

**AGREEMENT FOR REIMBURSEMENT FOR CONDEMNATION OF TEMPORARY
CONSTRUCTION AND SANITARY SEWER EASEMENTS AT
THIRD STREET AND VIEW HIGH DRIVE.**

This **AGREEMENT** entered into this ____ day of December, 2016, by and between the **CITY OF LEE'S SUMMIT, MISSOURI**, a Missouri municipal corporation ("City") and **PARROT PROPERTIES, INC.** a Missouri Corporation ("Developer").

WHEREAS, Developer owns real property (the "Property") in the vicinity of Third Street and View High Drive in Lee's Summit, Missouri; and

WHEREAS, Developer is currently in the process of developing the property for single family residential lots (the "Development"); and,

WHEREAS, adequate infrastructure in the form of sanitary sewer service is necessary for the development; and,

WHEREAS, it has been determined by Developer and City Staff that sanitary sewer easements and accompanying temporary construction easements are needed to install the necessary sewer facilities and infrastructure to serve the Property and the Development; and,

WHEREAS, Developer has exhausted all reasonable efforts in obtaining the easements for the necessary sanitary sewer facilities and infrastructure; and,

WHEREAS, the City of Lee's Summit has determined that City owned sanitary sewer easements, and accompanying temporary construction easements, as shown in **Exhibit A**, attached hereto and incorporated by reference as if fully set forth herein (the "Complete Sanitary Sewer Easement"), are necessary to serve the development and future development in the area of SW Pryor Road and SW Hook Road in Lee's Summit, Missouri; and,

WHEREAS, the property interests set forth and more fully described in **Exhibit B**, attached hereto and incorporated by reference as if fully set forth herein (the "Easements Sought") need to be obtained in order to provide the necessary sanitary sewer facilities; and,

WHEREAS, the City of Lee's Summit has determined that the Easements will serve a public purpose in the City of Lee's Summit in the form of providing sanitary sewer service to areas of the City where such service is currently unavailable.

WHEREAS, THE City of Lee's Summit has determined that the Easements are necessary to provide sanitary sewer service to residents of the city.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

A. Responsibilities of the Parties

1. City agrees to:

- a. Proceed to negotiate with the owners of the Easements Sought, in accordance with the requirements set forth by Missouri Law for pre-requisites to the exercise of eminent domain to acquire the Easements Sought in the name of the City.
- b. City will acquire an appraisal of the Easements Sought by a State licensed appraiser.
- c. If negotiations are unsuccessful, City will institute an action in the Circuit Court of Jackson County, Missouri to obtain the Easements Sought by Eminent Domain in the name of the City.

2. Developer agrees to:

- a. Cooperate with the City making any necessary engineering studies or other information needed for the Eminent Domain action available to the City.
- b. Cooperate with the City in making its representatives, agents, and contracted engineers available for any court hearings related to the Eminent Domain action.
- c. Within thirty (30) days of request by the City, Developer will reimburse the City for all staff time and costs incurred by the City associated with acquiring the Easements Sought and the Eminent Domain Action.
- d. Within thirty (30) days of the City obtaining an appraisal or valuation by City Staff for the Easements Sought, Developer shall deposit money (1) in an amount equal to the computation of total damages associated with the easements sought set forth in the

appraisal obtained by the City or valuation conducted by City Staff, plus (2) an amount equal to City Staff's estimate of Condemnation Commissioners Fees associated with obtaining the Easements Sought. This deposit of money will be held in escrow by the City for the purpose of being put towards the condemnation commissioners awards and fees associated with the Easements Sought. If a balance remains at the conclusion of the condemnation action, and all reimbursements for City staff time and costs have otherwise been paid in full, any remainder shall be refunded to Developer.

- e. Within thirty (30) days of request by the City, Developer will reimburse the City for Condemnation Commissioners fees and Condemnation Commissioners damage awards and any awards made by a jury at an exceptions trial.
- f. Deed/assign all portions of the Complete Sanitary Sewer Systems for the Project it has already acquired to the City.
- g. Developer agrees to pay Missouri Prevailing Wage on all construction related to the entire sanitary sewer improvements which are the subject of this Agreement.

B. Understanding of the Parties:

1. This agreement creates no attorney-client relationship between City and Developer.
2. This agreement creates no agency relationship between City and Developer.
3. City will be in sole control of all decisions, courses of action and direction related to any lawsuit in Eminent Domain for the Easements Sought.
4. Reimbursement under this agreement will not be contingent on the outcome or any final orders or rulings associated with the action for Eminent Domain for the Easements Sought.

5. City Staff time will be reimbursed by Developer at the employees standard hourly rate of compensation with the City.
6. City expenses will be reimbursed for the actual amount expended by the City.
7. City will submit written itemized reimbursement requests to Developer on a monthly basis. Developer shall make reimbursement payments within thirty (30) days of receipt of said request.

C. General Provisions

1. **Complete Agreement.** This Agreement shall constitute the complete agreement between the parties and any modification shall be in writing and signed by both parties.
2. **Captions.** Captions and headings of each part, section or subsection in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions.
3. **Authority.** The undersigned represent that they each have the authority and capacity from the respective parties to execute this Agreement. This Agreement shall not be valid until executed by the parties.
4. **Jointly Drafted.** The parties hereto agree that this Agreement has been jointly drafted and shall not be construed more strongly against either party.
5. **Governing Law.** This Agreement shall be governed by and construed according to the laws of the State of Missouri.
6. **Termination.** This Agreement may be terminated in writing by either party with ten (10) days written notice, provided such notice is prior to the commencement of any eminent domain lawsuit filed pursuant to this Agreement.
7. **Venue.** In the event this Agreement is litigated, venue shall be proper only in the Circuit Court of Jackson County, Missouri, and the parties expressly waive any rights to venue inconsistent therewith.

8. Assignment. Except as otherwise provided herein, neither party shall sell, assign, transfer or otherwise convey any of their rights under this Agreement without the prior and express written consent of the other party.

9. Notice. Any notice required under the terms of this Agreement shall be deemed to have been given if mailed by United States mail, postage prepaid, and addressed as hereinafter specified.

Notices to City shall be addressed as follows:

City Manager
City of Lee's Summit
220 SE Green St.,
Lee's Summit, MO 64063

Notices to Developer shall be addressed as follows:

Parrot Properties, Inc.
Attn: John Bondon
11303 View High Drive
Kansas City, MO 64134

10. Non-Waiver. No waiver of any condition or covenant contained in this Agreement or of any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

11. Agreement Contractual. The terms and provisions of this Agreement are contractual and not mere recitals.

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

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

CITY OF LEE'S SUMMMIT

PARROT PROPERTIES, INC.

Stephen A. Arbo, City Manager

John Bondon

ATTEST:

City Clerk

APPROVED AS TO FORM:

Chief of Litigation