprofit corporation ("Purchaser").

### ARTICLE I Definitions

1.1 Definitions. Capitalized terms used herein shall have the following meanings:

"Closing" means the consummation of the sale and purchase of the Property as contemplated by this Agreement.

"Closing Date" means the date on which the Closing occurs.

"Contract Date" means the date this Agreement is fully executed by both Seller and Purchaser.

"Contracts or Leases" means all written or oral service, maintenance, licensing, concession and other contracts or agreements related to the maintenance, ownership, use, possession or operation of the Property, all written or oral leases of personal property located at, or used in the operation of, the Property, and all written or oral leases (and to the knowledge of Seller all subleases) and other occupancy agreements, whether or not of record, which provide for the use or occupancy of space or facilities on or relating to the Property.

"Due Diligence Period" means the period from the Contract Date to last day upon which Purchaser may terminate this Agreement under Sections 5.2 or 5.3 below.

"Environmental Laws" means any and all statutes, laws, regulations and rules, in each case as in effect on the date hereof, relating to the protection of the environment or to pollutants, contaminants or Hazardous Substances.

"Hazardous Substance" means any pollutant, contaminant or any toxic, radioactive or otherwise hazardous substance, including asbestos, PCBs, urea formaldehyde, petroleum, its derivatives, by-products and other hydrocarbons, in each case as regulated under Environmental Laws.

"Legal Requirement" means any federal, state, local or municipal order, constitution, law, ordinance, rule, regulation or statute.

"Property" means that certain parcel of land situated in West Chester Township, Butler County, Ohio as more particularly described on Exhibit A attached hereto, and all buildings and

improvements thereon, including all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining such parcel to the center line thereof, all water and mineral rights, development rights and all easements, rights, privileges, hereditaments and other interests appurtenant thereto.

ARTICLE II  
Purchase and Sale of Property

2.1 Sale and Purchase Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, the Property for the Purchase Price, on the terms and subject to the conditions of this Agreement. Purchaser shall not assume any debts, obligations, or liabilities of Seller except as specifically set forth in this Agreement.

2.2 Purchase Price

(a) In accordance with the terms of this Agreement, Seller shall sell and Purchaser shall buy the Property for a total purchase price of Four Million Nine Hundred Thousand and no/100 Dollars (\$4,900,000.00), subject to adjustment as described in Article XII hereof (the "Purchase Price").

(b) Upon execution of this Agreement, Purchaser shall deposit into escrow with Summit Title Agency, Inc., as escrow agent (the "Escrow Agent") an all cash payment of \$50,000 (the "Initial Deposit"), and prior to the expiration of the Due Diligence Period (unless Purchaser shall have terminated this Agreement) Purchaser shall deposit into escrow with the Escrow Agent an additional all cash payment of Fifty Thousand and no/100 Dollars (\$50,000) (the "Final Deposit") (the Initial Deposit and the Final Deposit individually and collectively, the "Deposit"). The Deposit shall be held in an interest bearing account and all interest thereon shall be deemed a part of the Deposit. At the Closing, the Deposit shall be paid to Seller and credited against the Purchase Price subject to Article IX.

(c) The balance of the Purchase Price shall be paid to Seller in immediately available funds via wire transfer at Closing.

ARTICLE III  
Seller's Representations and Warranties

In order to induce Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, Seller represents and warrants to Purchaser as the following matters:

3.1 Good Standing. Seller is a political subdivision of the State of Ohio, duly organized, validly existing and in good standing under the laws of the State of Ohio, and, subject to the provisions of Section 5.7, is authorized and has full authority to enter into and perform this Agreement.

3.2 Due Authorization. Subject to the provisions of Section 5.7, the execution, delivery

and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite actions of Seller (none of which actions have been modified or rescinded, and all of which actions are in full force and effect). Subject to the provisions of Section 5.7, this Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

3.3 No Violations or Defaults Subject to the provisions of Section 5.7, the execution, delivery and performance of this Agreement by Seller and the consummation of the transaction contemplated hereby by Seller will not (i) violate any Legal Requirement or any order of any court or governmental authority with proper jurisdiction binding on Seller or the Property; (ii) result in a breach or default under or give any person the right to declare a default or exercise any remedy under, or to cancel, terminate, or modify, any contract or other binding commitment of Seller or any provision of the organizational documents of Seller (except in the case of Contracts or Leases requiring the consent of the contracting party to assignment to Purchaser); (iii) require any consent or approval or any person or governmental authority or vote that has not been taken or given (other than in the case of Contracts or Leases requiring the consent of the contracting party to assignment to Purchaser); or (iv) result in the imposition or creation of any Encumbrance upon or with respect to the Property.

3.4 Litigation. There are no actions, suits, arbitrations, governmental investigations or other proceedings pending or, to the knowledge of Seller, threatened against Seller before any court or governmental authority affecting (a) the Property, (b) Seller's ability to enter into or perform this Agreement or (c) Seller's title to the Property.

3.5 Condemnation Actions. There are no pending condemnation actions or special assessments of any nature with respect to the Property or any part thereof, and Seller has no knowledge of any such threatened or contemplated condemnation action or special assessment.

