

**AN ORDINANCE OF THE VILLAGE OF BARRINGTON HILLS  
AUTHORIZING THE ACQUISITION OF A PORTION  
OF PROPERTY DESIGNATED AS PARCEL 001 - CHERRY  
AS PART OF THE CUBA ROAD PROJECT**

WHEREAS, the Village of Barrington Hills (the "Village") is a home-rule municipality pursuant to Article VII, Section 6, of the Constitution of the State of Illinois, and as such is authorized to take all reasonable action pertaining to its affairs in accordance therewith; and

WHEREAS, the Village has previously determined that the Cuba Road Bridge is in need of repair and/or replacement (the "Cuba Road Bridge Project") and for such purpose applied for funds from the United States Department of Transportation to defray the costs of the Cuba Road Bridge Project which funding is administered by the State of Illinois; and

WHEREAS, the Village has entered into an agreement with the Illinois Department of Transportation ("IDOT") for the Cuba Road Bridge Project under a local agency agreement, for cost sharing of both engineering and land acquisition for said work; and

WHEREAS, the Village is empowered pursuant to 65 ILCS 5/2-3-8 to acquire by purchase real property within the Village for a public purposes; and

WHEREAS, the Village Board has determined that it is reasonable, necessary and in the public interest and welfare that a .622 acre portion (as legally described in Exhibit "A" attached hereto and incorporated herein by reference) of the 8.013 acre real property owned by the Roger J. Cherry 1998 Living Trust ("Owner"), located in the Village of Barrington Hills, identified by Permanent Index Nos. 13-28-200-015 and 13-28-200-016, should be acquired for purposes of the Cuba Road Bridge Project; and

WHEREAS, the Village, through its authorized agent, has negotiated an agreement to purchase said real property with the Owner, in the total amount of Thirty Eight Thousand, Eight Hundred and 00/100 Dollars (\$38,800.00); and

WHEREAS, funds for the acquisition of the real property described herein are available through the Local Agency Agreement; and

WHEREAS, acquisition of the property is specifically conditioned upon the final approval of the Local Agency Agreement for Federal Participation for Right of Way Acquisition by the Illinois Department of Transportation.

NOW THEREFORE BE IT ORDAINED by the President and Board of Trustees of the Village of Barrington Hills, located in the Counties of Cook, Kane, Lake and McHenry, Illinois, as follows:

**SECTION ONE:** The recitals set forth above are incorporated herein and made a part hereof.

**SECTION TWO.** That it is necessary and desirable that the real property described herein in Exhibit "A" be acquired by the Village of Barrington Hills for the purposes set forth herein.

**SECTION THREE:** That the President be, and the same is hereby authorized to execute the Purchase and Sale Agreement between the Village of Barrington Hills and the Owner of said real property, in substantially the form attached hereto and incorporated herein by reference as Exhibit

“B,” and to execute all other documents necessary to effectuate the purpose of the Purchase and Sale Agreement.

SECTION FOUR. That the Village Deputy Clerk be, and the same is hereby authorized to attest to the execution of the Purchase and Sale Agreement between the Village of Barrington Hills and the Owner of said real property, as well as to all other documents necessary to effectuate the purposes of the Purchase and Sale Agreement.

SECTION FIVE. That the Attorney and Staff of the Village of Barrington Hills are hereby authorized to take the necessary steps to acquire title to the real property described herein, after determining that the title to the real property is in proper order, and to pay any and all costs related thereto.

SECTION SIX. That the Attorney and Staff of the Village of Barrington Hills are hereby authorized to execute, on behalf of the Village of Barrington Hills, all documents necessary to effect the acquisition of the real property including all documents for purposes of the closing on this property, and, after acquisition of the real property, to take the necessary steps to properly remove said property from the general real estate tax rolls at the appropriate time.

