

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 17, 2018 AGENDA

Subject:	Type:	Submitted By:
APPROVAL - SATELLITE KENO LOCATION	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAM BUETHE CITY CLERK

SYNOPSIS

A resolution has been prepared to authorize a satellite keno location for La Vista, Keno, Inc. at Ref's Sports Bar & Grill, 9723 & 9725 Giles Road, La Vista NE effective upon receipt of the keno license from the State.

FISCAL IMPACT

None.

RECOMMENDATION

Approval.

BACKGROUND

On August 5, 2008, the City awarded a contract to La Vista Keno, Inc. for operation of a municipal keno-type lottery commencing October 1, 2008 through September 30, 2018. The terms of this contract allowed for the establishment of satellite locations with the approval of the City of La Vista. On September 16, 2008 the City passed ordinance 1073 which provided qualification standards for Keno lottery sales outlet locations.

On April 5, 2016 the City approved the assignment and assumption of the current Lottery Operator Agreement to and by buyer, LVK Holdings LLC through September 30, 2023.

La Vista Keno and Ref's Sports Bar & Grill have met the standards set forth by the City of La Vista and are requesting approval of this satellite location effective upon receipt of the keno license from the State.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING A SATELLITE KENO LOCATION FOR THE CITY'S KENO LOTTERY GAME AT FROEHЛИCH INVESTMENTS LLC. D/B/A REF'S SPORTS BAR & GRILL, 9723 & 9725 GILES ROAD LA VISTA NEBRASKA EFFECTIVE UPON RECEIPT OF THE KENO LICENSE FROM STATE.

WHEREAS, the current Keno Lottery Operator Agreement between the City of La Vista and La Vista Keno, Inc., dated August 8, 2008, and assigned and assumed to and by LVK Holdings LLC on April 5 2016 requires LVK Holdings LLC to obtain prior written consent of the City to establish a satellite location; and further that the satellite location shall comply with such qualification standards as adopted by the City pursuant to Nebraska Statutes, Section 9-642.01, governing lottery sales outlet locations, and such other terms and conditions determined necessary or advisable; and

WHEREAS, the City of La Vista, by Ordinance No. 1073, set forth qualification standards for Keno Lottery Sales Outlet Locations, which includes satellite locations ("Ordinance"); and

WHEREAS, LVK Holdings LLC has proposed a satellite location for the City's keno lottery game at Froehlich Investments LLC dba Ref's Sports Bar & Grill, located at 9723 & 9725 Giles Road, La Vista, Nebraska pursuant to a Satellite Agreement between said parties dated March 9, 2018, a copy of which has been presented at this meeting ("Satellite Agreement"); and

WHEREAS, the requirements of the Lottery Operator Agreement and other Keno Requirements as defined in the Ordinance are incorporated into the Satellite Agreement pursuant to said Ordinance; and

WHEREAS, the City Clerk has determined that the standards for the Keno Lottery Sales Outlet Location at Ref's Sports Bar & Grill, located at 9723 & 9725 Giles Road, La Vista NE, have been met.

NOW, THEREFORE, BE IT RESOLVED: that the Mayor and City Council of the City of La Vista, Nebraska, hereby authorize and approve a satellite keno location for the City's keno lottery game at Ref's Sports Bar & Grill, located at 9723 & 9725 Giles Road, La Vista NE, and further approve the owner and operator thereof, Froehlich Investments LLC, effective upon receipt of the keno license from that State and subject to the following:

- a. Submittal of all Exhibits to the Satellite Agreement in form and content satisfactory to the City;
- b. Any change of ownership or control of the satellite, Froehlich Investments, LLC, or any stock of Froehlich Investments, LLC, shall require prior written approval of the City of La Vista;
- c. The satellite, Froehlich Investments, LLC and stockholders of Froehlich Investments, LLC shall be bound by the Lottery Operator Agreement between the City of La Vista and LVK Holdings LLC and owe to LVK Holdings LLC all responsibilities and obligations which LVK Holdings LLC and its owner by said

Lottery Operator Agreement, as secured, owe to the City of La Vista. The City of La Vista shall be a beneficiary entitled to enforce such responsibilities and obligations of the satellite, Froehlich Investments, LLC and its stockholders;

