RESOLUTION AUTHORIZING CHAIRMAN TO SIGN THE COUNTY/CITY LOTTERY SALES OUTLET LOCATION APPLICATION FOR BDS 12015, INC., D/B/A PHOENIX 370

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2012), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2012), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, BDS 12015, Inc., d/b/a Phoenix 370 has applied to be a keno satellite location for Advanced Gaming Technologies, and said application is appropriate and reasonable.

NOW, THEREFORE, BE IT RESOLVED, by the Sarpy County Board of Commissioners that the Chairman is hereby authorized to sign the County/City Lottery Sales Outlet Location Application of BDS 12015, Inc., d/b/a Phoenix 370 for a keno satellite location.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 9th day of August, 2016.

Sarpy County Board Chairman

Attest:

County Clerk
MEMO

To: Sarpy County Board

From: Brian E. Hanson

Re: Keno Satellite Application

On August 9, 2016 the Sarpy County Board will be asked to approve a Resolution authorizing the Chairman to sign a lottery application for BDS 12015, Inc. d/b/a Phoenix 370. It will serve as a new keno satellite locations for Sarpy’s Advanced Gaming Technologies. This property was formerly known as That Place Eatery and is located on 132nd Street, just south of Highway 370.

Once the County Board approves the application it will be forwarded to the Department of Revenue for their review, approval and issuance of a lottery license.

If you have any questions please call me at 593-2349.

August 3, 2016

Brian E. Hanson

BEH/dp

cc: Mark Wayne
    Deb Houghtaling
    Scott Bovick
Nebraska Schedule II – County/City Lottery Sales Outlet Location Application
Form 50G

1 Nebraska ID Number of County, City, or Village
806323
2 County, City, or Village Name on Form 50G
Sarpy County

Sales Outlet Location Information (Attach additional sheet if necessary)

3 Nebraska ID Number

4 Federal ID or Social Security Number

001-0126-DK-805 20-8041763

5 Type of Application:

☐ New ☐ Renewal ☐ Report Changes ☐ Cancel

Business Name and Location Address

Name
BDS 12015, Inc P.O. Box Phoenix 370

Trade Name of Business (If Different Than Above)

Street Name: RICKLAND Dr

Street Address

City, State, Zip Code

6 Type of Ownership

☐ Sole Proprietorship ☐ Domestic Corporation ☐ Limited Liability Company

☐ Partnership ☐ Foreign Corporation ☐ Nonprofit Corporation or Organization

☐ Limited Liability Company or Other

7 Location Type

☐ Keno Satellite ☐ Keno Independent Game

Your Social Security number and date of birth are required under the Nebraska County and City Lottery Act and will be used to request criminal history information from law enforcement agencies to determine if the legal requirements for a lottery sales outlet location's license are met.

8 List the Social Security number, full name, home address, date of involvement, and percentage of ownership for each of the following persons involved with the applicant.

a. If a sole proprietorship, list the individual owner.

b. If a partnership, list each partner and spouse.

c. If a corporation, list each officer and spouse and each person holding 10% or more of the debt or equity of the applicant corporation. If any person holding 10% or more of the debt or equity of the applicant corporation is a partnership, limited liability company, or corporation, list each partner of such partnership, each member of such limited liability company, or each officer of such corporation and every person holding 10% or more of the debt or equity of any such partnership, limited liability company or corporation.

d. If a limited liability company, list each member and spouse.

e. If a nonprofit organization or nonprofit corporation, list each officer and the individual designated as manager.

(Attach additional sheet if necessary)

Social Security Number

Date of Birth

Type of Involvement and Percentage of Ownership

Does any person other than those listed in line 8 above have any ownership interest in the license applicant? (See instructions)

☐ Yes ☐ No

If Yes, in the case of an individual, identify the Social Security number, full name, home address, date of birth, type of ownership interest of each such individual. In the case of a business, identify the federal employer ID number, business name, address, and type of ownership interest of each such business. (Attach additional sheet if necessary)

Has anyone listed in line 8 ever been convicted of, forfeited bond upon a charge of, or pled guilty to, or failed to appear for a felony or misdemeanor at any time involving any gambling activity, fraud, theft, willful failure to make required payments or reports, or failure to keep records with a governmental agency at any level? This includes shoplifting or issuing bad checks.

