

**ROADWAY IMPROVEMENT COOPERATION AGREEMENT**

This Roadway Improvement Cooperation Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”), by and between **SPARKS LEGENDS OUTLET SHOPS, LLC**, a Delaware limited liability company (“Legends”) and the **CITY OF SPARKS** (“City”), a political subdivision of the State of Nevada. Legends and the City are sometimes individually referred to as a “Party” and collectively as the “Parties”.

**RECITALS:**

**WHEREAS**, Windsurfer Drive is an existing, unimproved roadway located at the eastern boundary of the Marina Village planned development (“Marina Village”) and the western boundary of the Legends at Sparks Marina planned development (“Legends Outlets”) between East Lincoln Way and Bayshore Drive in Sparks, Nevada as pictured in Exhibit A attached hereto and incorporated herein;

**WHEREAS**, the City acquired by dedication from Marina Village the western half of Windsurfer Drive and is responsible for completing construction of the western portion of Windsurfer Drive to City of Sparks roadway construction standards;

**WHEREAS**, Legends is the owner of a parcel directly adjacent to the northeastern edge of Windsurfer Drive with Washoe County Assessor Parcel Number 037-031-16 (“Legends Parcel”) which includes within its current boundaries a portion of the right-of-way required for the eastern half of Windsurfer Drive;

**WHEREAS**, PEDC LLC (“PEDC”) is the owner of a parcel directly adjacent to the southeastern edge of Windsurfer Drive with Washoe County Assessor Parcel Number 037-031-15 (“PEDC Parcel”) which includes within its current boundaries a portion of the right-of-way required for the eastern half of Windsurfer Drive and PEDC maintains a business relationship with Legends, the master developer of the Legends Outlets;

**WHEREAS**, in February of 2018 the City approved an Administrative Review request (AR17-0033) to allow for the construction of commercial buildings on the Legends Parcel and the PEDC Parcel. AR17-0033 Condition of Approval 4 requires that right-of-way for Windsurfer Drive be dedicated to the City and that Windsurfer Drive be improved to the approval of the City Engineer prior to the issuance of any Certificate of Occupancy for any buildings on the Legends Parcel or PEDC Parcel;

**WHEREAS**, Legends is responsible for completing construction of the eastern half of Windsurfer Drive, from the centerline of the road to its eastern boundary, to City of Sparks roadway construction standards;

**WHEREAS**, the City has included the construction of improvements to Windsurfer Drive in its Capital Improvements Plan for Fiscal Year 2020;

**WHEREAS**, the Parties agree that cooperation between the Parties is appropriate and desirable for the purpose of completing the construction of Windsurfer Drive; and

**WHEREAS**, Legends and the City wish to enter into this Agreement to define the Parties' respective roles, responsibilities and obligations in completing construction of Windsurfer Drive;

**NOW, THEREFORE**, in consideration of the mutual premises and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereto hereby agree as follows:

A G R E E M E N T:

**1. Design of Windsurfer Improvements.** Legends initiated the preparation of civil improvement plans for Windsurfer Drive by contracting at its own expense for such plans with a third-party professional engineer. Legends now desires to transfer responsibility for preparation of the civil improvement plans for Windsurfer Drive to the City. The City agrees to accept responsibility. Legends agrees to contribute \$10,000 to the City for completion of the civil improvement plans for Windsurfer Drive and shall pay to the City the sum of \$10,000 within fifteen (15) business days following execution of this Agreement. The City agrees to contract with the same professional engineer previously hired for Legends for completion of the civil improvement plans for Windsurfer Drive.

**2. Dedication of Right-of-Way.** Legends hereby agrees to dedicate to the City, from the Legends Parcel, the necessary right-of-way for the northeastern portion of Windsurfer Drive, as shown on Exhibit C as attached hereto and incorporated herein. Legends further agrees, in its role as master developer for the Legends Outlets, to arrange for PEDC to dedicate to the City, from the PEDC Parcel, the necessary right-of-way for the southeastern portion of Windsurfer Drive, as shown in Exhibit C. Legends also agrees to obtain and supply to City or City's representative any and all construction easements on both the Legends' Parcel and PEDC's parcel that may be necessary for construction of the improvements to Windsurfer Drive.

**3. Construction Costs.** Legends shall pay to the City the sum of \$152,357, which represents Legends's portion of the construction costs. Legends shall pay this amount to the City within fifteen (15) business days following execution of this Agreement.

**4. Construction of Improvements.** The City hereby agrees to bid and award a public works construction contract using the civil improvement plans provided by Legends during the City's Fiscal Year 2020 (July 1, 2019 – June 30, 2020). City agrees to manage the construction contract and oversee construction of the improvements to Windsurfer Drive through completion.