- d. City of La Vista shall have access at any time to the satellite location and keno-related funds, documents and records in the possession or control of the satellite owner or operator;
- e. City of La Vista shall be named as an additional named insured on any insurance required of the satellite owner or operator by the Satellite Agreement;
- f. City of La Vista, as owner of the La Vista keno game, retains authority over use of the term "La Vista keno"; and all uses of said term shall be subject to review and approval of the City and cease upon termination of the Satellite Agreement;
- g. Funds of the La Vista keno game handled by the satellite shall be the sole and exclusive property and held in trust for the benefit of the City of La Vista until properly paid in accordance with the Lottery Operator Agreement or Satellite Agreement; and
- h. Ongoing satisfaction by the satellite owner and operator of the Satellite Agreement and this Resolution, as well as the Lottery Operator Agreement, Ordinance and other Keno Requirements, as defined in said Ordinance.

BE IT FURTHER RESOLVED that, in addition to devices for satellite keno, the following gambling devices are hereby authorized at the satellite premises pursuant to Section 2(H) of the Ordinance: pickle card device.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to sign such documents, including, but not limited to, Nebraska Department of Revenue Form(s) 50G, and take such further actions as necessary or appropriate to carry out the actions approved herein.

PASSED AND APPROVED THIS 17TH DAY OF APRIL, 2018.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

LA VISTA KENO**SATELLITE LEASE AND OPERATING AGREEMENT**

This Satellite Lease and Operating Agreement is between LVK Holdings LLC dba La Vista Keno, 11248 John Galt Boulevard, Omaha, NE 68137 and the undersigned "Satellite". In this Agreement: (i) "we", "us" and "our" means and refers to LVK Holdings LLC; (ii) "you" and "your" means and refers to the undersigned Satellite and any successor-in-interest to the business of the undersigned Satellite; (iii) "Premises" means the location specified below and any new location to which your business is moved or expanded; (iv) "Game" means the legal gambling activities contemplated by this Agreement; (v) "Equipment" means any computer(s), input terminal(s), display device(s) and other equipment that we place at the Premises; (vi) "Supplies" means tickets, bet slips and other items of personal property necessary to play the Game; (vii) "Handle" means the amount wagered on the Game at the Premises, determined in accordance with the Game Rules; (viii) "Game Rules" means the La Vista Keno Satellite Manual and other rules we develop or implement from time to time for conduct of the Game, all of which are made a part of this Agreement; (ix) "Game Funds" means all proceeds of wagers, whether or not accepted in violation of this Agreement; (x) "Scheduled Expiration Date" means the last day that this Agreement may be effective, taking into account all possible Renewal Terms; (xi) "Community" means the City of La Vista.

1. **Lease.** You hereby lease to us space within the Premises specified below. That space shall be as indicated on Attachment A or as mutually agreed and shall in any event be sufficient to allow play of the Game and placement of the Equipment in a manner that is convenient for your customers. You agree that we may enter the Premises at any time during your normal business hours for purposes of inspecting or repairing the Equipment, viewing the manner in which the Game is offered, reviewing Game records, conducting Game audits, or exercising our rights under Section 7.

2. **Compliance with Law.** You agree to: (a) obtain and maintain in effect during the term of this Agreement all necessary and applicable licenses, permits, and approvals (including, but not limited to, a federal wagering stamp, a sales outlet location license, and any necessary licenses for your staff); and (b) comply with all "Regulatory Requirements" which include, but are not limited to, all applicable laws, regulations, ordinances, resolutions, rules and rulings promulgated by any federal, state or local government or any court, agency, instrumentality or official, and specifically including, but not limited to, the lottery operator agreement or similar agreement between us and the Community, and related rules, agreements, memoranda of understanding, resolutions and actions, and the Nebraska County and City Lottery Act and regulations promulgated pursuant thereto, all as now existing or hereafter amended, adopted or replaced, and whether applicable to conducting the Game at the Premises, the operation of your business or otherwise.