☐ Yes ☐ No

If Yes, see instructions.

Has anyone listed in line 8 ever been convicted of, forfeited bond upon a charge of, or pled guilty to, or failed to appear for a felony or misdemeanor at any time less than that described in line 10a within 10 years preceding the date of this application?

☐ Yes ☐ No

If Yes, see instructions.

Each of the individuals listed in line 8 above complied with the instructions for Completing Fingerprint Application, or when applicable, filed a signed Affidavit by Spouse for Waiver form?

☐ Yes ☐ No

(See What Must Be Filed instructions)

Do any of the individuals listed in line 8 above currently hold or have they previously held any other licenses issued under the Nebraska Bingo Act, the Nebraska Paddle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act?

☐ Yes ☐ No

If Yes, indicate the types of licenses, and their current status (active, suspended, cancelled, revoked, or expired)

Under penalties of law, I declare that I have examined this application, and to the best of my knowledge and belief, it is correct. I will comply with the provisions of the Nebraska County and City Lottery Act and the regulations adopted under such Act.

Signature of Sales Outlet Location Owner, Member, Partner, Officer, etc., or Person Authorized by Attached Power of Attorney

Name of Person to Contact Regarding This Application:

Authorization – Signature of Governing Official

I declare that I have examined this application, and authorize the applicant to conduct a lottery on behalf of the county, city, or village named in this application.

Authorized Signature

Retain a copy for your records.
Instructions

Who Must File. Any individual, business, nonprofit organization, or nonprofit corporation that has contracted with a lottery operator to conduct a lottery on behalf of a county, city, or village must apply for and obtain a lottery sales outlet location license. This includes any individual or business whose only involvement with the operation of the lottery is providing space to the lottery operator, even if the space is leased to and staffed by the lottery operator.

What Must Be Filed. Any individual, business, nonprofit organization or nonprofit corporation seeking a license as a lottery sales outlet location must complete and submit a Nebraska Schedule II - County/City Lottery Sales Outlet Location Application, Form 50G, to the Nebraska Department of Revenue (Department).

When and Where to File. A license issued to a lottery sales outlet location expires on May 31 of every even-numbered year and may be renewed biennially. The application may be submitted with the Nebraska Application for County/City Lottery, Form 50G, and the Nebraska Schedule I - County/City Lottery Operator Application, Form 50G, or submitted separately if the county, city, or village and lottery operator are already licensed. Applications for license renewal must be submitted to the Department at least 60 days prior to the expiration date of the license. No license application fee is required.

The Nebraska Schedule II may also be used to report changes in the application information or to cancel the license. Any change in the information originally submitted on the application must be provided to the Department within 30 days of the change.

Mail the original application form and any attachments to the Nebraska Department of Revenue, Charitable Gaming Division, PO Box 94855, Lincoln, NE 68509-4855. Retain a copy of this application for your records.

Specific Instructions

Line 6. Type of Ownership. Enter the type of ownership under which the applicant is operated. A partnership includes all types of partnerships, including general, limited, and joint ventures. A domestic corporation is a corporation which is organized under the laws of Nebraska and is qualified to do business in this state. A foreign corporation is a corporation which is organized under the laws of another state. A domesticated corporation is a foreign corporation that has domesticated in Nebraska.

Line 7. A keno satellite location is separate from a main keno location and electronically linked to the main location, but does not conduct its own winning number selection. An independent keno game location is not electronically linked to another location and does conduct its own winning number selection.

Line 8. Identify the Social Security number, name, address, date of birth, type of involvement (owner, member, partner, officer, debt or equity holder, or spouse) and percentage of ownership of each person who has any interest in the entity to be licensed as a lottery sales outlet location. If a nonprofit organization or nonprofit corporation, identify each officer and the individual designated as manager.