3.6 Contracts or Leases. All Contracts or Leases are listed on Schedule 3.6 to be delivered by Seller to Purchaser within five days after the Contract Date. To Seller's knowledge, all Contracts are in full force and effect, and there are no defaults or events that with notice or lapse of time or both would constitute a default by Seller under any Contract nor by any other party thereto.

3.7 Legal Requirements To the best of Seller's knowledge, the Property and Seller's use and operation thereof is in compliance in all material respects with all applicable Legal Requirements. Seller has received no notice from any governmental authority that the Property may be in violation of any Legal Requirements.

3.8 Environmental Matters.

(a) To the best of Seller's knowledge, no Hazardous Substance has been generated, released, stored or deposited over, beneath or on the Property or any structures located on the Property, from any source whatsoever, by Seller, its predecessors in interest or any other persons. To the best of Seller's knowledge, no underground storage tanks are present on the

Property. To the best of Seller's knowledge, no portion of the Property constitutes any of the following "environmentally sensitive areas": a wetland, a flood plain or other flood hazard area, or any other area the development of which is restricted by law by reasons of its physical characteristics or prior use.

(b) To the best of Seller's knowledge, other than as set forth in the reports and materials described on Schedule 3.8 to be delivered by Seller to Purchaser within five days after the Contract Date (the "Environmental Reports"), the Property is in compliance in all material respects with all Environmental Laws, and Seller has not received any written notice from any governmental authority of any actual or potential violation or failure to comply with any Environmental Laws which remains uncured, or of any actual or threatened obligation to undertake or bear the cost of any environmental, health, or safety clean-up, removal, containment, or other remediation which remains unperformed with respect to the Property, or with respect to any property or facility to which Hazardous Substances generated, manufactured, refined, transferred, imported, used, or processed at the Property have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(c) Other than as set forth in the Environmental Reports, there are no pending or, to the knowledge of the Seller, threatened suits, actions or proceedings arising under or pursuant to any Environmental Laws, with respect to or affecting the Property.

(d) Other than as set forth in the Environmental Reports, Seller has not received any written citation, directive, notice, order, summons, warning or similar communication from any governmental authority that remains uncured and that (i) relates to Hazardous Substances, or (ii) alleges a violation of or failure to comply with any Environmental Laws, or (iii) alleges an obligation to undertake or bear the cost of any environmental clean-up, removal, containment or other remediation with respect to the Property, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used, or processed at the Property have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(e) To the best of Seller's knowledge, other than as set forth in the Environmental Reports, no Hazardous Substances are present on or in the Property, including any Hazardous Substances contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Property.

(f) To the best of Seller's knowledge, other than as set forth in the Environmental Reports, there has never been a release or threat of release of Hazardous Substances at or from the Property.

(g) To the best of Seller's knowledge, Seller has delivered to Purchaser or made available to Purchaser for inspection true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Seller pertaining to Hazardous Substances in, on, or under the Property, or concerning compliance by Seller with Environmental Laws.

3.9 Change in Laws. As of the Contract Date, Seller has no information or knowledge of any change contemplated in the applicable Legal Requirements, or of any judicial or administration action or any action by adjacent property owners impacting the Property which may prevent, limit, impede or render more costly the operations or uses anticipated by Purchaser for the Property in the future (the "Intended Use").

3.10 Accurate and Complete. No representation or warranty made by Seller in this Agreement and no exhibit, certificate, instrument or any other document or information furnished to Purchaser by Seller pursuant to or in connection with the transaction contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit any material fact necessary in order to make the statements contained herein not false or misleading.

3.11 Knowledge Defined. As used herein, references to the knowledge of Seller shall be limited to those matters known by David R. Gully, Township Administrator, and Judith A. Carter, Assistant Township Administrator, and items that would be discovered by a review of the files and records of Seller related to the Property.

#### ARTICLE IV

##### Purchaser's Representations, Warranties and Covenants

In order to induce Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser represents and warrants to Seller as follows:

4.1 Good Standing. Purchaser is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Ohio, and is authorized to conduct the business in which it is now engaged.

4.2 Due Authorization. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite actions of Purchaser (none of which actions have been modified or rescinded, and all of which actions are in full force and effect), except approval of Purchaser's Board of Trustees. Subject to such approval, this Agreement constitutes a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

4.3 No Violations or Defaults. The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby by Purchaser will not (i) violate any law or any order of any court or governmental authority with proper jurisdiction binding on Purchaser; (ii) result in a breach or default under any contract or other binding commitment of Purchaser or any provision of the organizational documents of Purchaser, or (iii) require any consent or approval or vote that has not been taken or given.

4.4 Litigation. There are no actions, suits, arbitrations, proceedings, governmental investigations or other proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser that may affect its right to enter into or perform this Agreement or its ability to perform its obligations under this Agreement.



ARTICLE V  
Actions Pending Closing: Due Diligence Period

5.1 Conduct of Business: Maintenance and Operation of Property. Seller covenants that between the Contract Date and the Closing Date:

(a) Seller shall continue to operate and maintain the Property in the ordinary course substantially in accordance with historical practice;

(b) Unless required by law, Seller will not directly or indirectly solicit, initiate, or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of, any inquiries or proposals from, any third party relating to any transaction involving the sale of the Property;

(c) Seller shall not convey, mortgage or otherwise encumber the Property or any part thereof or any interest therein.