3. **Rent.** We will pay you rent equal to 4% of Handle. We will pay rent at least twice each month on settlement dates we choose. We may withhold or offset rent against any amounts you owe us or our affiliates under this Agreement or otherwise. If there is a change in Regulatory Requirements or other change in circumstances that we consider to be adverse, we may decrease the amount of rent due hereunder upon 45 days' prior written notice to you.

4. **Staffing.** You agree to supervise and be responsible for the staffing necessary at the Premises for customers to play the Game, and to require your staff to comply with all Game Rules and Regulatory Requirements. Staff members who have not been trained or approved by us or who have not been appropriately licensed shall not be permitted to have any duties with respect to the Game.

5. **Your Obligations.** You agree to comply with and perform all of your obligations under the Game Rules and this Agreement. You agree to: (a) maintain (or reimburse us for) electrical power and phone lines (or other communications services designated by us); (b) operate your business and the Premises in a clean, safe, orderly, lawful and respectable manner and condition, with no adverse changes as compared to when you became a sales outlet location for the Game; (c) maintain current, complete and accurate records pertaining to your business and transactions related to the Game and give us and relevant government officials access thereto promptly on request; (d) maintain commercially reasonable insurance (including, at least, public liability insurance) naming us as an additional insured and provide us with certificates evidencing the same on request; (e) pay all applicable taxes pertaining to conduct of the Game at the Premises (including, but not limited to, federal, state and local excise and occupational taxes); (f) use your best efforts to detect and prevent cheating with respect to the Game and tampering with the Equipment and Supplies and immediately report the same or your reasonable suspicions related thereto to us; and (g) maintain the confidentiality of all materials and information that we provide to you and return the same to us upon termination of this Agreement. You represent and agree that you have and will maintain all third party approvals necessary for you to perform under this Agreement. You are to meet all of your obligations under this Agreement at your expense, except as expressly provided in this Agreement.

6. **Our Obligations.** So long as you comply with this Agreement, we agree that you may be a sales outlet location for the Game. We will, at our own expense: (a) maintain any necessary central computer for the Game; (b) provide you with Equipment and Supplies and such construction as we consider to be necessary for the installation of the Game at the Premises; (c) repair (and, if necessary, replace) defective Equipment and insure (or self-insure) the same; (d) train your staff in the operation of the Equipment; and (e) market the Game as we deem necessary (e.g., through on-Premises signs). We do not guarantee that operation of the Game or the Equipment will be uninterrupted or error-free. We will not be considered in default if our performance is prevented due to a cause beyond our control, including, but not limited to, computer and communications failures.

7. **Equipment.** All Equipment remains our property, shall not be considered fixtures and shall be returned to us immediately upon any termination or discontinuation pursuant to Sections 14 or 15. We may add to, remove, or alter all or any of the Equipment at any time. You agree to use due care to safeguard the Equipment and agree to notify us immediately if any of it is lost, stolen, damaged, or destroyed or appears to be malfunctioning. You agree to reimburse us for any losses sustained as a result of your failure to comply with the foregoing or the negligence or intentional misconduct of you or your staff or customers.

8. **Marketing and Protection of Marks.** You agree to prominently display the promotional and informational material we provide regarding the Game. You acknowledge that the name "La Vista Keno", any other names, marks, slogans and similar materials that we may publish or distribute (the "Marks") are our property, whether or not registered, and you agree not to take any action to impair our ownership or the value thereof, or to bring the same into disrepute. You agree to obtain our prior written approval before you advertise or promote the Game or use the Marks.

9. **Conduct of the Game.** You agree to make the Game available to your customers during your normal business hours. You agree to use reasonable efforts to ensure that persons playing the Game on the Premises are limited to customers physically present on the Premises. Except in the case of tickets written for 21 or more consecutive games, you shall require customers to redeem all winning tickets immediately after the last game to which they relate and before the calling of the next game. You shall redeem all winning tickets in the presence of all customers having purchased tickets at the Premises for the games to which such tickets relate, and you shall not permit customers to purchase tickets, leave the Premises and return later for redemption. In the case of tickets written for 21 or more consecutive games, you may permit delayed redemption in accordance with the Game Rules.

