



City of Grand Island

Tuesday, September 8, 2020

Council Session

Item G-2

#2020-206 - Approving Keno Satellite Location and Agreement for Spirit in the Sky, LLC dba 40 North Tap & Grille, 520 West 3rd Street

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: September 8, 2020

Subject: Approving Keno Satellite Location and Agreement for Spirit in the Sky, LLC dba 40 North Tap & Grille, 520 West 3rd Street

Presenter(s): RaNae Edwards, City Clerk

Background

An Interlocal Agreement governing County/City keno operations provides that the City shall have the duty to review and approve satellite operations within the City. Fonner Keno, Inc. has previously been licensed to operate keno at Fonner Park as well as other facilities in the City that have been designated as satellite locations for the operation of keno.

Discussion

Spirit in the Sky, LLC dba 40 North Tap & Grille, 520 West 3rd Street has submitted a request for approval of a satellite location at the premises of 40 North Tap & Grille, 520 West 3rd Street. Approval of the Satellite Agreement between Spirit in the Sky, LLC and Fonner Keno, Inc. is required along with approval for the satellite location. The Agreement has been reviewed by the Legal and Building Departments.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the request
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the request for a Keno Satellite Location and Agreement for Spirit in the Sky, LLC dba 40 North Tap & Grille, 520 West 3rd Street.

Sample Motion

Move to approve the request for a Keno Satellite Location and Agreement for Spirit in the Sky, LLC dba 40 North Tap & Grille, 520 West 3rd Street.

SATELLITE AGREEMENT

THIS SATELLITE AGREEMENT made this 18th day of August,
by and between FONNER KENO, INC., a Nebraska corporation,
(hereinafter referred to as "Contractor") and Spirit in the Sky LLC
(hereinafter referred to as "Satellite Owner"). dba 40 North Tap + Grille

Whereas, the County of Hall, Nebraska (hereinafter referred to as "the County") and the City of Grand Island, Nebraska (hereinafter referred to as "the City") have entered into an inter-local Cooperation Agreement, dated the 23rd day of March, 1993 (hereinafter referred to as "the Inter-local Cooperation Agreement") for the conduct by the County of a keno-type lottery game consistent with the provisions of the Nebraska County and City Lottery Act (Neb. Rev. Stat. Sections 9-601 through 9-653); and

Whereas, the Contractor has entered into a Lottery Operator Agreement dated the 23rd day of March, 1993 (hereinafter referred to as "the Lottery Operator Agreement") with the County for the operation of a keno-type lottery game, the term of which Lottery Operator Agreement was extended by a Modification and Extension of Lottery Operator Agreement dated October 14, 1997; and

Whereas, the Satellite Owner has been designated as an additional satellite location consistent with Paragraph 3.3 of the Lottery Operator Agreement; and

Whereas, the Contractor and the Satellite Owner desire to enter into this Satellite Agreement to provide for the rights, duties and obligations of the Contractor and the Satellite Owner in regard to the establishment of a keno-type lottery game at the premises of the Satellite Owner.

Now, therefore, in consideration of the mutual covenants contained herein, the parties do hereby agree and contract as follows:

1. The Satellite Owner agrees to permit the Contractor to establish a keno-type lottery game at the premises of the Contractor described on Exhibit "A" attached hereto and made part hereof by reference (hereafter referred to as "the Satellite Location") upon the following terms and conditions.
2. The Contractor may commence a keno-type lottery game at the Satellite Location by providing the equipment necessary for the keno-type lottery game including, but not limited to, cable, terminals and ticket printers. The Satellite Owner shall, however, provide at the expense of the Satellite Owner a cabinet and counter area for such equipment and an adequate electrical power supply to operate such equipment along with internet access. The Satellite Owner shall also provide and install at the expense of the Satellite Owner all video monitors and cable that display the winning numbers to the public. The Contractor shall reserve the right, in sole discretion of the Contractor, to provide equipment at the Satellite Location, which is separate from equipment at the main or primary location of the Contractor as provided in the Lottery Operator Agreement.
3. The Contractor shall commence the keno-type lottery game at the Satellite Location as soon as possible after the execution of this Satellite Agreement by

the Contractor and the Satellite Owner consistent with the Lottery Operator Agreement. The keno-type lottery game at the Satellite Location shall, at all times, comply with the requirements of the Nebraska County and City Lottery Act (Neb. Rev. Stat. Sections 9-601 through 9-653), the rules and regulations of the Nebraska Department of Revenue and the rules and regulations of the Contractor. The Satellite Owner agrees to strictly comply with all requirements of the Nebraska County and City Lottery Act (Neb. Rev. Stat. Sections 9-601 through 9-653), the rules and regulations of the Nebraska Department of Revenue, and the rules and regulations of the Contractor in regard to the operation of a keno-type lottery game at the Satellite Location. The Satellite Owner agrees to issue keno tickets in compliance with the instructions of the Contractor. The Satellite Owner further agrees to award and pay prizes and to redeem all winning tickets in compliance with the instructions of the Contractor. The Contractor shall remain responsible for the operation of the keno-type lottery game at the Satellite Location consistent with the Lottery Operator Agreement.