5.2 Property Information: Inspections.

(a) Seller shall make available to Purchaser, within ten (10) days after the Contract Date, all permits, authorizations, drawings, plans, soil reports, environmental reports, agreements and any other information in Seller's possession relevant to the Property. Any information which subsequently is made available to Seller relevant to the Property shall be provided to the Purchaser within five (5) days after its receipt by Seller.

(b) Commencing on the Contract Date and for a period of sixty (60) days thereafter, Purchaser shall have the right, upon reasonable notice to Seller, at Purchaser's own risk, cost and expense, to enter, or cause its agents or representatives to enter, upon the Property for the purpose of making surveys or such other tests, inspections, investigations and/or studies of the Property as Purchaser may, in its sole discretion, deem desirable. In addition, Purchaser may conduct such architectural, environmental, economic, feasibility, and other studies of the Property as Purchaser may, in its sole discretion, deem desirable. Prior to any invasive testing of the Property, Purchaser shall obtain Seller's approval of the scope of Purchaser's testing and of the insurance coverage of Purchaser and its agents and contractors, which approval Seller shall not unreasonably withhold. Purchaser shall not make any physical alterations to the Property. Such entry shall not interfere with the existing recreational use of the Property, and Purchaser shall indemnify and hold Seller harmless from any claims, damages, demands, penalties, causes of action, losses, costs and expenses (including reasonable attorneys' fees) for personal injury (including death), property damage or loss or lien claims asserted by any person or entity and caused by acts or omissions of Purchaser or its representatives or independent contractors in the course of Purchaser's inspection of the Property prior to Closing. Notwithstanding any other provision of this Agreement to the contrary, the foregoing indemnity shall survive Closing or any termination of this Agreement. Purchaser agrees to supply Seller with the results of any tests, studies or inspections of

the Property performed hereunder and upon request from Seller, to provide Seller with status reports with respect to all of Purchaser's tests, studies and inspections of the Property.

(c) Prior to expiration of sixty (60) days after the Contract Date, Purchaser may give written notice to Seller of any condition, circumstance or other state of facts which in Purchaser's sole discretion affects the suitability of the Property for Purchaser's purposes (which may include without limitation any matter previously disclosed to or known by Purchaser). Seller shall have the right, to be exercised by written notice to Purchaser within thirty (30) days of receipt of Purchaser's notice, to elect to correct such condition, circumstance or other state of facts at or prior to Closing, provided the same is reasonably susceptible of correction. If within such thirty (30) day period, Seller does not notify Purchaser in writing that it is electing and agreeing to correct such condition, circumstance or state of facts prior to Closing, Purchaser shall have the right, to be exercised by written notice to Seller given within fifteen (15) days after expiration of such thirty (30) day period, to terminate this Agreement in its sole discretion and Purchaser shall receive an immediate return of the Earnest Money, and neither party shall have any further obligations thereafter under this Agreement except as set forth in Sections 5.2(b) and 13.8. Failure of Purchaser to notify Seller of its termination of this Agreement pursuant to this Section 5.2(c) shall be deemed a waiver by Purchaser of such termination right.

### 5.3 Title Insurance and Survey.

(a) Within sixty (60) days following the Contract Date, Purchaser shall obtain, and Seller shall cooperate with Purchaser in obtaining, a binding commitment to Purchaser for the issuance of an ALTA Owner's Policy of Title Insurance (the "Title Policy") by a title insurance company designated by Purchaser (the "Title Company") in an amount equal to the Purchase Price, committing to insure the Purchaser's good and marketable fee simple title to the Property, with such endorsements as designated by Purchaser (the "Title Commitment"). The Title Commitment shall be for the issuance of the Title Policy showing those liens, mortgages, deeds of trust, security interests, pledges, charges, options, encroachments, easements, covenants, leases, reservations or restrictions of that encumbers the Property (the "Encumbrances").

(b) Within sixty (60) days following the Contract Date, Purchaser shall order, and shall use commercially reasonable efforts as soon as practicable to obtain, and Seller shall cooperate with Purchaser in obtaining, an as-built survey of the Property, conforming to the survey standards of the American Land Title Association and American Congress of Surveying and Mapping for urban surveys, correctly showing the location of all buildings, structures and other improvements situated on the Property, and certifying to such matters as designated by Purchaser, including that, except as shown on the survey, there are no easements or rights of way across the Property, no encroachments onto adjoining premises, streets or alleys by any of said buildings, structures or other improvements, and no encroachments onto the Property by buildings, structures or other improvements situated on adjoining premises (the "Survey"). Within three business days after the Contract Date, Seller shall deliver to Purchaser a true and complete copy of all surveys of the Property in Seller's possession or under its control, and Seller authorizes Purchaser to use the services of the surveyor(s) producing such survey.

