

## RESOLUTION R-40-13

### RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN CONSTRUCTION, USE, AND INDEMNIFICATION AGREEMENT - Right-of-Way (1220 East Thomas Road)

BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement dated May 28, 2013, between the City of Wheaton and Ralph and Catalina Yale, 1220 East Thomas Road, Wheaton, Illinois, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 3<sup>rd</sup> Day of June, 2013.



Michael Gresk  
Mayor

Attested by:



Sharon Bennett-Hagan  
City Clerk

Ayes:

Roll Call Vote:  
Councilman Suess  
Councilman Prendiville  
Councilman Rutledge  
Councilman Saline  
Mayor Gresk  
Councilwoman Pacino Sanguinetti,  
Councilman Scalzo

Nays: None

Absent: None

Motion Carried Unanimously

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY (1220 EAST THOMAS ROAD)**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 28<sup>th</sup> day of May, 2013, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Ralph Yale and Catalina Yale ("Owner").

**WITNESSETH**

WHEREAS, the City is in possession of an unimproved right-of-way within the City limits of the City of Wheaton, Illinois, commonly known as Thomas Road between Stoddard Avenue and Summit Street; and

WHEREAS, Ralph and Catalina Yale (hereinafter "Owner"), are the owners of the premises located at 1220 East Thomas Road, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the unimproved right-of-way; and

WHEREAS, the Owner would like to use a portion of the unimproved right-of-way to access their property located at 1220 East Thomas Road; and

WHEREAS, the Owner acknowledges that this Agreement is not an easement and does not vest them with any property rights or claims to any portion of said right-of-way; and

WHEREAS, the Owner's successors and heirs will benefit from the placement of asphalt over the right-of-way as described herein.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and Ralph and Catalina Yale as follows:

1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.

2.) Ralph and Catalina Yale are the owners of property located at 1220 East Thomas Road, Wheaton, Illinois, legally described as follows:

EAST ONE HALF OF LOT 16 IN BLOCK 5 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  SECTION 10 AND THAT PART LYING SOUTH OF CENTER LINE OF GENEVA ROAD OF THE SOUTHWEST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

Commonly known as: 1220 East Thomas Road, Wheaton, Illinois

PIN: 05-10-107-018

3.) The Owner, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby authorized to use a portion of the unimproved right-of-way more specifically identified as the 75 feet by 13 feet portion of the right-of-way lying immediately north and west of the Property described in Paragraph 2 of this Agreement, in the following manner: to use the paved driveway in strict conformance with Exhibit A which is attached hereto and incorporated herein as if fully set forth.

4.) The Owner shall use the asphalt driveway in conformance with all applicable City ordinances and in a manner which does not interfere, impede, hinder or otherwise obstruct the lawful use of the right-of-way by the City, public or property owner residing at 1727 North Stoddard Avenue. Upon completion of paving the asphalt driveway by the City, Owner shall maintain the asphalt in good condition and repair and in conformance with all applicable City ordinances. If the Owner fails to maintain the asphalt as required by this paragraph, the City shall have the right but not the obligation to make any and all repairs to the asphalt. If the City makes such repairs the Owner shall reimburse the City its actual costs. If the Owner fails to reimburse the City its actual costs within 30 days of invoice the City shall have the right to lien the Property described in Paragraph 2 of this Agreement and to foreclose such lien in conformance with State law.

5.) The City retains the right to enter said right-of-way for the purpose of maintaining the existing City utility systems (watermain, storm and sanitary sewers) if any. If the City performs maintenance work on any of the aforesaid utility systems the City shall restore the asphalt at its sole cost and expense.

6.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the Owner in writing at least ninety (90) days prior to termination.

7.) Upon termination of this Agreement, the City may destroy, demolish, remove any improvements placed upon the right-of-way by the Owner without liability.

8.) To the greatest extent permitted under Illinois law Owner shall defend, indemnify and hold the City harmless from any and all claims, actions, causes of action, costs, judgments, injuries, property damage, expenses (including reasonable attorney's and experts fees which arise or may be caused by the negligence of the Owner, or Owner's agents, as a result of the design, construction, maintenance, use or abandonment of the asphalt driveway described herein.

9.) This Agreement is not an easement.

10.) The provisions set forth in this Agreement and Exhibit represent the entire Agreement between the parties and shall proceed all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written Agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

11.) This Agreement shall be binding upon the parties their respective heirs, successors and assigns.

12.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owner.