4. The Satellite Owner shall receive **five percent (5%)** of the gross proceeds received from the operation of the keno-type lottery game at the Satellite Location. The Satellite Owner shall have no interest in any gross proceeds received from the operation of the keno-type lottery game at any main or primary location of the Contractor as provided in the Lottery Operator Agreement or from the operation of the keno-type lottery game at any satellite location other than the Satellite location as provided in the Lottery Operator Agreement. Gross proceeds shall be defined as provided in the Lottery Operator Agreement. The amount due to the Satellite Owner shall be paid to the Satellite Owner by the Contractor no later than **fifteen (15) days** following the last day of the lottery operations for each month. The Satellite Owner shall have no right to retain any of the gross proceeds from the operation of the keno-type lottery game and shall have no interest in the gross proceeds of the keno-type lottery game except as provided in this Paragraph 4.
5. The Satellite owner shall hire and provide suitable management and operational personnel for the conduct of the lottery at the Satellite Location subject to the following:
 - 5.1 Each employee of the Satellite Owner who is engaged in the operation of the lottery or has direct unsupervised access to the lottery equipment shall be individually bonded in the amount of Twenty-Five Thousand Dollars (\$25,000.00);
 - 5.2 Each employee of the Satellite Owner, in the sole discretion of the Contractor, shall be subject to a complete and thorough background and criminal history check prior to, and throughout his/her term of employment;
 - 5.3 Each employee of the Satellite Owner shall be subject to the control and supervision of the Contractor in regard to the conduct and operation of the keno-type lottery game at the Satellite Location;

- 5.4 Each employee of the Satellite Owner involved in the conduct and operation of the keno-type lottery game shall be subject to such training, to be provided at the expense of the Contractor and shall be further subject to the approval of the Contractor before such employee of the Satellite Owner is permitted to become involved in the conduct and operation of the keno-type lottery game at the Satellite Location; and
- 5.5 Each employee of the Satellite Owner involved in the conduct and operation of the keno-type lottery game shall be familiar with the rules and regulations of the Contractor and the Nebraska Department of Revenue in regard to the conduct and operation of the keno-type lottery game at the Satellite Location and shall fully comply with such rules and regulations of the Contractor and the Nebraska Department of Revenue.
6. The Satellite Owner shall permit the Contractor access to the Satellite Location during regular business hours for any purpose related to this Satellite Agreement, the Lottery Operator Agreement or the operation of the keno-type lottery game at the Satellite Location.
7. The Satellite Owner shall take reasonable measures as required by the Contractor to keep safe the equipment for the keno-type lottery game provided by the Contractor and to provide secure areas for the storage of supplies for the keno-type lottery game at the Satellite Location. The Satellite Owner shall assume all risk for damage to the equipment for the keno-type lottery game provided by the Contractor unless such loss or damage is caused by the acts of the Contractor. The Contractor reserves the right, in the sole discretion of the Contractor, either to maintain insurance covering the equipment for the keno-type lottery game provided by the Contractor or to require the Satellite Owner to maintain insurance satisfactory to the Contractor covering the equipment for the keno-type lottery game provided by the Contractor with the Contractor named as an additional insured; provided, however, that the contractor shall be responsible for the cost of insurance covering the equipment for the keno-type lottery game provided by the Contractor.
8. The Satellite Owner shall make such arrangements as required by the Contractor to operate the keno-type lottery game at the Satellite Location including, but not limited to, arrangements for payments of prizes and disbursements in regard to the keno-type lottery game at the Satellite Location.
9. The Satellite Owner shall assume responsibility for any ticket written in error or for the payment of any prize not properly authorized for the payment in conformity with the rules and regulations of the Contractor and the Nebraska Department of Revenue.
10. The Satellite Owner shall use it's best efforts to detect efforts to cheat the keno-type lottery game or tamper with the equipment for the keno-type lottery game provided by the Contractor and promptly notify the Contractor of any such matters.

11. The Satellite Owner shall promptly notify the Contractor of any malfunction of the equipment for the keno-type lottery game provided by the Contractor for the Satellite Location.
12. The Contractor will provide all supplies for the operation of the keno-type lottery game at the Satellite Location. The Satellite owner shall not use any supplies for the operation of the keno-type lottery game at the Satellite Location except as provided by the Contractor. The Satellite Owner will reimburse the Contractor for the cost of supplies provided to the Satellite Owner by the Contractor.
13. The Satellite Owner shall be solely responsible for all expenses incurred at the Satellite Location in connection with the operation of the keno-type lottery game except for the costs relating to the equipment for the keno-type lottery game provided by the Contractor. The Satellite Owner shall be solely responsible for the payment of all expenses incurred by the Satellite Owner, including, but not limited to, taxes, insurance except as provided in Paragraph 7, rent, supplies, fees, salaries and all other such expenses incurred by the Satellite Owner in the operation of the keno-type lottery game at the Satellite Location.
14. The daily net proceeds from the keno-type lottery game at the Satellite Location shall be deposited by the Satellite Owner not later than noon of the next banking day following the date of receipt in an account maintained by the Contractor in a bank designated by the Contractor, consistent with any instructions of the Contractor. The daily net proceeds shall be the aggregate amount wagered at the Satellite Location less prizes paid by the Satellite Location in accordance with the rules and regulations of the Contractor and the Nebraska Department of Revenue.
15. The Satellite Owner will use its best efforts to maximize the gross proceeds from the keno-type lottery game at the Satellite Location.
16. The Contractor may terminate this Satellite Agreement if the gross proceeds from the operation of the keno-type lottery game at the Satellite Location are One Hundred Twenty Thousand Dollars (\$120,000.00) or less for any previous period of three (3) months; provided, however, that the Contractor shall have no right to terminate this Satellite Agreement for a period of six (6) months after the establishment of the keno-type lottery game at the Satellite Location.
17. The Satellite Owner shall sell concessions, including alcoholic and non-alcoholic beverages, and may conduct other legitimate business operations at the Satellite Location; provided, however, that the Satellite Owner shall comply with all applicable federal, state and local laws in selling concessions at the Satellite Location. Concessions shall include, but not to be limited to, food, alcoholic and non-alcoholic beverages, and souvenirs. All proceeds, expenses, and liabilities resulting from the sale of the concessions shall be the property and the sole responsibility of the Satellite Owner. The Satellite

Owner shall maintain separate records and bank accounts for all concessions, which shall not be co-mingled with any funds or proceeds received in the conduct of the keno-type lottery game.