(c) Prior to expiration of the Due Diligence Period, Purchaser agrees to notify Seller of any objections Purchaser may have in its sole discretion to Encumbrances appearing in the Title Commitment or to any matters depicted in the Survey. Within ten (10) days following Seller's receipt of Purchaser's notice, Seller shall notify Purchaser that Seller will either (a) eliminate prior to the Closing Date all Encumbrances and survey matters to which Purchaser has objected or (b) specify Encumbrances and survey matters which Seller will not eliminate. If Seller fails to give notice to Purchaser within such ten day period, Seller shall be deemed to have elected not to eliminate any Encumbrances or survey matters. If Seller elects not to remove all Encumbrances to title to which Purchaser has objected, then within ten (10) days following its receipt of Seller's notice, Purchaser may terminate this Agreement in its sole discretion and receive a return of the Deposit. If Purchaser fails to terminate this Agreement pursuant to the foregoing sentence, Purchaser shall be deemed to have accepted the Encumbrances which Seller will not eliminate. As used herein, the "Permitted Exceptions" shall be those Encumbrances of record or disclosed by the Survey to which Purchaser has not objected or has otherwise agreed to accept. Notwithstanding any other provision of this Section 5.3(c), Seller shall satisfy at Closing all mortgage and deed of trust and other monetary liens granted by Seller or otherwise encumbering the Property.

#### 5.4 Contracts and Leases.

(a) Within five (5) business days after the Contract Date, Seller shall deliver to Purchaser true and complete copies of all written Contracts or Leases, and a description of the material terms and conditions of all verbal Contracts or Leases, all of which are set forth on Schedule 3.6. Between the Contract Date and the Closing Date, Seller shall not renew, extend or modify any Contracts or Leases, or enter into any new Contracts or Leases that would survive the Closing Date (unless such Contracts or Leases are terminable upon 30 days notice) without Purchaser's prior written consent in each instance.

(b) Prior to expiration of the Due Diligence Period, Purchaser shall have the right to notify Seller in writing of those Contracts or Leases set forth on Schedule 3.6 that Purchaser desires to assume. At Closing, Purchaser shall assume only the Contracts or Leases (i) entered into after the Contract Date in accordance with Section 5.4(a), or (ii) designated by Purchaser pursuant to this Section 5.4(b) (collectively, "Assumed Agreements"). Notwithstanding the foregoing, if the assignment to and assumption by Purchaser of any such Contracts or Leases requires the consent or approval of any other party thereto, and Seller, after commercially reasonable efforts, is unable to obtain such consent or approval at or prior to Closing, then such Contracts or Leases shall not be assigned to or assumed by Purchaser at Closing.

5.5 Required Approvals. As promptly as practicable after the Contract Date, Purchaser, with the cooperation of Seller, shall make all filings required by Legal Requirements to be made by it in order to consummate the transactions contemplated by this Agreement. Between the Contract Date and the Closing Date, Seller will (i) cooperate with Purchaser with respect to all filings that Purchaser elects to make or is required by Legal Requirements to make in connection with obtaining permits for the construction or operation of the Property and the transactions contemplated by this Agreement, and (ii) cooperate with Purchaser in obtaining all consents required under Section 5.4(b).

5.6 Notification. Between the Contract Date and the Closing Date, Seller will promptly notify Purchaser in writing if Seller becomes aware of any fact or condition that causes or constitutes a breach of any of Seller's representations or warranties as of the date of this Agreement, or if Seller becomes aware after the Contract Date of any fact or condition that would (except as expressly contemplated by this Agreement) cause or constitute a breach of such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. During the same period, Seller will promptly notify Purchaser if it becomes aware of the occurrence of any event that makes the satisfaction of the conditions in Article VI impossible or unlikely.

5.7 Home Rule Township. Purchaser acknowledges that Seller 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 Seller authorizing the execution and delivery of this Agreement and the performance of the obligations of Seller 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 October 12, 2000, then Purchaser shall have the right to terminate this Agreement upon written notice to Seller, whereupon this Agreement shall automatically terminate and the Deposit shall be immediately returned to Purchaser.

5.8 Road Improvements. The parties acknowledge that they have not made any commitments to one another concerning any construction of or improvements to roads or rights of way through or adjacent to the Property.

## ARTICLE VI Conditions Precedent to Closing

6.1 Purchaser's Conditions to Closing. It shall be an express condition to Purchaser's obligation to purchase the Property that the following conditions shall have been satisfied as of the Closing Date (or waived by Purchaser in writing).

(a) Representations and Warranties. Each of Seller's representations and warranties shall be true and accurate in all material respects, as if made on and as of the Closing Date.

(b) Covenants of Seller. Seller shall have performed all of its obligations under this Agreement required at or prior to Closing.

(c) Title. The Title Company shall be prepared to issue the Title Policy, subject to the Permitted Exceptions, upon payment of the applicable premiums and recordation of the deed referred to in Section 8.1.

(d) Zoning. On or before the expiration of Due Diligence Date, Purchaser shall have received satisfactory evidence from applicable governmental authorities that the zoning and building ordinances applicable to the Property will not prevent Purchaser from using the Property for the Intended Use. Notwithstanding the foregoing, Purchaser acknowledges that Seller has made

no agreement, either express or implied, to change the zoning classification for the Property, to grant any zoning variances as may be requested by Purchaser, or to approve any development plans submitted by Purchaser.

