

RESOLUTION No. 36-13

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE VILLAGE OF EAST DUNDEE AND THE EAST DUNDEE FIRE
PROTECTION DISTRICT FOR THE TRANSFER OF REAL PROPERTY**

WHEREAS, the Village of East Dundee (the “Village”) a home rule municipality and the East Dundee Fire Protection District (the “Fire District”) are units of local government within the meaning of Article VII, Section 1 of the Illinois Constitution of 1970 and are authorized to enter into intergovernmental agreements pursuant to the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.); and

WHEREAS, the Fire District has approved the relocation of its existing downtown fire station at 115 East Third Street by the construction of a new fire station to better serve its constituents and desires to construct said fire station on a more centrally located parcel that the Village owns in the vicinity of Route 25 and Route 72; and,

WHEREAS, the Village desires upon relocation of the Fire District’s downtown fire station to acquire that downtown fire station to rehabilitate for the expansion of the Village’s Police Department facility and to help revitalize the downtown area; and,

WHEREAS, therefore the Village desires to transfer a portion of its property to the Fire District and the Fire District desires to transfer its downtown fire station property to the Village pursuant to the terms and conditions contained in the attached Intergovernmental Agreement; and,

WHEREAS, the Village and Fire District are entering into this Intergovernmental Agreement pursuant to the authority of the Section 10 of Article VII of the Constitution of the State of Illinois and the Intergovernmental Cooperation Act.

NOW THEREFORE, BE IT RESOLVED, by the President and Board of Trustees

of the Village of East Dundee, Kane and Cook Counties, Illinois, as follows:

Section 1: That the *INTERGOVERNMENTAL AGREEMENT* between the Village of East Dundee and the East Dundee Fire Protection District that is attached hereto and made a part hereof by reference as Exhibit A, be and is hereby approved, and that the Village President and Village Clerk be and are hereby authorized to execute and attest said Intergovernmental Agreement on behalf of the Village.

Section 2: This Resolution shall be in full force and effect upon its passage and approval in the manner provided by law.

PASSED this 3rd day of Sep, 2013, pursuant to a roll call vote as follows:

AYES: Trustees Lynam, Gorman, Skillicorn, Wood and Selep

NAYS: \emptyset

ABSENT: Trustee Ruffalo

APPROVED this 3rd day of Sep, 2013



Village President

Attest: 

Village Clerk

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "*Agreement*") by and between the East Dundee Fire Protection District of East Dundee, Illinois, a municipal corporation of the State of Illinois (the "*Fire District*") and the Village of East Dundee, Kane and Cook Counties, Illinois (the "*Village*"), a municipal corporation of the State of Illinois, dated this 3rd day of September, 2013.

WITNESSETH:

WHEREAS, the Constitution of the State of Illinois of 1970, Article VII, Section 10, provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and,

WHEREAS, the Fire District is a municipal corporation vested with all power necessary or appropriate in order to engage in the acquisition, establishment, maintenance and operation of fire stations, facilities, vehicles, apparatus and equipment for the prevention and control of fire; and,

WHEREAS, the Village is a home rule municipality pursuant to Article 7, Section 6(a) of the Constitution of the State of Illinois of 1970 authorized to exercise any power and perform any function pertaining to its government and affairs; and,

WHEREAS, the Village and the Fire District, as units of local government within the meaning of Article VII, Section 1 of the Illinois Constitution of 1970, are authorized to enter into intergovernmental agreements pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and,

WHEREAS, pursuant to a referendum, the Fire District received approval of the voters in November of 2012 to finance and build a new \$5.5 million dollar fire station and in furtherance thereof, the Fire District has determined that it would be in the best interests of the residents and citizens its serves to acquire approximately three (3) acres in the vicinity of Route 25 and Route 72 in order to be centrally located in order to best provide services to its constituents; and,

WHEREAS, the Fire District currently operates from its facility located at 115 East Third Street, East Dundee, Illinois (the "*Fire District Parcel*") legally described on *Exhibit C* attached hereto, which property the Village desires to purchase when the Fire District relocates after construction of its new fire station in order to provide better facilities for its Police Department as hereinafter explained; and,

WHEREAS, and the Village currently owns ten (10) acres in the vicinity of Route 25 and Route 72, and is prepared to subdivide this property in order to convey three (3) acres thereof (the "*Village Parcel*") to the Fire District as the location for its new fire station; and,