18. The Satellite Owner agrees to maintain any books and records of all operations associated with the operation of the keno-type lottery game required by the Contractor to comply with the Nebraska County and City Lottery Act (Neb. Rev. Stat. Section 9-601 through 9-653) and the rules and regulations of the Nebraska Department of Revenue.
19. The Contractor shall have the right, without notice to the Satellite Owner, to review any books and records relating to the lottery operations at the Satellite Location.
20. The Satellite Owner agrees to provide to the Contractor and keep current on at least an annual basis, financial statements, including balance statements and profit and loss statements of the Satellite Owner.
21. The term of this Satellite Agreement shall be for the remainder of the term of the Lottery Operator Agreement, including the term of any renewal or renewals of the Lottery Operator Agreement. In addition, the Contractor shall have the right to extend the term of this Satellite Agreement for the term of any new agreement between the County and the Contractor for the conduct of a keno-type lottery game. The Contractor and the Satellite Owner agree that the compensation of the Satellite Owner shall remain at **five percent (5%)** of the gross proceeds received from the operation of the keno-type lottery game, at the Satellite Location, during the term of this Satellite Agreement, and during the term of any renewal, extension, or renegotiation of this Satellite Agreement.
22. The Satellite Owner agrees to permit the Contractor to operate the keno-type lottery game consistent with the Lottery Operator Agreement and any schedule for the hours of operation of the keno-type lottery game developed by the Contractor and the County. Subject to the amendment of the schedule for the hours of operation of the keno-type lottery game by the Contractor and the County, the hours of operation of the keno-type lottery game at the Satellite Location shall be from 11:00 a.m. until 1:00 a.m. of the following day on Monday, Tuesday, Wednesday, Thursday, Friday and Saturday and from 11:00 a.m. to 10:00 p.m. on Sunday.
23. The Satellite Owner shall be responsible to conduct and maintain the business of the Satellite Location in an orderly fashion and maintain its license to sell alcoholic beverages for consumption at the Satellite Location.
24. The Satellite Owner shall, at all times, maintain insurance with an insurer acceptable to the Contractor covering general liability in the amount of One Million Dollars (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and One Hundred Thousand (\$100,000.00) for property damage and shall provide assumed contractual liability coverage as imposed by this Satellite Agreement notwithstanding that the Contractor or the County be named insured. The Satellite Owner shall

provide proof of insurance with an insurance company acceptable to the Contractor within thirty (30) days of the execution of this Satellite Agreement and Annually thereafter, and the Contractor and the County, upon request, shall be an additional named insured therein. Said insurance shall contain a non-cancellation provision requiring thirty (30) days' notice to the Contractor prior to the cancellation of coverage. The Satellite Owner shall maintain coverage for workers compensation insurance as required by state law. The failure to maintain insurance as required by this Satellite Agreement shall constitute a breach of this Satellite Agreement.

25. The Satellite Owner shall indemnify and hold harmless the Contractor from any claims, loss or expenses to persons or property, including the equipment for the keno-type lottery game provided by the Contractor, caused or resulting from the operation of the keno-type lottery game at the Satellite Location unless, and to the extent, caused by the negligence of the Contractor.
26. The Satellite Owner shall be subject to the following provisions:
 - 26.1 The Satellite owner is prohibited from violating any law, rule or regulation governing the keno-type lottery game at the Satellite Location;
 - 26.2 The Satellite Location shall, at all times, have seating capacity and available parking sufficient to accommodate members of the general public who may wish to come to the Satellite Location to observe or play the keno-type lottery game or to engage in any other activity conducted at the Satellite Location.
 - 26.3 The Satellite Location shall, at all times, have sufficient facilities to permit the Contractor to sell keno tickets.
 - 26.4 The Satellite Location may be required by the Contractor to have a board or other monitor clearly visible to the players on which the winning numbers are displayed simultaneously or nearly simultaneously with their display at the main or primary location of the Contractor as described in the Lottery Operator Agreement;
 - 26.5 The Satellite Location shall have proper security for the keno lottery activities and associated activities;
 - 26.6 All persons with any direct or indirect ownership in the Satellite Location must, in the sole discretion of the Contractor, be of good character and financially responsible; and
 - 26.7 The Satellite location must comply with any criteria or qualifications standards established by the County and the City, if applicable.
27. The Contractor shall have no ownership, nor any other interest, in the Satellite Location except for the right to operate the keno-type lottery game at the Satellite Location. The Contractor will not charge the Satellite Owner a fee for the right to be a Satellite Location. The Contractor shall pay the costs of the necessary equipment for the Satellite Location and the installation of same, and maintenance, repairs, financing, taxes, and insurance of any such equipment or failure of same. The Contractor is expressly prohibited from receiving any income or other proceeds from any concession sales of the Satellite Owner at the Satellite Location.

