CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JULY 19, 2016 AGENDA

Subject: APPROVAL - SATELLITE KENO LOCATION

Submitted By:
RAM BUETHE
CITY CLERK

SYNOPSIS
A resolution has been prepared to authorize a satellite keno location for La Vista, Keno, Inc. at J-Birds Foods & Spirits, 9723 & 9725 Giles Road, La Vista NE effective upon receipt of the keno license from the State.

FISCAL IMPACT
It is anticipated that a satellite location could increase the handle for La Vista, Keno, Inc. which in turn could increase the City’s monthly keno revenue.

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 J-Birds Foods & Spirits 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. ______


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; and

WHEREAS, LVK Holdings LLC has proposed a satellite location for the City’s keno lottery game at Wildkat Restaurants, Inc. dba J-Birds Foods & Spirits, located at 9723 & 9725 Giles Road, La Vista, Nebraska pursuant to a Satellite Agreement between said parties dated June 9, 2016, a copy of which has been presented at this meeting; 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 J-Birds Foods & Spirits, 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 J-Birds Foods & Spirits, located at 9723 & 9725 Giles Road, La Vista NE, and further approve the owner and operator thereof, Wildkat Restaurants, 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, Wildkat Restaurants, or any stock of Wildkat Restaurants, shall require prior written approval of the City of La Vista;

c. The satellite, Wildkat Restaurants and stockholders of Wildkat Restaurants 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, Wildkat Restaurants 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 19TH DAY OF JULY, 2016.

CITY OF LA VISTA

____________________________________________
Douglas Kindig, Mayor

ATTEST:

____________________________________________
Pamela A. Buethe, CMC
City Clerk
June 21, 2016

Pamela Buethe, City Clerk  
City of La Vista  
8116 Park View Blvd  
La Vista, Ne 68128-2198

RE: La Vista Keno Satellite Location  
   J – Birds Foods & Spirits

Dear Ms. Buethe,

I am writing to inform you of the decision to have Skot Timm of Wildkat Restaurants Inc. as an authorized Satellite Location of La Vista Keno. The location of this satellite is:

J-Birds Foods & Spirits  
9723 & 9725 Giles Road  
La Vista, Ne 68128  
402-991-3999

Also attached is the Form 50G filled out by Mr. Timm for the Satellite location and a copy of the satellite agreement between J-Birds Foods & Spirits and La Vista Keno.

Please place the keno sales outlet location application on the Council’s agenda for approval at your earliest convenience. If you have any questions, please feel free to contact me at 402-670-2965.

Thank you for your assistance. I look forward to working with you on this application.

Thank you,

Katrina Coffey  
Vice President of Sales & Community Relations
CITY OF LA VISTA

OCCUPATIONAL LICENSE - LIQUOR

Occupation tax, power to levy, exceptions. A city of the first or second class and villages may raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city or village and regulate the same by ordinance. All such taxes shall be uniform in respect to the classes upon which they are imposed: Provided, all scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and other musical entertainments given exclusively by citizens of the city or village. See 16-205, 17-525 Revised Statutes of Nebraska, 1943.

No. 15-046

CITY CLERK'S OFFICE

TO ALL WHO SHALL SEE THESE PRESENTS:

Know Ye, that, J-Birds Foods & Spirits having paid the Treasurer the sum of Six Hundred Dollars and No Cents, is hereby licensed to OPERATE A CLASS C LIQUOR LICENSE, at 9723 & 9725 Giles Road within the city limits of La Vista through October 31, 2016.

In Testimony Whereof, I, the City Clerk of the said City have hereunto set my hand and affixed the Seal of said City, October 29, 2015.

Pamela A. Suetho
City Clerk
LA VISTA KENO

SATELLITE LEASE AND OPERATING AGREEMENT

This Satellite Lease and Operating Agreement is between LK Holdings LLC dba La Vista Keno, 17268 John St, Hours, Omaha, NE 68137 and the undersigned "Premises." The terms and conditions of this Agreement: (a) "we," "our," and "us" means and refers to LK Holdings LLC; (b) "you" and "your" means and refers to the undersigned Satellite and any successor-to-beneficial interest to the business of the undersigned Satellite; (c) "Premises" means the location specified below and any new location to which your business is moved or expanded; (d) "Game" means the legal gambling activities contemplated by this Agreement; (e) "Equipment" means any computer(s), input terminal(s), display device(s) and other equipment that we place at the Premises; (f) "Scheduled Expiration Date" means the last day that this Agreement may be effective, taking into account all possible Renewal Terms; (g) "Community" means the City of La Vista.