WHEREAS, the Fire District Parcel is located within the downtown central business district of the Village and in order to encourage its redevelopment, the President and Board of Trustees (the "*Corporate Authorities*") of the Village, on June 16, 2008, pursuant to Ordinance Nos. 08-34; 08-35 and 08-36; approved a Redevelopment Project Plan and Eligibility Report (the "*Redevelopment Plan*") for an area designated as the Downtown Tax Increment Redevelopment Project Area (the "*Project Area*"), and adopted tax increment financing for the payment and financing of redevelopment project costs incurred within the Project Area, pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, (the "*TIF Act*"); and,

WHEREAS, pursuant to the Business District Development and Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.3-1 *et seq.*, as from time to time amended (the "*BDD Act*"), the President and Board of Trustees of the Village (the "*Corporate Authorities*") are empowered to undertake the development or redevelopment of business districts within the municipal boundaries of the Village which are in need of revitalization; and,

WHEREAS, pursuant to the BDD Act, on September 28, 2009, the Corporate Authorities, after public hearings, passed Ordinance No. 09-30 designating the Route 25 and Route 72 Business District (the "*BD District*"), and amended this BD District on March 17, 2011 by Ordinance No. 11-12 and on March 18, 2013 by Ordinance No. 13-05 to expand the boundaries of the BD District to include the Fire District Parcel and imposed a retailers' occupation tax and service occupation tax in the amount of one-half of one percent (0.5%) on all commercial operations within the boundaries of the BD District as amended to pay project costs incurred in connection with the Village's approved plan for the planning, execution and implementation of the BD District (the "*BD Plan*"); and,

WHEREAS, in furtherance of the BD Plan and the Redevelopment Plan, the Village is committed to the rehabilitation of existing aging structures such as the Fire District's facility and the centralization and expansion of its own municipal departments to better serve its residents and, therefore, is prepared to acquire the Fire District Parcel and undertake its redevelopment and rehabilitation thereby eliminating some of the blighting factors reported in the Redevelopment Plan in the Project Area; and,

WHEREAS, the purpose of this Intergovernmental Agreement is to set forth the terms and conditions for the Village to purchase the Fire District Parcel from the Fire District pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the covenants, conditions and considerations hereinafter set forth, the parties agree as follows:

Section 1. The foregoing preambles are hereby adopted as if fully set forth herein.

Section 2. The Fire District hereby agrees to convey to the Village the Fire District Parcel pursuant to the terms and conditions hereinafter set forth for a purchase price of \$2,000,000, payable from the special tax allocation funds established by the Corporate Authorities as mandated by the BDD Act and the TIF Act, and the conveyance to the Fire District of title by the Village to the Village Parcel, being three (3) acres of the ten (10) acres which the Village currently owns in the vicinity of Route 25 and Route 72. The purchase price for the Fire District Parcel is hereby agreed to be satisfied by the following:

- (a) The Village shall pay \$100,000 to the Fire District on or before June 1, 2014 and \$100,000 each anniversary thereafter until a total sum of \$2,000,000 has been paid; and,
- (b) Upon receipt of a title commitment for an Owner's title insurance policy covering the Fire District Parcel with all Title Defects, as hereinafter defined, having been removed, the Village shall convey the Village Parcel to the Fire Protection District upon completion of the subdivision of its ten (10) acre parcel in the vicinity of Route 25 and Route 72.

Section 3.

A. Upon execution of this Agreement, the Village shall proceed to prepare a Plat of Subdivision of its ten (10) acre parcel located in the vicinity of Route 25 and Route 72 to create the three (3) acre Village Parcel as depicted on *Exhibit A* attached hereto and legally described on *Exhibit B* also attached.

B. Upon completion of all procedures mandated to subdivide property and approval thereof as required by all applicable ordinances and laws of the State of Illinois, and the recordation thereof with the County of Kane, the Village shall proceed to order a title commitment for an Owner's Title Insurance Policy covering title to the Village Parcel subject only to the following permitted exceptions:

- (1) Extended, but unbilled and not due general real estate taxes to the date of conveyance and subsequent years; and,
- (2) Liens of record, if any, caused by the Fire District; and,
- (3) Any recorded easement(s) for public utilities which were of record as of January 1, 2013; and,
- (4) Liens of record caused by Village, which lien(s) shall be released prior to conveyance.