(e) Utilities. On or before the expiration of Due Diligence Period, Purchaser shall have received satisfactory evidence that the Property is presently served with natural gas, water, electricity, telephone, sanitary and storm sewers, fire protection facilities and adequate drainage, all in the capacity reasonably and customarily necessary to serve the Intended Use without any extension of, or work on the main, trunk or common utilities or facilities as they currently exist, and there shall be no prohibitions or moratorium at the time of Closing against the use of such utilities by Purchaser for its Intended Use of the Property.

(f) Board Approval. Purchaser's Board of Trustees shall have approved this Agreement no later than thirty (30) days after the expiration of the Due Diligence Period.

In the event of the failure of any condition precedent set forth above, Purchaser, at its sole election, may (i) terminate this Agreement and receive a return of the Deposit, (ii) waive the condition and proceed to Closing, (iii) extend the Closing Date for such additional period of time (not to exceed thirty (30) days in the aggregate) as may be reasonably required to allow Seller and/or Purchaser, as applicable, to satisfy such condition precedent, or (iv) if such failure arises from Seller's breach of this Agreement, avail itself of any remedies provided in Section 9.2 hereof.

6.2 Seller's Conditions to Closing. It shall be an express condition to Seller's obligation to sell the Property that the following conditions shall have been satisfied as of the Closing Date (or waived by Seller in writing).

(a) Representations and Warranties. Each of Purchaser's representations and warranties shall be true and accurate in all material respects as if made on and as of the Closing Date.

(b) Covenants of Purchaser. Purchaser shall have performed all of its obligations under this Agreement required at or prior to Closing.

In the event of the failure of any condition precedent set forth above, Seller, at its sole election, may (i) terminate this Agreement, (ii) waive the condition and proceed to Closing, (iii) extend the Closing Date for such additional period of time (not to exceed thirty (30) days in the aggregate) as may be reasonably required to allow Purchaser to satisfy such condition, or (iv) if such failure arises from Purchaser's breach of this Agreement, avail itself of any remedies provided in Section 9.1 hereof.

## ARTICLE VII

### Closing

7.1 Closing. The Closing shall be held on the date which is the earlier of (i) the date designated by Purchaser in a written notice given by Purchaser to Seller (the "Closing Notice"), which date shall be no earlier than fifteen (15) days after the delivery of such notice and no later than

March 8, 2001, or (ii) such other date as Purchaser and Seller may mutually agree upon in writing.

The Closing shall take place at the offices of Katz, Teller, Brant & Hild at 10:00 a.m. on the Closing Date. If Purchaser does not give such notice by January 4, 2001, this Agreement shall automatically terminate and the Deposit shall be promptly paid to Seller pursuant to the provisions of Section 9.1. If either Purchaser gives the Closing Notice after December 20, 2000 or the Closing Notice designates a Closing Date after January 4, 2001, simultaneously with the delivery of the Closing Notice Purchaser shall deposit the "Letter of Credit", as defined below, with the Escrow Agent, to secure the performance of Purchaser's obligation to purchase the Property. The Letter of Credit shall be an irrevocable letter of credit in favor of Escrow Agent, drawn on a bank with offices in Cincinnati, Ohio, in the amount of \$4,800,000, with an expiration date no later than April 30, 2001. If after the delivery of the Letter of Credit Purchaser fails to tender the performance required of it under Article VIII on or before March 8, 2001, Seller shall have the right to present to Escrow Agent both (i) an affidavit (the "Demand Notice"), executed under penalty of perjury by an authorized representative of Seller, certifying to Escrow Agent that Seller was ready, willing and able to deliver the documents required of it under Sections 8.1, 8.2, 8.3, and 8.4 of this Agreement but that Purchaser failed to tender the performance required of it under Article VIII of this Agreement, and (ii) original executed counterparts of the instruments required of Seller under Sections 8.1, 8.2, 8.3, and 8.4 of this Agreement (the "Original Documents"). Upon receipt of the Demand Notice and the Original Documents from Seller, Escrow Agent shall draw upon the Letter of Credit and then (1) pay the proceeds of the Letter of Credit and the Deposit to Seller and (2) deliver the Original Documents to Purchaser, whereupon the Closing shall be deemed to have occurred for all purposes, and the lease described in Section 8.6 shall commence pursuant to the terms described therein.

7.2 Costs. Purchaser shall pay (i) the cost of any Title Commitment obtained by Purchaser and the premium for the Title Policy, including the cost of endorsements, (ii) the escrow charges, (iii) all recordation fees other than those with respect to any documents required to clear Seller's title to the Property, (iv) the cost of Purchaser's due diligence, including the costs of the survey and any other environmental, engineering or other due diligence reports, and (v) its attorneys' and accountants' fees and expenses. Seller shall pay (i) any real property transfer taxes applicable to the sale of the Property, (ii) recordation fees with respect to any documents which Seller is required to obtain or provide pursuant to Section 5.3 to clear title objections, (iii) its attorneys' and accountants' fees and expenses. Any other closing costs typically paid by sellers or purchasers of real estate shall be paid by Seller and Purchaser respectively, in accordance with local custom.

## ARTICLE VIII Closing Deliveries

At the Closing, Seller and/or Purchaser, as the case may be, shall deliver the following items (drafts of which shall be delivered not less than ten days before the Closing Date):

8.1 Deed. A duly executed and acknowledged limited warranty deed in recordable form conveying Seller's fee simple interest in the Property, dated as of the Closing Date; if requested by Purchaser, Seller shall also execute and deliver to Purchaser at Closing a standard bill of sale conveying to Purchaser all improvements situated at the Property.