10. **Game Funds.** You shall require all wagers on the Game to be paid in cash (valid U.S. currency) at the time they are made. If you cash checks for customers, you shall do so separately and at your own risk and shall not accept checks in our name. All Game Funds are our sole and exclusive property. You agree to: (a) hold Game Funds in trust for us; (b) keep Game Funds separate from your funds; and (c) prevent any of your creditors or other third parties from seizing or otherwise enforcing any lien, claim or other interest in Game Funds. All Game Funds, less prizes paid by you in accordance with the Game Rules, shall be deposited no later than noon of the first banking day after receipt into a separate bank account that we have approved. If the bank account is other than our account, we are hereby authorized to transfer the balance of that account to our account on a daily basis and you agree to sign a funds transfer agreement to permit the same. We are entitled to immediate payment of any deposit of Game Funds not made when due or for any non-cash wager proceeds that you accept. Interest shall accrue thereon at the lesser of 24% per annum or the highest lawful rate until paid.

11. **Term.** This Agreement shall be effective through the term of our current lottery operator agreement with the Community (which ends September 30, 2023) and shall thereafter be automatically renewed for up to three additional consecutive renewal terms of five years each (each a "Renewal Term") unless we have given you written notice of non-renewal of this Agreement any time before the commencement of the next Renewal Term. Sections 5(c), 5(e), 5(g), 12, 13, and 16 shall survive any termination of this Agreement.

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12. **Expanded Gambling.** If additional gambling activities are legalized in the future and you wish to offer those activities at the Premises, we agree to use our best efforts to make those activities available to you on mutually agreed terms. If we are unable to do so for any reason within six months after your written request for such legal gambling activities, you may discontinue your obligation to staff the Game in accordance with Section 14. In return for the foregoing and our other obligations herein, and in view of our significant capital investment in reliance hereon, you agree not to permit anyone other than us to offer, supply or install gambling activities (other than paper pickle cards as allowed by the Nebraska Pickle Card Lottery Act on the date this Agreement is signed by us) at the Premises under any circumstances before the Scheduled Expiration Date of this Agreement.

13. **Indemnity.** You agree to indemnify, defend and hold us, the Community, and our and their respective employees and agents, harmless from and against any and all losses, costs, expenses (including reasonable attorneys' fees) and damages arising out of or related to: (a) your breach of this Agreement; or (b) any third party claim based on your, your staff's, or your customers' acts or omissions; or (c) the conduct of your business or the condition of the Premises or any adjoining areas (including parking areas). We will not, however, be entitled to such indemnity if the sole proximate cause of proven damages was our own negligence or willful misconduct.

14. **Your Right to Terminate or Discontinue.** You may terminate this Agreement early if we materially default hereunder, and fail to cure our default within 30 days after receipt of written notice from you, specifying our default to be corrected. You may discontinue your responsibility to staff the Game: (a) if we propose a rent reduction pursuant to Section 3 and you give us written notice that you reject the same within 15 days after your receipt thereof; (b) if you determine, reasonably and in good faith, that continued staffing would be unprofitable; or (c) if we are unable to provide you, under Section 12, with additional gambling activities that you desire. Discontinuation of staffing shall not terminate this Agreement. We may, but are not required to, staff the Game at the Premises if you discontinue staffing. In such event, we may deduct the cost thereof from the rent due. If you discontinue staffing, any recommencement thereof by you will be subject to approval by us and applicable government authorities. Your right to terminate this Agreement or discontinue staffing under this Section is your exclusive remedy for our breach of this Agreement, and is in lieu of any other rights and remedies which you may have at law or equity.

15. **Our Right to Terminate or Discontinue.** We may terminate this Agreement early or discontinue our responsibilities under Section 6 without causing a termination hereof if: (a) you or your staff fail to comply with Section 2 or Section 10 in any respect, or your license to act as a sales outlet location is denied or revoked; (b) you otherwise materially default hereunder, and fail to cure the same within 30 days after receipt of written notice from us; (c) you discontinue staffing for any reason; (d) a material adverse change occurs in your business, financial or other condition, in our good faith determination; (e) there is a change in ownership of your business or you transfer your interest in, or discontinue business at, the Premises; (f) you have less than \$700 in Handle per week on average during any calendar quarter; or (g) we determine in good faith that a change in Regulatory Requirements will make continuation of our responsibilities hereunder impractical or unprofitable.