The title commitment shall be conclusive evidence of good title as therein shown as to all matters to be insured by the policy, subject only to the exceptions as therein stated. If the title commitment discloses either unpermitted exceptions or boundary overlaps, unpermitted

easements, or encroachments (“*Title Defects*”), the Village shall have twenty-five (25) days from the date of delivery thereof to have the exceptions removed or to correct such Title Defects or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or Title Defects. If the Village fails to have the exception(s) removed, or correct any Title Defects, the Fire District may terminate this Agreement or may elect, upon notice to the Village, to take title as it then is with the right to add to the purchase price the amount of those liens or encumbrances against the Village Parcel of a definite or ascertainable amount not caused by the Fire District.

Section 4. Upon receipt of a title commitment from the Village for the Village Parcels the Fire District shall deliver to the Village a title commitment for an Owner’s Title Insurance Policy covering title to the Fire District Parcel subject only to the following exceptions:

- (1) Extended, but unbilled and not due general real estate taxes to the date of conveyance and subsequent years; and,
- (2) Liens of record, if any, caused by the Village; and,
- (3) Any recorded easement(s) for public utilities of record as of January 1, 2013; and,
- (4) Liens of record caused by the Fire District, which lien(s) shall be released prior to conveyance.

The title commitment shall be conclusive evidence of good title as therein shown as to all matters to be insured by the policy, subject only to the exceptions as therein stated. If the title commitment discloses either unpermitted exceptions or boundary overlaps, unpermitted easements, or encroachments (“*Title Defects*”), the Fire District shall have twenty-five (25) days from the date of delivery thereof to have the exceptions removed or to correct such Title Defects or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or Title Defects. If the Fire District fails to have the exception(s) removed, or correct any Title Defects, the Village may terminate this Agreement or may elect, upon notice to the Fire District, to take title as it then is with the right to subtract from the purchase price the amount of such liens or encumbrances of a definite or ascertainable amount.

Section 5. Upon receipt by the Village of a title commitment from the Fire District for the Fire District Parcel demonstrating title to be conveyed by the Fire District Parcel being free of Title Defects, the Village shall convey the Village Parcel to the Fire District, and deliver the following documents:

- (i) A Warranty Deed (“*Deed*”) in recordable form conveying the Village Parcel to the Fire District subject only to the exceptions hereinabove stated in Section 3;
- (ii) ALTA Statement;
- (iii) Appropriate evidence of the Village’s authority to convey the Village Parcel as may be required by the title insurer;
- (iv) An Affidavit of Title; and,
- (v) The Title Policy, issued by the title insurer.

Possession of the Village Parcel shall be delivered to the Fire District upon recordation of the Warranty Deed.

Section 6.

A. Upon receipt by the Fire District of a title commitment from the Village for the Village Parcel demonstrating title to the Village Parcel to be conveyed to the Fire District as being free and clear of Title Defects, the Fire District shall convey to the Village the Fire District Parcel and deliver the following documents:

- (i) A Warranty Deed ("*Deed*") in recordable form conveying the Village Parcel to the Fire District subject only to the exceptions hereinabove stated in Section 3;
- (ii) ALTA Statement;
- (iii) Appropriate evidence of the Village's authority to convey the Village Parcel as may be required by the title insurer;
- (iv) An Affidavit of Title; and,
- (v) The Title Policy, issued by the title insurer.

B. Possession of the Fire District Parcel shall be delivered to the Village upon relocation of its operation to its new fire station to be constructed on the Village Parcel but in no event after December 31, 2014. The Fire District hereby covenants and agrees that after conveyance to the Village of the Fire District Parcel and for so long as it retains possession thereof, the Fire District shall:

- (i) Not permit any damage or destruction to the structure on the Fire District Parcel and repair any damage or destruction at its sole cost and expense but only with the approval of the Village;
- (ii) Keep in full force and effect all insurance with respect to damage or injury to persons or property occurring on the Fire District Parcel, in the amount and scope of coverage and deductible amount which are the same or better than that which it has previously maintained;
- (iii) Not enter into any contracts affecting the Fire District Parcel without obtaining the prior written consent of the Village;
- (iv) Not contract for any services, or make or enter into any new leases, commitments or obligations which will bind the Village with respect to the Fire District Parcel, without obtaining the Village's prior written consent;
- (v) Not waive or release any material right which would otherwise accrue to the Village as a result of the conveyance;
- (vi) Permit the Village, its designated officers, agents and representatives reasonable access to the Fire District Parcel and all improvements provided the Village indemnifies the Fire District in the event of any claim which may arise as a result of its exercise of such right of access; and,
- (vii) Not remove any fixture from the premises without written permission of the Village.