28. The Satellite owner agrees to strictly comply with all applicable laws and regulations of the United States, the State of Nebraska, the County and the City, if applicable, in regard to the operation of a keno-type game by the Contractor at the Satellite Location, together with the requirements, provisions and conditions of the Nebraska County and City Lottery Act (Neb. Rev. Stat. Sections 9-601 through 9-653) and administrative rules and regulations promulgated by the Nebraska Department of Revenue. In the event that any such law should be changed, amended, repealed, or newly enacted, the Satellite Owner shall comply to said change by the effective date of the change in the law. In the event that the Lottery Operator Agreement with the Contractor is terminated by the County for any reason whatsoever, this Satellite agreement may be terminated by the Contractor without liability to the Satellite Owner.
29. The Satellite Owner agrees to be bound by and comply with the applicable provisions of the Inter-local Cooperation Agreement, if applicable, and the Lottery Operator Agreement, which Inter-local Cooperation Agreement and Lottery Operator Agreement are made a part hereof by reference.
30. The Satellite Owner agrees to take all action requested by the Contractor to obtain a license from the City, if applicable, for the establishment of a keno-type lottery game at the Satellite Location.
31. The Satellite Owner acknowledges and agrees that the Contractor may establish a keno-type lottery game at other satellite locations consistent with the provisions of the Lottery Operator Agreement.
32. The Satellite Owner shall be considered to be in default of this Satellite Agreement upon the happening of any of the following events:
- 32.1 Insolvency of the Satellite Owner;
 - 32.2 The filing of a petition of bankruptcy for the protection, under Chapter 7, 11 or 13 of the Bankruptcy Code, of the Satellite Owner, any partner of the Satellite Owner if Satellite Owner is a partnership, or any officer, director or shareholder of the Satellite Owner if the Satellite Owner is a corporation;
 - 32.3 The conviction of the Satellite Owner or any partner, director, officer, shareholder or employee of the Satellite Owner of a felony relating to the honesty or trustworthiness of the Satellite Owner in the Performance of this satellite Agreement.
 - 32.4 The failure of the Satellite Owner to comply with any federal, state or local law;
 - 32.5 The failure to provide material information, the furnishing of false information, or the omissions of material information as required to be disclosed to the Contractor under this Satellite Agreement.
 - 32.6 The failure of the Satellite Owner to provide the Contractor with the sufficient facilities at the Satellite Location, in the sole discretion of the Contractor, to permit the Contractor to operate the keno-type lottery game; or
 - 32.7 Any breach of this Agreement.

33. The Contractor may terminate this Satellite Agreement in the event that the Satellite Owner or partner, director, officer, shareholder or employee of the Satellite Owner has:
- 33.1 violated any provision of the Nebraska County and City Lottery Act (Neb. Rev. Stat Section 9-601 through 9-653);
 - 33.2 violated any of the rules and regulations of the Nebraska Department of Revenue;
 - 33.3 violated any of the rules and regulations of the Contractor in regard to the operation of the keno-type lottery game at the Satellite Location;
 - 33.4 condoned or promoted the conduct of any gambling activity not recognized or authorized by the laws of the State of Nebraska;
 - 33.5 had its right to continue as a Satellite Location disapproved by the County or the City, if applicable.
34. The Satellite Owner shall comply with all rules and regulations established by the Contractor in regard to the operation of the keno-type lottery game at the Satellite Location.
35. No officer, director, shareholder, partner or owner of the Satellite Location shall play the keno-type lottery game or claim any keno-type lottery game prizes at the Satellite Location.
36. The Contractor may terminate this Satellite Agreement upon **five (5) days'** notice to the Satellite Owner at any time the Satellite Owner breaches any of the terms of this Satellite Agreement or is otherwise in default of this Satellite Agreement and fails to cure such breach or default within said **five (5) day** period after notice is given of such default or breach by the Contractor. The Contractor may, however, extend the period within which to allow the Contractor to cure such breach or default. The Contractor may terminate this Satellite Agreement upon **thirty (30) days'** notice to the Satellite Owner if the Lottery Operator Agreement of the Contractor is terminated by the County for any reason whatsoever.
37. The Satellite Owner shall provide and maintain a performance bond in the form of a corporate surety acceptable to the Contractor in the amount of Twenty-Five Thousand Dollars (\$25,000.00), said bond to guarantee the Satellite Owner's full and complete performance of this Satellite Agreement, including the payment to the Contractor of all sums due hereunder and the payment of all prizes claimed. Said bond shall provide that said bond shall not be canceled except upon giving **thirty (30) days'** notice in writing to the Contractor. Any termination or cancellation of said bond during the term of this Satellite Agreement shall constitute a breach of this Satellite Agreement; provided, however, that the Satellite Owner may cure such breach by filing with the Contractor a replacement bond in the form and surety satisfactory to the Contractor on or before the effective date of termination or cancellation of said bond. In lieu of said bond, the Satellite Owner, with the consent of the Contractor, may file with the Contractor a letter of credit issued by a local bank or other financial institution or other collateral acceptable to the Contractor in the amount of Twenty-Five Thousand Dollars (\$25,000.00); provided, however, that the Satellite Owner shall be in breach of this Satellite

Agreement at any time during the term of this Satellite Agreement that the Satellite Owner does not have on file with the Contractor a letter of credit issued by a local bank or other financial institution or other collateral acceptable to the Contractor in the amount of Twenty-Five Thousand Dollars (\$25,000.00).