A person is a debt holder of the corporation, partnership, or limited liability company if such person holds any mortgages, notes, bonds, convertible debentures, or other obligations, whether written or oral, issued by the corporation, partnership, or limited liability company. For purposes of this application, a debt holder does not include any financial institution organized or chartered under the laws of Nebraska, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, installment loan licensees, or similar associations organized under the laws of Nebraska and subject to supervision by the Department of Banking and Finance. A person is an equity holder of the corporation, partnership, or limited liability company if such person holds any capital stock, whether common or preferred, or any ownership interest or share issued by the corporation, partnership, or limited liability company.

Line 9. Identify any persons who have an ownership interest in the license applicant not listed in line 8. Owner means a person with a right to share in the profits, losses, or liabilities of an applicant or licensee. The term includes loan guarantors who make actual debt payments for or contribute capital to a license applicant or licensee with a contingent right to share in the profits, losses, or liabilities of the operation. The term ownership interest is synonymous with owner.
KENO SATELLITE OPERATOR AGREEMENT

THIS AGREEMENT is made this 5th day of July, 2016 by and between KDS 2015, Inc., doing business as PHOENIX 370, at 10308 South 23rd, Bellevue, Nebraska hereinafter referred to as the "Facility" and Advanced Gaming Technologies Inc., a Nebraska Corporation, hereinafter referred to as "AGT".

1. **Lease.** Sarpy County (the "County"), pursuant to Sarpy County Ordinance and related rules, agreements, memoranda of understanding, resolutions and actions (collectively, whether now or hereafter adopted or executed, the "Resolution"), and pursuant to authority granted by the State of Nebraska and its agencies and instrumentalities including without limitation the Nebraska Department of Revenue and its Division of Charitable Gaming (collectively, the "State") under the Nebraska City and County Lottery Act, Neb. Rev. Stat. 9-601 et seq., and regulations promulgated pursuant thereto (as amended or replaced by any similar law or regulations, the "Act") has authorized and appointed AGT to act as manager of lottery conducted by the County for community betterment purposes ("Keno Operations"). Subject to the terms of this Agreement, AGT hereby leases from Facility and Facility leases to AGT, the square footage of visible and accessible floor space within the premises more particularly described in Exhibit "A" attached hereto (hereinafter the "Premises") determined by AGT to be reasonably necessary for the conduct of Keno Operations on the Premises and for the placement of Gambling Equipment specified in this Agreement.

2. **Licensing and Compliance with Laws.** AGT shall operate a keno satellite at the Facility. The Facility, its owners, officers and agents shall abide by and comply with this Agreement and the following, all of which shall be considered incorporated into this Agreement: (i) the Resolution, the Act, and all laws, regulations, ordinances, resolutions rules and rulings now existing or hereafter promulgated by any federal, state or local government or any court, agency, instrumentality or official thereof (collectively, the "Regulatory Requirements") and (ii) those rules promulgated and amended from time to time by AGT which are applicable to Keno Operations generally or Keno Operations on the Premises, including without limitation rules contained in any manual or other document or other documents which AGT may provide to Facility and amend from time to time (the "Official Game Rules").

3. **Rent.** AGT shall pay facility rent of 5% of gross revenue (as hereinafter defined) collected by AGT from Keno Operations at the Facility. For purposes of this Agreement, "gross revenue" shall include all amounts collected from keno at the Facility. Rental payments shall be made on settlement dates chosen by AGT, which shall occur not less, then twice per month.

4. **Equipment.** AGT shall install at the Premises one or more of each of the following items of equipment ("Gambling Equipment"): (a) an on-site computer capable of registering each keno ticket purchase on the Premises, computing the results of each keno game, authenticating keno tickets, and storing accumulated keno game results; (b) a keno writer's input terminal for use in connection with the on-site computer; and (c) a display device for the numbers selected. The type of Gambling Equipment may be changed and the number of devices installed and operated at the Premises may be increased or decreased during the term of this Agreement at the discretion of AGT. "Gambling Equipment" shall also include any other equipment installed by AGT pursuant to this Agreement or pursuant to Facility's request or assent.
5 **Keno Supplies and Staff.** Facility shall supply sufficient personnel to properly and efficiently run the satellite keno game. No person employed by the Facility or any other person in any capacity in connection with the Facility shall play keno or collect and prize at the Facility except in the regular course of business and during off-duty hours. AGT shall provide appropriate and necessary keno supplies as it in its absolute discretion determines to be necessary.