IN WITNESS WHEREOF, the Corporate authorities and the Owner have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

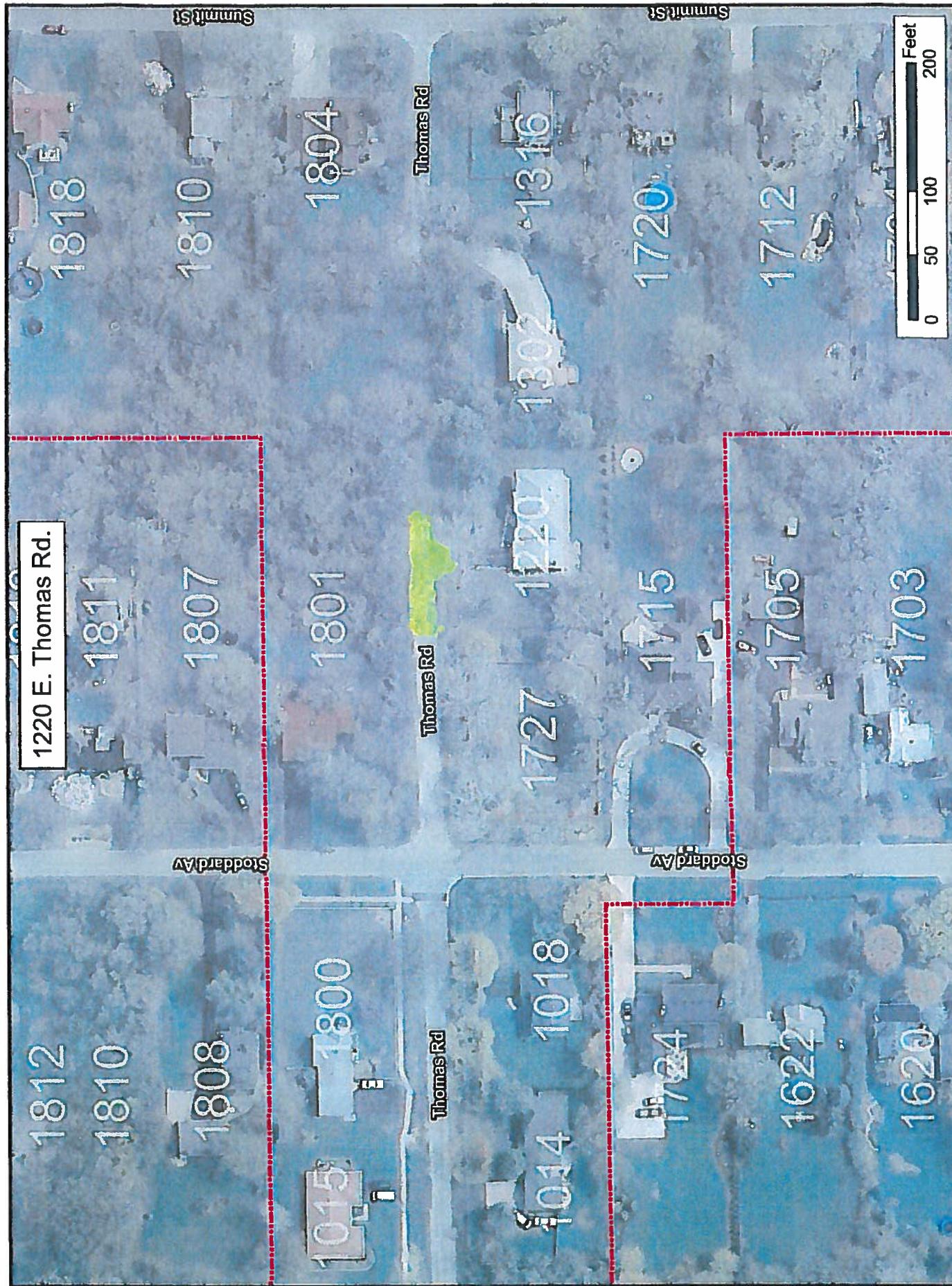
Attested by:

Shawn Bennett-Hayes  
City Clerk

Michael Hayes  
Mayor, City of Wheaton

Ralph Yale 5/28/13  
Ralph Yale

Catalina Yale 5/28/2013  
Catalina Yale



This map is provided "as-is" without warranties of any kind. See [www.wheaton.il.us/maps/disclaimer](http://www.wheaton.il.us/maps/disclaimer) for more information.