38. In the event of the breach of the Satellite Agreement, and in addition to all remedies available under this Satellite Agreement, or at law or in equity, the Contractor shall be entitled to affirmative or negative injunctive relief.
39. No waiver by either party to this Satellite Agreement at any time of any breach by the other party or if compliance by the other party with any condition or provision of this Satellite Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or any prior or subsequent time. Any invalidity or unenforceability of any provision or provisions of this Satellite Agreement shall not affect the validity or enforceability of any other provisions of this Satellite Agreement, nor shall the invalidity or unenforceability of a portion of any provision of this Satellite Agreement affect the validity or enforceability of the balance of such provisions. All other provisions and parts of provisions shall remain in full force and effect; provided, however, if the removal or inoperative effect of any such provision or part of any provision so declared invalid or unenforceable shall materially affect the Contractor's rights hereunder, the Contractor may terminate this Satellite Agreement.
40. Whenever this Satellite Agreement shall set forth any time for any action to be performed by, or on behalf of, the Satellite Owner, such time shall be deemed of the essence.
41. The parties hereto agree that all rights and obligations required under this Satellite Agreement are personal to the parties and that neither this Satellite Agreement, nor any rights or obligations hereunder, may be assigned, transferred, or subcontracted by the Satellite Owner.
42. This Satellite Agreement incorporates and integrates all terms and conditions of all documents and laws mentioned herein or incidental hereto and constitutes the entire Satellite Agreement between the parties hereto superseding any prior agreement or understanding, whether oral or written, express or implied. This Satellite Agreement may not be discharged or modified except as provided herein or permitted by law.
43. This Satellite Agreement shall be governed and construed in accordance with the laws of the State of Nebraska. Any legal action to enforce or declare any rights or obligations created or imposed by this Satellite Agreement shall be commenced in a court of the State of Nebraska.
44. Notices for any and all purposes hereunder, including service of process, shall be deemed to be sufficient if sent by certified or registered mail, postage prepaid, addressed as follows:

44.1 To the Contractor:

Fonner Keno, Inc.
700 East Stolley Park Road
P.O. Box 490
Grand Island, NE 68802-0490

44.2 To the Satellite Owner:

At the address designated on Exhibit "A" attached hereto and made a part hereof by reference.

45. The Contractor shall have the option to renew this Satellite Agreement for any period during which the Lottery Operator Agreement is extended by the County.
46. The Satellite Owner shall promote the keno-type lottery game with the regular food and beverage customers of the Satellite Location consistent with any requirements of the Contractor. The Contractor shall have sole authority in regard to any other advertising and promotion of the keno-type lottery game at the Satellite Location. The Satellite Owner shall not engage in any advertising or promotion of the keno-type lottery game at the Satellite Location except with the consent of the Contractor.
47. The Satellite Owner agrees to cooperate with the Contractor regarding the operation of a keno-type lottery game at the Satellite Location and will execute and deliver any such other instruments and documents and take such other actions as may reasonably be required or requested from time to time by the Contractor in order to carry out the intended purposes of this Satellite Agreement and to comply with any and all laws and governmental regulations for the operation of a keno-type lottery game.
48. At the end of the term of this Satellite Agreement, or in the event of any termination of this Satellite Agreement, the Satellite Owner agrees to surrender the equipment for the keno-type lottery game provided by the Contractor at the Satellite Location to the Contractor. The Satellite Owner further consents to permit the Contractor access to the Satellite Location for the purposes of the removal of the equipment for the keno-type lottery game provided by the Contractor at the Satellite Location notwithstanding any dispute between the Satellite Owner and the Contractor regarding the termination of this Satellite Agreement. The Satellite Owner acknowledges and agrees that the Satellite Owner shall have no right, title or interest in the equipment for the keno-type lottery game provided by the Contractor at the Satellite Location.

Exhibit "A"

1. The address of and general description of the Satellite Location under Paragraph 1. of the Satellite Agreement is:

Premises of:

40 North Tap + Grille
520 W. 3rd Street
Grand Island, Ne.
68801

2. The mailing address for notice to the Satellite Owner under Paragraph 44.2 of the Satellite Agreement is:

Joseph J. Vavricek
2729 Brentwood Blvd.
Grand Island, Ne.
68801

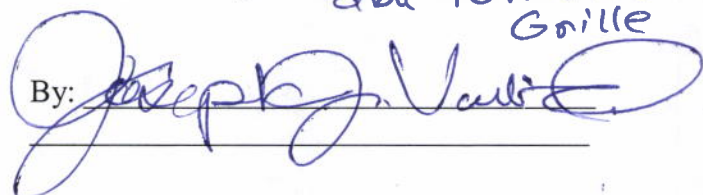
49. The Satellite Owner acknowledges and agrees that it is not an employee of, or joint venture or partner with, the Contractor. This Satellite Agreement does not give rise for any claim, loss or damages against the Contractor in the event of the termination of the Satellite Agreement, or in the event that the Contractor is unable to perform hereunder for any reason whatsoever.

In Witness whereof, the parties have executed this Satellite Agreement

Fonner Keno, Inc.
A Nebraska Corporation

By:  8.19.2020

“Contractor”

Spirit in the Sky LLC
A Nebraska Corporation dba 40 North Tap +
Grille
By: 

OPTION

The undersigned hereby grants to Fonner Keno, Inc., ("Fonner Keno"), a Nebraska corporation, the option to establish a keno-type lottery game at the premises of 40 North Tap + Grille
520 W 3rd St Grand Island, NE 68801, upon the following terms and conditions:

1. The undersigned acknowledges that Fonner Keno has entered into a Lottery Operator Agreement dated the 23rd day of March 1993 ("Lottery Operator Agreement") with the County of Hall, Nebraska ("County") for the establishment of a keno-type lottery game and that the term of such Lottery Operator Agreement was extended by a Modification and Extension of Lottery Operator Agreement dated October 8, 2002.