SECTION SEVEN. That upon direction from the Attorney for the Village of Barrington Hills, the Village Administrator is authorized to issue a check, draft or wire transfer in the amount of Thirty Eight Thousand, Eight Hundred and 00/100 Dollars (\$38,800.00), and as adjusted by proper prorations determined by the Village’s Attorney and made payable to the owner of the real property, or as otherwise directed by the Village’s Attorney.

SECTION EIGHT. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION NINE. That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

Ayes: Nays: Absent:

PASSED AND APPROVED by the President and Board of Trustees of the Village of Barrington Hills, Illinois, this 27th day of May, 2015.

APPROVED:

ATTEST:

\_\_\_\_\_  
Village President

\_\_\_\_\_  
Deputy Village Clerk

**EXHIBIT A  
LEGAL DESCRIPTION**

**EXHIBIT B**  
**REAL ESTATE PURCHASE AGREEMENT**

**PURCHASE AND SALE AGREEMENT**

**Parcel 001- Cherry**

520 Merri Oaks, Barrington Hills

THIS AGREEMENT is entered into this \_\_\_ day of May, 2015, by and between the Roger J. Cherry 1998 Living Trust (referred to herein as the "Seller") and the Village of Barrington Hills, an Illinois municipal corporation (referred to herein as the "Buyer").

RECITALS:

- A. Seller is the owner of a certain parcel of land designated by P.I.N.s 13-28-200-015; -016.
- B. Seller desires to sell a .622 portion of the Property to Buyer, and Buyer desires to buy the .622 portion of the Property from Seller, as described herein in Exhibit A, attached hereto and incorporated herein by reference (the "Property"), on the terms and subject to the conditions of this Agreement.
- C. The Purchase/Sale of the Property is specifically conditioned upon approval of the acquisition by the Village Board of the Village of Barrington Hills, and the final approval of the Local Agency Agreement for Federal Participation for Right of Way Acquisition by the Illinois Department of Transportation.

THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency are hereby acknowledged, Seller and Buyer agree as follows:

**ARTICLE I  
PURCHASE AND SALE**

1.01. Agreement to Buy and Sell. Subject to the terms and conditions of this Agreement, Seller will sell to Buyer, and Buyer will purchase from Seller, good and marketable title to the Property subject to the Permitted Exceptions which may appear on the Title for said Property.

1.02. Purchase Price. The purchase price ("Purchase Price") for the Property is \$37,800.00.

1.03. Payment Terms. The Purchase Price will be payable at Closing (as hereinafter defined), plus or minus prorations provided for under this Agreement, and less other credits to which Buyer is entitled under the terms of this Agreement, in U.S. funds, by cashier's check or wire transfer of immediately available funds.

## **ARTICLE II PRE-CLOSING MATTERS**

2.01. Title Commitment. Concurrently with the exception of this Agreement, Buyer will secure, at its sole cost and expense, a commitment for an owner's title insurance policy ("Title Commitment") issued by a licensed Title Company (the "Title Company") in the amount of the Purchase Price, covering title to the Property on or after the date of this Agreement, showing title in the intended grantor, subject only to the general exceptions contained in the policy, the Permitted Exceptions and title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at Closing and which Seller will so remove or cause to be removed at Closing by using funds Buyer will pay upon delivery of the deed.

2.02. Survey. To the extent required by the Title Company, Buyer will obtain at its cost a survey (the "Survey") of the Property. The Survey shall show no encroachments onto the Property from any adjacent property, no encroachments by or from the Property onto any adjacent property and no violation of or encroachments upon any recorded building lines, restrictions or easements affecting the Property.

2.03. Title Defects. If either the Title Commitment or the Survey disclose any encroachment or violation or any exceptions to title or other than an exception described in Section 2.01 of this Agreement (an "Unpermitted Exception"), Seller shall have ten (10) days from the date of delivery thereof to have the Title Company issue its endorsement insuring against damage caused by such encroachments, violations or Unpermitted Exceptions, and provide evidence thereof to Buyer. If Seller fails to have the same insured against within said 10-day period, Buyer may elect, on or before the Closing, to terminate this Agreement or accept the Property subject to such encroachments, violations and Unpermitted Exceptions.