8.2 Assignment and Assumption of Contracts or Leases. Two (2) duly executed counterparts of an assignment and assumption of all Assumed Agreements, to the extent such items are assignable.

8.3 FIRPTA Certificate. A certificate dated as of the Closing Date to establish that Seller is not a foreign person for the purposes of the Foreign Investors in Real Property Tax Act.

8.4 Other Documents. Such other documents, affidavits, and instruments as may be reasonably requested by Purchaser or the Title Company to effectuate the transactions contemplated by this Agreement and to induce the Title Company to insure title to the Property as described herein and to remove its "standard exceptions" from the Title Policy in form and substance reasonably satisfactory to Seller's counsel.

8.5 Purchase Price. Purchaser shall deliver the Purchase Price, as adjusted by the prorations and adjustments described in Article XII.

8.6 Lease. Seller and Purchaser agree that Seller shall have the right to lease the Property from Purchaser from and after the Closing Date until that date which is thirty (30) days following Purchaser's delivery to Seller of written notice of termination. At Closing, Seller and Purchaser shall enter into a lease agreement containing mutually agreeable terms documenting Seller's right to use the Property, which lease shall provide, among other things, that (i) Seller may occupy the portion of the Property so leased without the payment of rent of any kind, (ii) Seller will maintain a commercial general liability insurance policy in an amount not less than Three Million Dollars (\$3,000,000.00) to which Purchaser is named as an additional insured, and (iii) Seller's use of that portion of the Property so leased shall be limited to one or more of Seller's uses of the Property as of the date of this Agreement.

## ARTICLE IX

### Default

9.1 Purchaser's Default. If Purchaser fails to consummate the transaction contemplated herein after all conditions precedent to Purchaser's obligation to do so have been satisfied or waived by Purchaser, Escrow Agent shall pay the Deposit to Seller, as full and complete liquidated damages, and as the exclusive and sole right and remedy of Seller, all in accordance with this Section 9.1, whereupon this Agreement shall terminate and neither party shall have any further obligations or liabilities to the other party, except as provided in Sections 5.2 and 13.8 hereof. Notwithstanding the foregoing, if Purchaser delivers the Letter of Credit in accordance with Section 7.1 and if Purchaser fails to consummate the transaction contemplated herein after all conditions precedent to Purchaser's obligation to do so have been satisfied or waived by Purchaser, Seller shall have the remedies set forth in Section 7.1.

9.2 Seller's Default. If Seller fails to consummate the transaction in accordance with the terms of this Agreement and Purchaser is otherwise willing to proceed as contemplated hereunder, it is agreed that inasmuch as damages resulting from such default are impossible to calculate due to

the nature of the purchase and sale of the Property contemplated by this Agreement, Purchaser shall be entitled to, as its sole remedy, either (i) specific performance or (ii) return of the Deposit. Upon Seller providing such remedy to Purchaser, neither Seller nor Purchaser shall have any rights against or obligations to the other arising out of this Agreement, except as provided in Sections 5.2 and 13.8 hereof.

ARTICLE X  
Survival; Indemnification

10.1 Generally. Except as provided in Section 10.2 below or as otherwise specifically provided herein, the respective representations, warranties, obligations, covenants and agreements of Seller and Purchaser contained herein shall not survive the Closing and no action may be brought on any such representation, warranty, obligation, covenant or agreement.

10.2 Survival. The representations, warranties, obligations, covenants and agreements of Seller and Purchaser contained herein shall survive Closing for a period of one (1) year. Notwithstanding the foregoing, the covenants set forth in Section 5.2, 12.1, and 13.8 shall survive Closing without limitation. Except as expressly set forth in this Agreement, Purchaser acknowledges and agrees that the Property shall be sold "as is, where is", without any warranties of any kind by Seller, including, without limitation, any warranty of merchantability, or fitness for a particular purpose.

10.3 Agreement to Indemnify.

(a) Seller shall hold harmless, indemnify and defend Purchaser and its members, trustees, officers, directors, agents, employees, and affiliates (collectively, "Purchaser Parties"), from and against, any and all obligations, claims, losses, damages and liabilities, and any expenses (including costs of investigation and defense and reasonable attorneys' fees and disbursements) incurred in connection therewith (collectively, "Damages"), arising out of the (i) events, contractual obligations, acts or omissions of Seller that occurred in connection with the ownership or operation of the Property prior to Closing, (ii) any failure of Seller to perform any obligation required to be performed by Seller prior to Closing under any Contracts or Leases, (iii) any damage to property or injury to or death of any person occurring on or about the Property prior to Closing, (iv) any breach of any of Seller's representations, warranties, covenants and agreements set forth in this Agreement, (v) all actions, suits, arbitrations, governmental investigations or other proceedings against any of the Purchaser Parties related to the alleged violation prior to Closing of any Legal Requirement at the Property, except as it relates to the physical condition of the Property, (vi) any liability of Seller relating to the operation of the Property, accruing prior to Closing, except as it relates to the physical condition of the Property and (vii) any legal restriction (such as injunctive relief) imposed by any court or other governmental authority on the operation of the Property resulting from any of the matters described in the foregoing clauses (i) through (vi).