2. The undersigned further acknowledges that Fonner Keno may operate any number of Satellite locations within the boundaries of the County, subject to the approval of the County, consistent with Paragraph 3.3 of the Lottery Operator Agreement. If any such satellite location is located within the boundaries of the City of Grand Island, Nebraska ("City"), Fonner Keno may not operate such satellite location before obtaining the approval of the City.

3. The undersigned desires to be designated as an additional satellite location consistent with the Lottery Operator Agreement, and further desires to enter into the Satellite Agreement with Fonner Keno, attached hereto as Exhibit "A" and made a part hereof by reference.

4. The undersigned agrees to complete the Sales Outlet Application, attached hereto as Exhibit "B" and made a part hereof by reference, and any other materials requested by the County, and deliver same to Fonner Keno for submission to the County.

5. The undersigned acknowledges that the sole consideration for the Option shall be the submission of the Sales Outlet Application and this Option by Fonner Keno to the County and the City, if applicable, consistent with the provisions of Paragraph 3.3 of the Lottery Operator Agreement.

6. The undersigned acknowledges that Fonner Keno will rely on this Option in submitting the Sales Outlet Application of the undersigned and this Option to the County and the City, if applicable, consistent with the provisions of the Lottery Operator Agreement, and may incur expense in regard to the submission to the County of the Sales Outlet Application of the undersigned and this Option consistent with the provision of the Lottery Operator Agreement.

7. Fonner Keno may exercise this option to establish a keno-type lottery game at the premises of the undersigned, as described in this Option, in the sole discretion of Fonner Keno and upon the exercise of such option by Fonner Keno, the undersigned shall execute the Satellite Agreement, attached hereto as Exhibit "A" and made a part hereof by reference.

8. This Option shall be void and of no further force and effect whatsoever unless it is exercised in the sole discretion of Fonner Keno.

9. This Option shall terminate if the Sales Outlet Application of the undersigned and this Option are not approved by the County and the City, if applicable consistent with Paragraph 3.3 of the Lottery Operator Agreement. If the undersigned has not entered into the Satellite Agreement attached here to as Exhibit "A" and made a part hereof by reference , on or before 12/31/2020 this Option shall be considered terminated.

10. This Option shall be subject to the terms and conditions of the Lottery Operator Agreement and the Interlocal Cooperation Agreement dated the 23rd day of March 1993, between the County and the City.

11. The undersigned acknowledges that Fonner Keno has no obligation to establish a keno-type lottery game at the premises of the undersigned described in this Option and the obligation of Fonner Keno to Establish a keno-type lottery game at the premises of the undersigned described in this Option shall arise only upon the execution in the sole discretion of Fonner Keno, of the Satellite Agreement.

12. The submission of the Sales Outlet Application of the undersigned and this Option to the County and the City, if applicable, will not result in any rights of the undersigned to have the premises of the undersigned described in this Option designated as a satellite location. The establishment of a satellite location at the premises of the undersigned described in this Option by Fonner Keno is expressly subject to the approval of the County and the City, if applicable.

13. Fonner Keno shall have no obligation to enter into the Satellite Agreement except in the sole discretion of Fonner Keno and consistent with the Lottery Operator Agreement. Fonner Keno will enter into the Satellite Agreement only upon compliance with the requirements of the Lottery Operator Agreement including, but not limited to, the approval of a satellite location at the premises of the undersigned described in this Option by the County and the City, if applicable.

14. The undersigned acknowledges that the County and the City have established or may establish criteria of qualification standard for satellite locations. The undersigned agrees to provide Fonner Keno with such additional information required by Fonner Keno to determine whether the undersigned complies with any criteria or qualification standards established by the County and, if applicable, the City. The undersigned acknowledges that the undersigned will be ineligible to be designated as an additional Agreement in the event that the undersigned fails to comply with any criteria or qualification standards established by the County and, if applicable, the City.

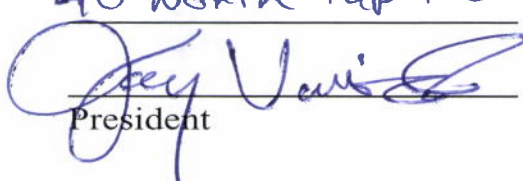
15. The undersigned will not transfer, sell, assign, grant or convey this Option to any other person or entity.

16. The undersigned will indemnify and hold Fonner Keno harmless against any liability incurred by Fonner Keno in reliance on the Option in the event that the undersigned fails to perform he terms and conditions of this Option.

17. Time is of the essence in regard to this Option.

18. This Option is binding upon the parties hereto and upon their respective heirs, successors, personal representatives and assigns.

DATED this 12th day of August 2020


40 North Tap + Grille

President

RECEIPT

Fonner Keno, Inc., hereby acknowledges receipt of this Option and agrees to submit this Option, together with the applicable Sales Outlet Application, to the County of Hall, Nebraska and the City of Grand Island, Nebraska, if applicable, consistent with the Lottery Operator Agreement dated the 23rd day of March 1993, between Fonner Keno, Inc., and the County of Hall, Nebraska; provided, however, that Fonner Keno, Inc., shall have no obligation to establish a keno-type lottery game at the premises described in the foregoing Option, except in the sole discretion of Fonner Keno, Inc.