## **ARTICLE III APPORTIONMENT OF COSTS**

3.01. Real Estate Taxes. Seller shall remain liable for payment of all general and special real estate and other ad valorem taxes and assessments and other state or city taxes, fees, charges and assessments affecting the Property through the date of tender of possession to Buyer. For this purpose, taxes shall be prorated as of the date of closing on the basis of one hundred and five percent (105%) of the most recent ascertainable amounts of taxes, which amount shall be paid by Seller to Buyer at Closing.

3.02. Title; Recording Costs. Buyer will pay all Title and Recording Costs.

3.03. Attorney Fees. Seller will pay any Attorney Fees he/she may incur in this transaction.

## ARTICLE IV CLOSING

4.01. Closing Date and Location; Escrow. Seller and Buyer will use their best efforts to close this transaction on or before June 30, 2015 (the "Closing Date"), subject, however, to satisfaction of the conditions set forth in this Agreement, at the offices of the Title Company, or at such other time as is mutually acceptable to Seller and Buyer. In this Agreement, the term "Closing" refers to Seller's conveyance of title to the Property to Buyer.

4.02. Seller's Closing Documents. At Closing, the Seller will deposit with the Buyer, the following documents:

- (a) A recordable warranty deed, in a form reasonably acceptable to Buyer's counsel and the Title Company, conveying good and marketable title to Buyer in fee simple, free and clear of all liens and encumbrances, except the Permitted Exceptions.
- (b) An ALTA Owner's Title Insurance Policy ("Title Policy") issued by the Title Company in the form customarily used by the Title Company for property similar to the Property, in the amount of the Purchase Price, insuring that Buyer or Buyer's assignee has marketable, good, insurable and indefeasible fee simple title to the Property, subject only to the general exceptions of the Policy, the Permitted Exceptions, and any other exceptions Buyer has elected to accept.
- (c) Payoff letters issued by the holders of all mortgages or trust deeds or record, if any, setting forth the amount(s) required to release the Property from such mortgages or trust deeds, or release deed(s) sufficient to release such mortgages or trust deeds or record as to the Property.
- (d) A duly executed affidavit attesting to the absence of any claims of lien or potential lienors known to the Seller and further attesting that there have been no improvements to the Property for one hundred twenty (120) days immediately preceding the Closing Date which have not been fully paid for.
- (e) Executed ALTA Statement.
- (f) Executed real estate transfer tax declarations.
- (g) Executed Closing Statement.
- (h) Such other documents as reasonably may be required to consummate the transaction contemplated by this Agreement.

4.03. Buyer's Closing Documents. At Closing, in addition to the Purchase Price, Buyer

will deposit with the Seller, the following documents:

- (a) Executed ALTA Statement.
- (b) Executed counterpart of Seller's Closing Statement.
- (c) A copy of the ordinance of Buyer's Village Board, approving this Agreement and authorizing Buyer to complete the transaction described herein, certified by an authorized officer of Buyer as being a true and complete copy of the original and as being in effect.
- (d) Such other documents as reasonably may be required to consummate the transaction contemplated by this Agreement.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

5.01. Seller's Representations and Warranties. To induce Buyer to enter into this Agreement, Seller makes the following representations and warranties (all of which representations and warranties will be deemed to have been made again at the time of the Closing, and all of which will survive the Closing), and Seller's obligations under Section 5.03 to indemnify and hold Buyer harmless from any and all loss, expense or liability Buyer may suffer or incur, including reasonable attorneys' fees and court costs, as a result of any inaccuracy in any of such representations and warranties, will be applicable.