1. Leases. 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 Premises 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) maintain and operate the Game in compliance with all laws, rules, agreements, memoranda of understanding, resolutions and actions, and the Nebraska County and City Lottery Act and regulations promulgated thereunder, 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 approved to handle money shall not be permitted to handle any orders 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, legal and reasonable manner and condition, with no adverse change 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 upon request; (d) maintain commercially reasonable insurance (including, at least, public liability insurance) earning us as an additional insured; and provide us with certificates evidencing the same on request; (e) provide all applicable forms pertaining to the conduct of the Game at the Premises (including, but not limited to, federal, state and local excise and occupational taxes); (f) not use your best efforts to conceal and prevent cheating with respect to the Game; 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 equipment and costs as we consider to be necessary for this installation of the Game at the Premises; (c) repair (and, if necessary, replace) defective Equipment and Supplies and immediately report the same or your reasonable suspicions related thereto to us; and (d) 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 approved to handle money shall not be permitted to handle any orders with respect to the Game.

7. Equipment. All Equipment remains our property. We shall not add to, alter or improve the Equipment and shall return to us immediately upon any termination or discontinuance 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 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 Promotion 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," and any other names, marks, logos 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 of the value thereof, or to bring the same into direct or indirect use. 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 usereasonable 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 such tickets relate and before the calling of the next game. You shall redeem all checks received in payment of winnings and not require customers to have purchased tickets at the Premises for the games to which such ticket relates, 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 attaching any tax, lien, or other interest in Game Funds. All Game Funds, less proceeds payable to you, shall be deposited in the first banking day after receipt into a separate bank account that we have approved. If the bank account is not maintained in a manner acceptable to us at any time, we are hereby authorized to transfer the balance of that account to our account on a daily basis and you/or your parent company agree to 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 2% per annum or the highest lawful rate until paid.

11. Term. This Agreement shall be effective throughout the term of our current lottery operator agreement with the Community (which ends September 30, 2023) and shall therefor be automatically renewed for use prior to 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 6(g), 9(e)(f), 12, 14, and 16 shall survive any termination of this Agreement.

SUBJECT TO TERMS ON REVERSE
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 terminate 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 during 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 conditions of the Premises or any adjoining areas (including parking areas). We will not, however, be entitled to such indemnity if the facts proximate cause of proven damages was our own negligence or willful misconduct.

14. Your Right to Terminate or Discontinue. We may terminate this Agreement early if we mutually determine 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 terminate this Agreement by giving written notice to the undersigned. If you give us written notice that you reject the same within 15 days after receipt thereof; (a) you determine, reasonably and in good faith, that continued staffing would be unpromising; or (b) you 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 recommitment thereof by you will be subject to approval by us and applicable government authorities. You have the right to terminate this Agreement or discontinue staffing under this Section if you believe in good faith that a change in Regulatory Requirements will make continuation of our responsibilities hereunder impractical or unprofitable.

15. Remedies. If we terminate this Agreement early or exercise our right to discontinue our responsibilities under Section 6 without causing a termination hereof: (a) you or your staff fail to comply with Section 2 or 10 in any respect, or your license to act as a retailer 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; or (c) you otherwise materially default hereunder in person or by course of conduct or otherwise; (b) a material adverse change occurs in your business, financial or other condition, in our good faith determination; (c) there is a material adverse change in ownership of your business or you transfer your Interest in, or discontinue business at, the Premises; (b) 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. 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 conditions of the Premises or any adjoining areas (including parking areas). We will not, however, be entitled to such indemnity if the facts proximate cause of proven damages was our own negligence or willful misconduct.

17. Miscellaneous. This Agreement: (a) is a continuation of any prior existing lease we may have with regard to the Premises; (b) supersedes any other prior understandings, communications, agreements, representations, or promises; (c) is the entire Agreement and supersedes any and all prior negotiations, communications, agreements, representations, or promises; (d) may not be amended except in writing executed by the parties; and (e) shall be interpreted and enforced in accordance with the laws of Nebraska. This Agreement binds 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 (he provisions of this Agreement which survive termination continue to bind such persons and locations 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 conditions of the Premises or any adjoining areas (including parking areas). We will not, however, be entitled to such indemnity if the facts proximate cause of proven damages was our own negligence or willful misconduct.

I have read and understand this Agreement (Front and Back) and am satisfied with myself and the Satellite named herein.

Print Name: Skat E. Timm
Title: President
Date: 09 Jan 2016