DATED this 11 day of August, 2020

FONNER KENO, INC., A Nebraska
Corporation

By 
CHRIS KOWALAK CEO

Spirit in the Sky LLC

DBA: 40 North Tap + Grille

520 W 3rd St

Grand Island, Ne 68801

August 10, 2020

Kim Dugan

Hall County Keno Administrator

121 South Pine Street

Grand Island, NE 68801

Re: Keno Application

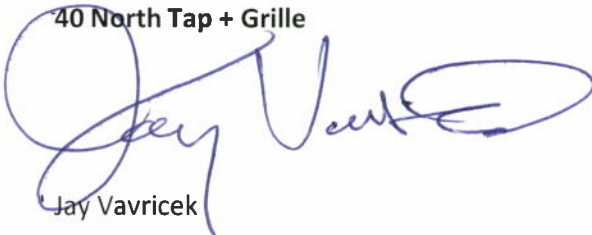
Dear Kim:

This letter is to advise you and the County Board, of a Security Plan that has been discussed between Jay Vavricek, Owner and Patrick Smith, Fonner Keno Manager. We will be depositing the daily proceeds from the keno operation into a separate safe which is located on the premises. The proceeds will be deposited directly into the Hall County Keno account at Home Federal on the following business day. The amount of the deposit is confirmed by the bank and reported to Fonner Keno via telephone. Cameras have been installed above the keno station and keno safe on premises.

Please let us know if you have any further questions.

Sincerely,

40 North Tap + Grille



Jay Vavricek

Owner

APPLICATION FOR HALL COUNTY KENO SALES OUTLET APPROVAL

1. Business name and location of proposed sales outlet location: 40 North
Tap + Grille 520 W. 3rd St. Grand Island, Ne.

2. Address of proposed sales outlet location: 520 W. 3rd Street.

3. Applicant's name: Joseph J. Vavricek

4. Applicant is: ☐ individual/sole proprietorship; ☐ partnership; ☒ corporation (check one) LLC

5. Provide below the name, address, and date of birth of the applicant individually, or in the case of a business entity, of all officer, director, employee, or limited liability company member of the applicant (other than an employee whose duties are purely ministerial in nature), and state the nature of each person's ownership interest. (Attach additional sheets if necessary):

Joseph J. Vavricek. managing member
Spirit in the Sky LLC.
100% ownership.
2729 Brentwood Blvd.
Grand Island Ne. 68801
Birthdate 10-13-53

6. Provide below the name, address, and date of birth of the person or persons who will be in charge of the day-to-day operations of the keno lottery at the sales outlet location:

Jordan T. Narber
2905 Bearing Pointe
Grand Island, Ne. 68803
DOB 12-31-94

7. Provide below the name, address, and date of birth of each person that will be involved in the conduct of the keno lottery at the sales outlet location:

Jordan T. Narber 2905 Bearing Pointe.
Grand Island, Ne. 68803 DOB 12-31-94
Kenny Aerni 304 John St. Marquette, Ne. 68854
DOB. 11-28-63.
Trisha Thies 1903 W. 16th St. Grand Island, Ne.
68803 DOB. 2-20-80
Katie Hibbs 2503 W. Koenig St. Grand Island,
Ne. 68803 DOB. 3-14-82

8. Has the applicant individually, or in the case of a business entity, any officer, director, employee, or limited liability company member of the applicant (other than an employee whose duties are purely ministerial in nature) been a party in any lawsuit filed or pending within ten years of the date of this application? no. If yes, for each such suit state the names of the parties, the court and case number, and the type of action and whether a judgment was entered against the applicant or person having ownership interest in the applicant. Attach additional sheets if necessary.

9. Has the applicant individually, or in the case of a business entity, any officer, director, employee, or limited liability company member of the applicant (other than an employee whose duties are purely ministerial in nature) been a party in any lawsuit filed a petition in bankruptcy within the previous ten year period? no. If yes, for each such state the name of the bankruptcy debtor, the court, and case number. Attach additional sheets if necessary.

10. Is the applicant individually, or in the case of a business entity, any officer, director, employee, or limited liability company member of the applicant (other than an employee whose duties are purely ministerial in nature) delinquent in the payment of any county, state or federal taxes? no. If yes, state the type and amount of each delinquency and explain the reason for the delinquency.

11. Has the applicant individually, or in the case of a business entity, any officer, director, employee, or limited liability company member of the applicant (other than an employee whose duties are purely ministerial in nature), or any person with a substantial interest in the applicant:

- a) been found by a court or an administrative agency or tribunal to have violated the provisions, requirements, conditions, limitations, or duties imposed by this Resolution, the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;
- b) been found by a court or an administrative agency or tribunal to have knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;
- c) been found by a court or an administrative agency or tribunal to have obtained a permit or permit pursuant to such acts by fraud, misrepresentation, or concealment;
- d) convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;
- e) convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony within the ten years preceding the filing of the application;
- f) been found by a court or an administrative agency or tribunal to have denied without lawful cause the Nebraska Department of Revenue or their authorized representatives, including authorized law enforcement agencies, access to any place where activity required to be licensed under the Nebraska County and City Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

NO. If yes, identify each such person or entity and explain fully the nature of the administrative or judicial proceedings, the outcome, the date of such action, and the basis for the finding or conviction:

12. Is the applicant individually, or in the case of a business entity, any officer, director, employee, or limited liability company member of the applicant (other than an employee whose duties are purely ministerial in nature), any other person or entity directly or indirectly associated with such applicant currently the subject of an investigation by an agency of the state of Nebraska or an agency of the United States of America? NO. If yes, for each such person or entity state the agency or agencies conducting such investigation:

13. Does the proposed sales outlet location meet the accessibility requirements of the Americans with Disabilities Act of 1990? _____. If yes, provide a statement of compliance from an architect, consultant or building inspector who has surveyed the facility for compliance.