- (a) All representations and warranties made in the Exhibit "B" attached hereto.
- (b) Seller has full power and authority to enter into and carry out the terms and provisions of this Agreement. The execution and performance of this Agreement and the terms and provisions hereof by Seller are not inconsistent with, and do not result in the breach of any terms of any agreement or instrument to which Seller is a party by which Seller may be bound.
- (c) Seller has the right and authority to perform hereunder without obtaining any consent from governmental authorities or others except as expressly provided herein. The transactions herein contemplated will not constitute a violation of any applicable law, rule, regulation, ordinance, judgment, order or decree of any governmental entity or court to which Seller is subject.
- (d) Seller will at all times on and after the date of this Agreement, act with diligence and in good faith to satisfy any contingencies remaining unsatisfied from time to time, and to perform its obligations under this Agreement.



- (e) Neither the Property nor the transfer of the Property contemplated by this Agreement is subject to the Illinois Responsible Property Transfer Act, 765 ILCS 90/1.

5.02. Buyer's Representations and Warranties. To induce Seller to enter into this Agreement, Buyer makes the following representations and warranties (all of which representations and warranties will be deemed to have been made again at the time of Closing, and all will survive the closing), and Buyer's obligations under Section 5.03 to indemnify and hold Seller harmless from any and all loss, expense or liability Seller may suffer or incur, including reasonable attorneys' fees and court costs, as a result of any inaccuracy in any of such representations and warranties, will be applicable.

- (a) Buyer is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Illinois, with full power and authority to enter into and carry out terms and provisions of this Agreement. The execution and performance of this Agreement and the terms and provisions hereof by Buyer are not inconsistent with, and do not result in the breach of any terms of any agreement or instrument to which Buyer is a party or by which Buyer may be bound.
- (b) Buyer has the right and authority to perform hereunder without obtaining any consent from governmental authorities or others except as expressly provided herein. The transactions herein contemplated will not constitute a violation of any applicable law, rule, regulation, ordinance, judgment, order or decree of any governmental entity or court to which Buyer is subject.
- (c) Buyer will at all times on and after the date of this Agreement at with diligence and in good faith to satisfy any contingencies remaining unsatisfied from time to time, and to perform to obligations under this Agreement.

5.03. Survival of Representations and Warranties; Indemnification. The representations and warranties of the parties will be deemed to be continuing representations and warranties up to and including the Closing Date, with the same force and effect as though such representations and warranties had been made as of Closing. The representations and warranties of the parties will further survive the Closing, will not merge with any deed of conveyance, and will be continuing commitments and obligations of the parties hereto following the Closing Date, subject to any applicable statutes of limitations. Seller and Buyer agree to reimburse and indemnify each other (and Seller's and Buyer's employees, agents, successors and assigns) from and against all liability, damages and losses whatsoever, including reasonable attorney's fees and court costs resulting from an misrepresentation, breach of warranty, or breach of covenant made by the indemnifying party in this Agreement or in any document certificate or exhibit given or delivered to the other pursuant to this Agreement.

**ARTICLE VI  
BROKERS**

6.01 Brokers. The Parties agree that there have been no Brokers involved in the sale of this Property.

6.02. Survival. The representations and warranties of Seller and Buyer, and their agreements contained in this Article VI, will survive the Closing or other termination of this Agreement.

**ARTICLE VII  
MISCELLANEOUS**

7.01. Fees and Expenses. All costs, fees and expenses, including reasonable attorneys' fees, and court costs, incurred by a non-defaulting party as a result of the default of the other party will be paid by the defaulting party.

7.02. Notices. Any notice required or permitted to be given under this Agreement will be in writing and will be deemed to have been given when sent by telefacsimile to the telefacsimile number provided below for the intended recipient of such notice, or when delivered personally or on the date deposited in the United States mail, registered or certified mail, postage pre-paid, return receipt requested, and addressed as follows:

If to Seller: The Roger J. Cherry 1998 Living Trust

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Buyer: The Village of Barrington Hills  
Attn: Village Administrator  
112 Algonquin Road  
Barrington Hills, IL 60010-5199

With copy to: Mary E. Dickson  
Bond, Dickson & Associates, P.C.  
Corporation Counsel  
Village of Barrington Hills  
400 S. Knoll Street Unit C  
Wheaton, Illinois, 60187

or to such other address as a party may from time to time specify in writing to the other parties in

accordance with the terms hereof.