16. **Remedies.** If we terminate this Agreement early or exercise our right to discontinue our obligations in accordance with Section 15, we will be entitled to recover our damages, in addition to our other rights and remedies at law and in equity. Our damages are deemed to be no less than the product of: (i) the number of weeks remaining until the Scheduled Expiration Date, multiplied by (ii) eight percent (8%) of your average weekly Handle (averaged for the period beginning with commencement of the Game at the Premises and ending 12 months before the event giving rise to such termination or discontinuance; if the Game at the Premises continued for less than 15 months, we will use the average for the first half of such period). We will not, however, be entitled to damages if our termination or discontinuance was based solely on: (A) Section 15(f), or (B) Section 15(c) or 15(e) provided that you otherwise continue to comply with the terms of this Agreement until the Scheduled Expiration Date (including, but not limited to, your obligation not to permit additional gambling activities under Section 12, even in circumstances where we are unable to provide you with the additional gambling activities that you desire). You further agree that we shall be entitled to specific performance and/or injunctive relief to enforce the terms hereof, including, but not limited to, injunctive relief against third parties with respect to violations pertaining to Section 12. As security for your performance of Section 12 and payment of our damages occasioned thereby, you hereby grant us a security interest in and assign to us any rents or other payments due under any lease or other agreement and any other revenues to which you may be entitled with respect to other gambling activities on the Premises and you also hereby grant us a power of attorney to sign and file on your behalf any financing statement or other document related to such security interest.

17. **Miscellaneous.** This Agreement: (a) is a continuation of any prior existing lease we may have with regard to the Premises; (b) supersedes the terms of any and all such leases and is the exclusive statement of the agreement of the parties with respect to the subject matter hereof; (c) may not be amended except in writing executed by the parties; and (d) shall be interpreted and enforced in accordance with the laws of Nebraska. This Agreement binds the undersigned Satellite, the individual signing this Agreement, the Premises, any successor-in-interest to the business of the undersigned Satellite, and any new location to which your business is moved or expanded, through the Scheduled Expiration Date, unless terminated earlier as provided herein, and the provisions of this Agreement which survive termination continue to bind such persons and locations after termination. If any provision of this Agreement shall be unenforceable, the remaining provisions shall remain in effect. No waiver hereunder (whether by course of conduct or otherwise) shall be effective unless in writing and no waiver shall be considered a waiver of any other or further default. Our nonenforcement or waiver of any provision under any similar agreement(s) shall not be deemed a waiver of any provision under this Agreement. The parties intend their relationship under this Agreement to be that of independent contractors and not employees, agents, joint venturers, or partners; neither party shall have the power or authority to bind the other. Notices hereunder shall be given in writing by personal delivery or certified mail, addressed to the parties at the addresses set forth herein and shall be deemed given upon receipt.

<p>Satellite Name: <u>Froehlich Investments LLC</u> <u>Ref's Sports Bar + Grill</u></p> <p>Premises Address: <u>9725 Giles Road</u> <u>La Vista, Ne 68128</u> <small>(Premises legal description attached as Attachment A)</small></p>	<p>I have read and understand this Agreement (Front and Back) and am signing on behalf of myself and the Satellite named herein.</p> <p>By: <u>Angela J. Froehlich</u></p> <p>Print Name: <u>Angela J. Froehlich</u></p> <p>Title: <u>owner</u></p>
<p>State of Nebraska, Co. of <u>Sarpy</u> ss: This instrument was acknowledged before me on <u>3-7-18</u> by <u>Angela Froehlich</u> <small>Owner</small></p> <p>of <u>Froehlich Investments LLC, Ref's Sports Bar + Grill</u> <small>Business Name</small> <u>a Nebraska LLC</u> <small>State and Type of Organization</small></p> <p>on behalf of the <u>LLC</u> <small>Type of Organization</small></p> <p><u>Kathrina L. O'Dowd</u> Notary</p>	<p>Accepted: <u>LVK Holdings LLC</u></p> <p>By: <u>Todd R</u> <small>Officer of LVK Holdings LLC</small></p> <p>Print Name: <u>Todd Ryan</u></p> <p>Dated: <u>3-9-18</u></p>

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