**5. Wall Adjacent to Eastern Boundary of Windsurfer Drive.**

A. Legends will, at its own expense, remove the existing wall bordering the eastern side of Windsurfer Drive within 30 days of the City providing Legends a written notice to do so in anticipation of commencing construction of the improvements to Windsurfer Drive.

B. Replacement walls will be constructed by the respective developers of the PEDC Parcel and Legends Parcel at their own expense in accordance with the requirements of the Legends at Sparks Marina planned development handbook.

**6. Sidewalk Adjacent to Eastern Boundary of Windsurfer Drive.**

A. The developer of the Legends Parcel may be required to dedicate to the City additional right-of-way for, and construct, a five foot (5') wide sidewalk at their own expense along that section of Windsurfer Drive adjacent to the Legends Parcel if the use of the parcel warrants pedestrian access to and along Windsurfer Drive. If required, dedication of the requisite right-of-way and construction of the sidewalk shall be completed prior to issuance of a certificate of occupancy for the development on the Legends Parcel.

**7. Waiver of Administrative Review Condition of Approval Applicable to PEDC Parcel.** Condition of Approval 4 imposed by Administrative Review AR17-0033 requiring that Windsurfer Drive be improved to the approval of the City Engineer prior to the issuance of any Certificate of Occupancy for any buildings on the PEDC Parcel is waived. Notwithstanding this waiver, all other AR17-0033 Conditions of Approval applicable to the PEDC Parcel remain in force.

**8. Direct Access to Windsurfer Drive from Legends Parcel.** Subject to any City approvals required by the Legends at Sparks Marina Planned Development Handbook for the future development of the Legends Parcel, the City will allow, at the request of Legends, the Legends Parcel to have direct access to Windsurfer Drive.

**9. Notices.** Any and all notices, demands or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if served either personally or via Federal Express or other nationally recognized courier delivery services or via the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice, demand or other communication be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication be given by mail, or by courier service, such shall be conclusively deemed given upon receipt or first refusal of receipt when addressed to the party to whom such notice, demand or other communication is to be given as hereinafter set forth:

**To City:** Office of City Clerk  
City of Sparks  
City Hall  
431 Prater Way  
Sparks, Nevada 89432-0857

**To Legends:**                   **SPARKS LEGENDS OUTLET SHOPS, LLC**  
c/o RED Development LLC  
One East Washington, Suite 300  
Phoenix, AZ 85004  
Attn: Barry Shannahan

**10. Applicable Law.** This Agreement shall be governed by and interpreted under the laws of the State of Nevada.

**11. Conformity with all Applicable Laws.** Nothing in this Agreement shall be construed as requiring or permitting any person or entity to perform any act or omission in violation of any local, state or federal law, regulation or requirement in effect at the time the act or omission would occur. Provisions in this Agreement which may require or permit such a violation shall yield to the law, regulations or requirement.

**12. Counterparts.** The parties may execute this Agreement in one or more counterparts, all of which when taken together will constitute one and the same instrument. Signatures transmitted by facsimile or other electronic means shall be effective and binding in the same manner as original signatures.

**13. Amendments.** This Agreement embodies the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements and understandings, if any, relating to the matters addressed herein and may be amended or supplemented only by a written instrument executed by the party against whom enforcement is sought.

**14. No Assignment; binding effect.** Assignment of this Agreement by Legends requires the written consent of the City; provided however, a conveyance of the fee title to the Legends Parcel shall not require the consent of the City and any purchaser of the Legends Parcel shall be entitled to the benefits of this Agreement. In addition, a change in control of Legends shall not constitute an assignment of the Agreement. Consent of the City is not required if the recipient of the assignment is a wholly-owned subsidiary of Legends. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**15. No Third-Party Beneficiaries.** Except as provided in Section 14 above, none of the provisions of this Agreement are intended to make any person who is not a party to this Agreement a third-party beneficiary hereunder or to authorize anyone who is not a party to this Agreement to maintain any suit pursuant to this Agreement for any reason, including, without limitation, any suit for personal injuries or property damage.

**16. Entirety of Obligations.** This Agreement contains the entirety of all of the obligations of Legends, its affiliates, successors and assigns, and PEDC, its affiliates, successors and assigns with respect to any and all obligations related to the dedication of right-of-way or construction obligations (including without limitation, payment of construction costs) applicable to Windsurfer Drive.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective as of the Effective Date.

[Signature pages to follow.]

**CITY**

CITY OF SPARKS,  
a municipal corporation

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

Name: Ronald E. Smith

Title: Mayor

Date: \_\_\_\_\_, 2019

Attest:

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

Name: Lisa Hunderman

Title: City Clerk

Date: \_\_\_\_\_, 2019

Approved as to form:

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

Name: \_\_\_\_\_

Title: City Attorney

Date: \_\_\_\_\_, 2019

**Legends**

SPARKS LEGENDS OUTLET SHOPS, LLC  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2019

Attest: \_\_\_\_\_