7.03. Amendment. This Agreement cannot be amended or terminated except by written instrument signed by all the parties hereto.

7.04. Waiver. No failure by Seller or Buyer to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy upon a breach thereof, will constitute as waiver thereof. Any party hereto, by notice to the other parties, may, but will be under no obligation to, waive any of its rights or any condition to its obligations hereunder, or any duty, obligation or covenant of the other parties hereto. No waiver will affect or alter any other covenant, agreement, terms or conditions of this Agreement, all of which shall continue in full force and effect.

7.05 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

7.06 Governing Law. This Agreement has been entered into in the State of Illinois and will be interpreted under and governed by the laws of the State of Illinois.

7.07. Assignment. Seller may not assign this Agreement, or any of Seller's rights hereunder, nor may Buyer delegate its duties, without first obtaining Buyer's written consent, which Buyer may withhold in its absolute discretion.

7.08. Binding Effect. Without limiting the provisions of Section 7.07, this Agreement will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

7.09. Prior Agreements. This Agreement (including the exhibits attached hereto) is the entire agreement between Seller and Buyer and supersedes in its entirety all prior agreements and understandings relating to the Property. The Exhibits attached hereto are a material part of this Agreement.

7.10. Time of the Essence. Time is of the essence of the performance of each of the obligations of Seller and Buyer.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

SELLER:

The Roger J. Cherry 1998 Living Trust

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

BUYER:

Village of Barrington Hills

By: \_\_\_\_\_  
Martin J. McLaughlin, President

ATTEST:

\_\_\_\_\_  
Anna Paul, Deputy Village Clerk

**EXHIBIT A**

LEGAL DESCRIPTION OF PARCEL 001- CHERRY

Route: FAU 1260  
Section: 12-00020-00-BR  
County: Lake  
Job Number: R-91-006-13  
Parcel Number: 0001  
Station 34+36.04 to Station 39+76.23  
Parcel Index Number: 13-28-200-016  
& 13-28-200-015

0001: ROW Taking

That part of the East 540.00 feet of the South 646.16 feet (except the North 242.07 feet thereof) as measured on the West line thereof, of a tract of land described as that part of the West Half of the Northeast Quarter of Section 28, Township 43 North, Range 9 East of the Third Principal Meridian, lying South of the Chicago and Northwestern Railroad, and the North 242.07 feet of the South 646.15 feet of the East 540.0 feet of the West Half of the Northeast Quarter of Section 28, Township 43 North, Range 9 East of the Third Principal Meridian, taken as a tract and described as follows: Beginning at the Southeast corner of said tract; thence South 89 degrees 22 minutes 44 seconds West along the South line of said tract, a distance of 540.20 feet to the West line of said tract; thence North 00 degrees 55 minutes 34 seconds East along the last described line, a distance of 33.01 feet; thence North 89 degrees 22 minutes 44 seconds East and parallel with the South line of said tract, a distance of 180.08 feet; thence North 88 degrees 15 minutes 55 seconds East, a distance of 175.08 feet; thence North 20 degrees 20 minutes 34 seconds East, a distance of 134.23 feet; thence South 69 degrees 39 minutes 26 seconds East, a distance of 66.00 feet; thence South 20 degrees 20 minutes 34 seconds West, a distance of 92.62 feet to a point of curve; thence Southeasterly along a curve concave Northeasterly having a radius of 10.00 feet, a central angle of 112 degrees 04 minutes 39 seconds and a chord bearing of South 35 degrees 41 minutes 46 seconds East, a distance of 19.56 feet (16.59 feet chord measure) to a point of tangency; thence North 88 degrees 15 minutes 55 seconds East, a distance of 99.23 feet to the East line of said tract; thence South 00 degrees 55 minutes 34 seconds West along the last described line, a distance of 40.02 feet to the point of beginning, in Lake County, Illinois.  
Said parcel containing 0.622 acres.