14. Seating capacity of sales outlet location: 292

15. Parking capacity of sales outlet location: off street parking

Date: 8-19-20

Signature: Joseph J. Vautour

Title: managing member.

Phone: (308) 380-4913

Permit # 171801819

Date: 08-01-2019

Certificate of Occupancy

City of Grand Island, Nebraska

Department of Building Inspection

This Certificate issued pursuant to the requirements of the 2015 I.R.C. and I.B.C. certifying that at the time of issuance this structure was in compliance with the various ordinances of the City regulating building construction or use. For the following:

Address:

520 W 3rd St

Legal Description:

Lt 5 Blk 59 Original Town

Owner:

40 North Tap & Grill

General

Contractor:

Jim Narber

Type:

VB

Fire Sprinkler:

Yes

Group:

A2

Electrical

Contractor:

Middleton Electric

Zone:

B3

Occupancy

Load:

292

Plumbing

Contractor:

O'Hara Plumbing

Mechanical

Contractor:

Jerry's Sheet Metal

Craig A. Lewis
Building Official - Craig A. Lewis



Occupancy Use Permit

Grand Island Fire Department

100 E. 1st Street
Grand Island, NE 68801
308-389-0228

PERMIT TYPE: Assembly Within Building

08/28/2019 -

Business Name 40 North Tap & Grille
Address: 520 W 3rd St
Grand Island, NE 68801

Emergency Contact: Jay Vavricek

P-fhotz-19-0142

Permit Number

133

Occupant Load

Sports Bar North End of Building

Hotz, Fred

Inspector

Fred Hotz
Issuing Official Signature

RESOLUTION #20- 158

**A RESOLUTION APPROVING SPIRIT IN THE SKY LLC,
DBA 40 NORTH TAP & GRILLE
AS A KENO SALES OUTLET LOCATION**

WHEREAS, Spirit In The Sky LLC, DBA 40 North Tap & Grille, hereinafter referred to as Applicant, has made its application for approval as a keno sales outlet location for the Hall County Keno Lottery and has entered into an option agreement and a satellite agreement with the lottery operator, Fonner Keno, Inc., for satellite operation of the county keno game at its place of business located at 520 W 3rd Street, Grand Island, Nebraska; and

WHEREAS, Applicant's application has been reviewed and approved by the County's Keno Administrator; and

WHEREAS, Fonner Keno, Inc., requests the County's approval of Applicant's Keno Sales Outlet application.

NOW BE IT RESOLVED, Applicant's application for operation of a satellite keno sales outlet at 520 W 3rd Street, Grand Island, Nebraska, consistent with the Lottery Operator Agreement between Hall County and Fonner Keno, Inc., is hereby approved.

Resolution moved by Commissioner Gary Quandt.

Seconded by Commissioner Karen Bredthauer

Vote:

Commissioner Bredthauer:	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Abstained <input type="checkbox"/>	Not Present <input type="checkbox"/>
Commissioner Hartman:	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Abstained <input type="checkbox"/>	Not Present <input type="checkbox"/>
Commissioner Hurst:	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Abstained <input type="checkbox"/>	Not Present <input type="checkbox"/>
Commissioner Lancaster:	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Abstained <input type="checkbox"/>	Not Present <input type="checkbox"/>
Commissioner Peterson:	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Abstained <input type="checkbox"/>	Not Present <input type="checkbox"/>
Commissioner Quandt:	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Abstained <input type="checkbox"/>	Not Present <input type="checkbox"/>
Commissioner Richardson:	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Abstained <input type="checkbox"/>	Not Present <input type="checkbox"/>

PASSED AND ADOPTED THIS 15 day of August, 2020.

HALL COUNTY BOARD OF COMMISSIONERS

Pamela E. Lancaster
Pamela E. Lancaster, Board Chair

Marla J. Conley
Marla J. Conley, Hall County Clerk

RESOLUTION 2020-206

WHEREAS, the County of Hall and the City of Grand Island entered into an Inter-Local Cooperation Agreement to permit the operation of keno within Hall County; and

WHEREAS, Fonner Keno, Inc. has previously been licensed to operate keno and certain locations have been designated as satellite locations for the operation of keno; and

WHEREAS, the County of Hall has selected an additional satellite location for approval for the operation of keno, such location being the premises at 520 West 3rd Street in Grand Island, Nebraska, operated by Spirit in the Sky, LLC dba 40 North Tap & Grille, a Nebraska corporation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Spirit in the Sky, LLC dba 40 North Tap & Grille, a Nebraska corporation, located at 520 West 3rd Street, Grand Island, Nebraska is hereby approved as an additional satellite location for the operation of keno, subject to entering into the proper agreement.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, September 8, 2020.

Mike Paulick, Council President

Attest:

Aaron Schmid, Acting City Clerk

Approved as to Form	☐ _____
October 23, 2020	☐ City Attorney