(b) Purchaser shall hold harmless, indemnify and defend Seller and its members, trustees, officers, directors, agents, employees, and affiliates (collectively, "Seller Parties"), from and against, any and all Damages arising out of the (i) events, contractual obligations, acts or



omissions of Purchaser that occur in connection with the ownership or operation of the Property from and after Closing, (ii) any failure of Purchaser to perform any obligation required to be performed by Purchaser from and after Closing under any Assumed Agreements, (iii) any damage to property or injury to or death of any person occurring on or about the Property from and after Closing, (iv) any breach of any of Purchaser's representations, warranties, covenants and agreements set forth in this Agreement, (v) all actions, suits, arbitrations, governmental investigations or other proceedings against any of the Seller Parties related to the alleged violation from and after Closing of any Legal Requirement at the Property, except as it relates to the physical condition of the Property, and (vi) any liability of Seller that is expressly assumed by Purchaser under this Agreement.

10.4 Notice and Cooperation on Indemnification. Whenever either party shall learn through the filing of a claim or the commencement of a proceeding or otherwise of the existence of any liability for which the other party is or may be responsible under this Agreement, the party learning of such liability shall notify the other party promptly and furnish such copies of documents (and make originals thereof available) and such other information as such party may have that may be used or useful in the defense of such claims and shall afford said other party full opportunity to defend the same in the name of such party and generally shall cooperate with said other party in the defense of such claim.

## ARTICLE XI

### Casualty, Condemnation or Litigation

11.1 Notice to Purchaser. Seller agrees to give Purchaser prompt notice (i) of any pending or threatened condemnation affecting the Property of which Seller becomes aware, (ii) of any fire or other casualty reasonably estimated by Seller to cost more than Ten Thousand Dollars (\$10,000) to repair and occurring at the Property between the Contract Date and the Closing Date, and (iii) if a Property becomes subject to litigation which if adversely determined would materially adversely affect the use or value of a Property to Purchaser.

11.2 Condemnation, Casualty or Litigation. If, prior to Closing, (i) condemnation proceedings are commenced against all or any material portion of the Property, or (ii) the Property is damaged by fire or other casualty to the extent that the cost of repairing such damage shall be Ten Thousand Dollars (\$10,000) or more, or (iii) the Property becomes subject to litigation which if adversely determined would materially affect the use or value of the Property to Purchaser, Purchaser shall have the right, upon notice in writing to the Seller delivered within ten (10) days after Seller gives Purchaser written notice of such matter as described in this Section 11.2, to terminate this Agreement, whereupon the Deposit shall be returned to Purchaser, and neither party shall have any further liability to the other except as set forth in Sections 5.2 and 13.8. Notwithstanding the foregoing, the parties acknowledge that Purchaser is not purchasing the Property for the purpose of maintaining any of the improvements located on the Property, and Purchaser shall not have the right to terminate this Agreement under this Section 11.2 unless the casualty to the Property substantially interferes with Purchaser's intended development of the Property. If Purchaser does not elect, or is not entitled, to terminate this Agreement, the Purchase Price shall not be reduced except as hereinafter set forth, but Purchaser shall be entitled to an

assignment of all of Seller's share of the proceeds of fire or other casualty insurance proceeds (if any) payable with respect to the period after Closing or of the condemnation award, as the case may be, and Seller shall have no obligation to repair or restore the Property; provided, however, that the Purchase Price shall be reduced by the "deductible" applied by Seller's insurer with respect to such fire or casualty and not paid by Seller.

11.3 Risk of Loss. Subject to the provisions of this Article XI, the risk of loss or damage to the Property shall remain with Seller until Closing.

## ARTICLE XII Prorations and Adjustments

### 12.1. Prorations.

(a) At the Closing, all utilities with respect to the Property for the year of Closing shall be prorated between Purchaser and Seller as of 12:01 a.m. on the date of Closing. Seller represents and warrants that the Property is not subject to real estate taxes due to its ownership by Seller. Consequently, the parties agree that no real estate taxes shall be prorated.

(b) If on the date of Closing the Property or any part thereof is or has been affected by any general or special assessment, or by any assessments which are or may be payable in annual installments, then, for purposes of this Contract all such general and special assessments and the unpaid installments of any assessment payable in annual installments, including those installments which are to become due and payable after the date of Closing, are to be deemed to be duly payable and to be liens upon the Property and shall be paid by Seller on or before the date of Closing, or Purchaser shall receive a credit on the Purchase Price in the amount of any such unpaid assessments or installments.

## ARTICLE XIII Miscellaneous

13.1 Assignment. Neither party may assign this Agreement without the consent of the other. Notwithstanding the foregoing, Purchaser may assign this Agreement upon notice to Seller provided such assignee is affiliated with the Purchaser or the College of Medicine of the University of Cincinnati. No permitted assignment of this Agreement shall release any party of liability for the performance of its obligations under this Agreement.

13.2 Consents. If, under this Agreement, the consent of a party is required, the consent shall be in writing and shall be executed by a duly authorized officer or agent.