Section 7. Within one hundred eighty (180) days following the conveyance by the Village of the Village Parcel to the Fire District, the Fire District shall undertake the construction of its new facility and complete said construction on or before December 31, 2014, subject only to force majeure as provided in Section 8 hereof. Within thirty (30) days after the Fire District shall have completed construction of its new fire station and have been issued a certificate of occupancy, the Fire District shall vacate the Fire District Property and deliver possession to the Village.

Section 8. Time is of the essence of this Agreement; provided, however, the Fire District shall not be deemed in material breach of this Agreement with respect to any obligations pursuant to this Agreement on the Fire District's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("*Force Majeure*"). If one of the foregoing events shall occur or the Fire District shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate and consult with the Fire District regarding the event and shall grant any extension for performance equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

Section 9. In the event any notice, approval or permission is required of either party pursuant to this Agreement, such notice, approval or permission shall be required in writing and responded to in writing and shall be deemed given if and when delivered personally, or on the day of being deposited with a national overnight courier service, or on the day of being deposited in the United States by certified mail, return receipt requested, postage prepaid, addressed to a party at its address set forth below, or such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to the Village: Village of East Dundee
120 Barrington Ave.
East Dundee, Illinois 60118

With a copy to: Kathleen Field Orr & Associates
53 West Jackson Blvd., Suite 935
Chicago, Illinois 60604

If to the Fire District: East Dundee Fire Protection District
115 East Third Street
East Dundee, Illinois 60118

With a copy to: John Kelly
Ottosen Britz Kelly Cooper Gilbert & DiNolfo Ltd.
1804 N. Naper Blvd., Suite 350
Naperville, Illinois 60563

Section 10.

(A) This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous written or oral agreements, undertakings, promises, representations, warranties or covenants not contained herein, all of which prior agreements are hereby terminated and of no force or effect.

(B) This Agreement may be amended only by a writing executed by both the Village and the Fire District.

(C) This Agreement may not be assigned.

(D) No waiver of any provision or condition of this Agreement by either party shall be valid unless in writing signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act, or default.

(E) In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(F) In the event that any provision of this Agreement shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.

Section 11.

This Agreement shall commence on the date of its execution and terminate as of the date of the final payment of \$100,000 by the Village to the Fire District of the purchase price.

Section 12.

(A) If either party fails to fulfill its obligations under this Agreement, the non-defaulting party shall provide the defaulting party with a written statement indicating in inadequate detail any failure on such party's part to fulfill its obligations under this Agreement. No remedies against the defaulting party in connection with such failure may be undertaken until

thirty (30) days after giving such notice. If the default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonable necessary for the curing of the same, so long as the defaulting party diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. If such default is not cured such default shall be deemed a breach of this Agreement. Any failure or delay by any party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(B) In the event of a breach of this Agreement, the non-defaulting party may institute legal action against the other party to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance; provided, however, no recourse under or upon any obligation contained herein or for any claim based thereon shall be had against either party in any amount or in excess of any specific sum agreed to be paid hereunder, or in addition to any other specific promise or obligation set forth herein, and no liability, right or claim at law or in equity shall be attached to or incurred by either party, its officers, agents, attorneys, representatives or employees in any amount in excess of the amounts hereunder or more than any specific obligation undertaken by either party pursuant to this Agreement.

(C) Notwithstanding the foregoing, in the event either party shall institute legal action against the other party because of a breach of any agreement or obligation contained in this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

(D) The rights and remedies of the parties are cumulative and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Illinois. Any legal proceedings shall be commenced in the Circuit Court of Kane County.

Section 13. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at East Dundee, Illinois.

Village of East Dundee, an Illinois municipal corporation

By:



President

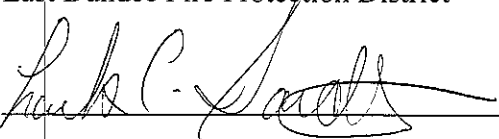
Attest:



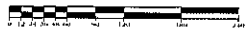
Village Clerk

East Dundee Fire Protection District

By:



President



River Haven Second Resubdivision

Being a resubdivision of Lot #4 of
River Haven Subdivision in the
Village of East Dundee, Kane County,
Illinois.