6 **Facility Obligations.** Facility shall (a) obtain and maintain its license to sell alcoholic beverages for consumption on the Premises and all other licenses, approvals, and agreements necessary for the continued operations of its business; (b) conduct its business in an orderly, respectable fashion, substantially in the same manner as on the date of commencement of the Keno Operation; (c) maintain the Premises in a clean and safe condition suitable for the conduct of Facility’s business and for the good conduct of Keno Operations sufficient to satisfy the regulatory requirements; (d) maintain in good standing its right to possession of the Premises; (e) provide AGT, the County and State access to the Premises as may be reasonably required from time to time; and (f) provide all necessary electrical outlets and other improvements necessary electrical outlets and other improvements necessary for the lawful and effective conduct of Keno Operation at the Facility as determined by AGT.

7 **Term.** This Agreement shall be for three years effective upon approval of the Facility as a satellite location for AGT by the Sarpy County Board and shall automatically renew for successive five year terms unless AGT advises you in writing of its intention not to renew ninety (90) days prior to the expiration of the initial term or any renewal thereof. AGT shall have the right to terminate this Agreement without notice if (a) Facility has violated any of the terms and conditions of this Agreement; (b) any change in regulatory requirements has made the continuations of Keno Operations on the Premises impractical or unprofitable; (c) there has been any material adverse change in the condition of Facility, or other factor which in AGT’s sole discretion could have a negative impact on Keno Operations at the Facility or on the overall condition of AGT’s Keno Operation; (d) Facility has had its right to continue to act as a satellite disapproved, revoked, or otherwise terminated by the Sarpy County Board and/or the State of Nebraska; or (e) upon reasonable demand by the Sarpy County Board.

8 **Exclusivity.** This Agreement is exclusive to AGT and Facility agrees during the term of this Agreement and any extension thereof now to allow anyone other than AGT to offer, supply or install gambling devices and carry on gambling activities (other than pickle cards as authorized by the Nebraska Pickle Card Lottery Act) including, but not limited to that offered by any other manager of a lottery conducted by the Sarpy County.

9 **Expanded Gambling.** Facility grants AGT the exclusive right during the term of this Agreement and any extension thereof to install and operate legalized gambling devices on the Premises including, but not limited to gambling devices which become legal after the execution of this Agreement, provided that this Agreement shall not apply to such activities until such time as they become legal. Such additional legalized gambling devices shall be installed and operated upon terms and conditions mutually agreed to by the Facility and AGT.

10 **Entire Agreement: Amendments.** This Agreement embodies the complete agreement between the parties with respect to the subject matter hereof and supersedes, in it’s entirety, any and all the other agreements, either written or oral, with respect thereto. This Agreement may only be amended by a written instrument executed on behalf of each of the parties hereto.

11 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be taken to be an original.
12. **Severability.** In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

13. **Applicable Law.** This Agreement shall be subject to and governed by the laws of the State of Nebraska.

14. **Parties Bound by this Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns.

15. **Notices.** All notices provided for under this Agreement shall be in writing and sufficient of sent by registered mail or national overnight delivery service to the address that a party shall specify in writing to the other party.

16. **Previous Agreement.** This Agreement shall supersede and all previous agreements between the parties whether in writing or otherwise.

17. **Assignment.** This agreement may be assigned by AGT. Facility shall not assign its rights or obligations under this Agreement without the prior written consent of AGT.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

**Advanced Gaming Technologies Inc.**

BY: [Signature]

ITS: President

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**Phoenix Family Food & Spirits**

("Facility")

BY: [Signature]

ITS: President