13.3 Further Assurances From time to time after the Closing, at the request of Purchaser, Seller shall, without further consideration, execute and deliver such further instruments of transfer and assignment (in addition to those delivered under Article VIII) and take such other actions as Purchaser may reasonably request to transfer and assign to, and vest in Purchaser, the Property as

contemplated by this Agreement, provided that such documents or actions shall not subject Seller to any obligation or liability not expressly imposed on Seller pursuant to this Agreement.

13.4 Applicable Law. This Agreement shall be governed by the laws of the State of Ohio.

13.5 Notices. Notices and other communications required by this Agreement shall be in writing and delivered by hand against receipt or sent by recognized overnight delivery service, by certified or registered mail, postage prepaid, with return receipt requested or by telefacsimile or telecopy. All notices shall be addressed as follows:

If to Seller:  
West Chester Township  
9113 Cincinnati-Dayton Road  
West Chester, Ohio 45069  
Fax No.: 513-779-9369  
Attention: Township Administrators

with a copy to:  
Frost & Jacobs, LLP  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202-4182  
Fax No.: (513) 651-6981  
Attention: W. Russell Wilson

If to Purchaser:  
University of Cincinnati Physicians, Inc.  
University Medical Arts Building  
222 Piedmont Avenue  
Suite 1200  
Cincinnati, Ohio 45219  
Fax No.: 513-475-7230  
Attn: Administrator

with a copy to:  
Andrew R. Berger, Esq.  
Katz, Teller, Brant & Hild  
255 East. Fifth Street, Suite 2400  
Cincinnati, Ohio 45202  
Fax No.: (513) 721-7120

or to such other addresses as may be designated by a proper notice. Notices shall be deemed to be effective upon receipt (or refusal thereof) if personally delivered or sent by recognized overnight delivery service, upon three (3) days following the date of mailing if sent by certified mail or upon electronically verified transmission, if such delivery is by telefacsimile or telecopy.

13.6 Waiver. The failure of either party to insist on strict performance of any of the provisions of this Agreement or to exercise any right granted to it shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver of any provision or right shall be valid unless it is in writing and signed by the party giving it.

13.7 Entire Agreement; Survival. This Agreement, together with any other writing signed by the parties and incorporated by reference and together with any instruments to be executed and delivered under this Agreement, constitutes the entire agreement between the parties with respect to the purchase and sale of the Property and supersedes all prior oral and written understandings. Amendments to this Agreement shall not be effective unless in writing and signed by the parties hereto.

13.8 Brokerage. Purchaser and Seller represent to each other that no broker or consultant acting on behalf of Purchaser or Seller brought about this transaction. Each of the parties hereto agrees to indemnify and hold the other harmless from claims made by any other broker, attorney or finder claiming through such party for a commission, fee or compensation in connection with this Agreement or the sale of the Property hereunder. Purchaser agrees it shall be solely responsible for any fees or compensation due Property Advisers by reason of the transaction contemplated by this Agreement.

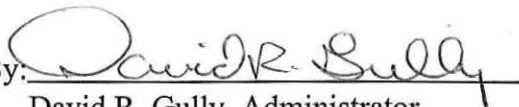
13.9 Confidentiality. To the extent permitted by applicable law, Purchaser and Seller shall each maintain as confidential any and all material obtained about the other and, in the case of Purchaser, about the Property, and shall not disclose such information to any third party, except such party's consultants, lenders, and attorneys. This provision shall survive the Closing or any termination of this Agreement.

13.10 Public Announcements. Neither Seller nor Purchaser shall make any public statement or issue any press release prior to the Closing with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other party, except as otherwise required by law or contemplated by Section 5.7.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the dates indicated below:

SELLER:

**WEST CHESTER TOWNSHIP**

By:   
David R. Gully, Administrator

Date: August 23, 2000

PURCHASER:

**UNIVERSITY OF CINCINNATI  
PHYSICIANS, INC.**

By: 

James R. Hillard, MD  
President and CEO

Date: August 23, 2000

**JOINDER**

The Escrow Agent hereby acknowledges receipt of the Initial Deposit and agrees to handle the Initial Deposit and any Final Deposit and Letter of Credit delivered under this Agreement in accordance with the terms of this Agreement.

Date: August 25, 2000

**Summit Title Agency, Inc.,  
Escrow Agent**

By: 

President

KTBH: 436673.13

## Exhibit A

Situated in Section 18, Town 3, Range 2, West Chester Township (formerly known as Union Township), Butler County, Ohio and more particularly described as follows:

Beginning at a concrete monument in the east line of Section 18, found by measuring along the east line of said section N 4° 26' East 774.91 feet from a railroad spike at the southeast corner of said section in the centerline of Tylersville Road; thence from said beginning point, departing said section line N 69° 35' 38" West 1820.52 feet to a concrete monument on the east right of way line of Interstate 75; thence along said east right of way line North 28° 26' 15" East 428.95 feet to a concrete monument, thence continuing along said right of way line North 24° 48' 08" East 814.54 feet to a concrete monument found; thence departing said right of way line South 70° 32' 41" East 1337.95 feet to an iron pin in the east line of section 18; thence along the east line of section 18, South 4° 26' West 1309 feet to the point of beginning.