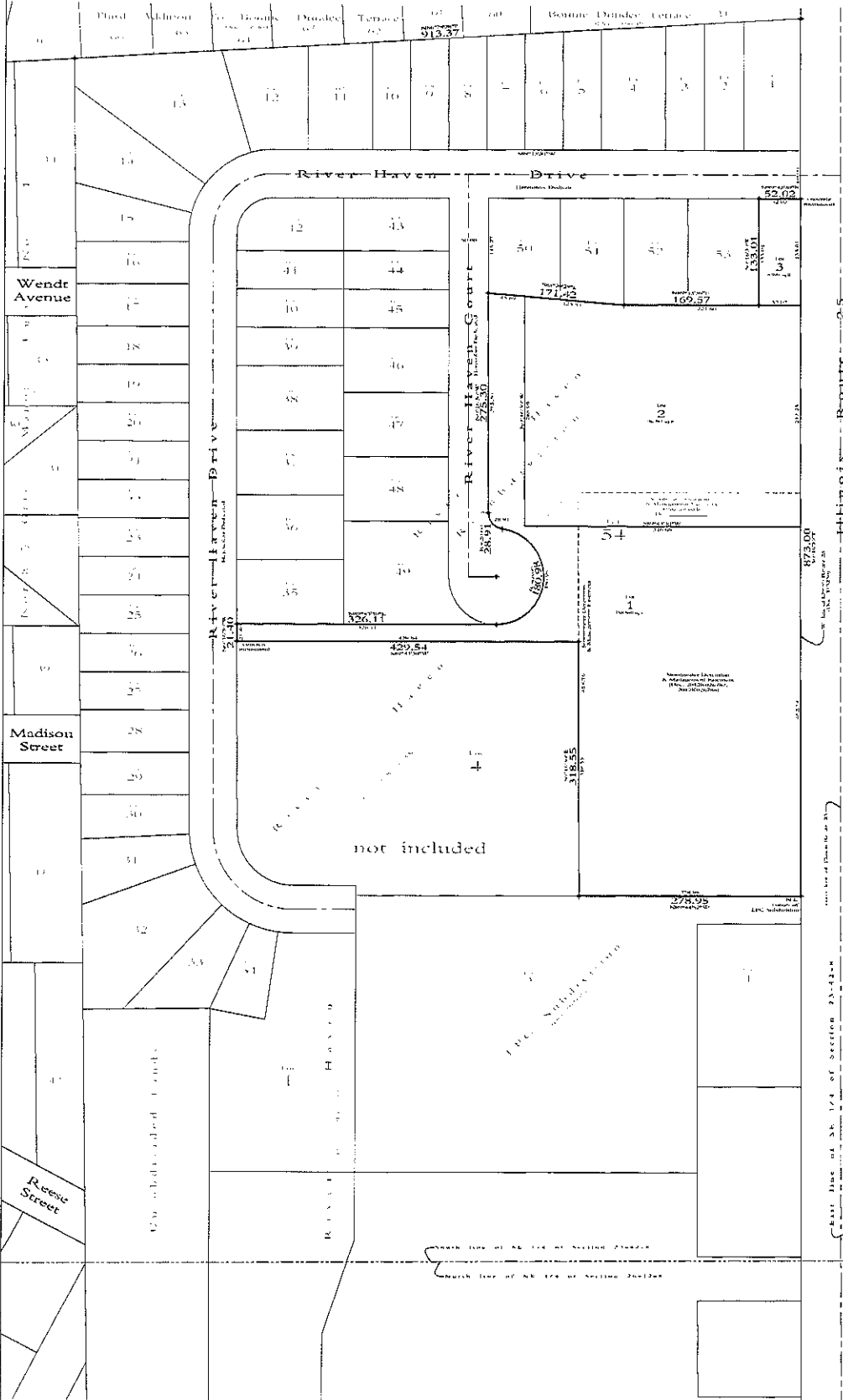
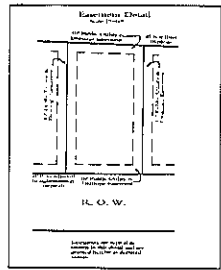


Exhibit B

Legal Description

Being a resubdivision of Lot 54 of River Haven Resubdivision in the Village of East Dundee,
Kane County, Illinois

Exhibit C

Existing Fire District Legal Description

Lot 36 and 37 and the West 20 feet of Lots 1, 2, 3, 4, all in Block 8 of Edward's Addition to Dundee, in the Village of East Dundee, Kane County, Illinois.