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# SATELLITE LEASE AND OPERATING AGREEMENT

BIG RED KENO, LTD.

Please Return To:

William F. Harvey P.C.  
1650 Farnam Street  
Suite 900 West  
Omaha, Nebraska 68102  
(402) 346-6100, ext. 107

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This Satellite Lease and Operating Agreement (this "Agreement") is made by and between Big Red Keno Ltd., a Nebraska limited partnership ("Game Manager"), whose address is 1650 Farnam Street, Suite 900, Omaha, Nebraska 68102, and the undersigned satellite ("Satellite"). This Agreement shall become effective when accepted by an authorized officer of Game Manager.

1. Lease. The City of Omaha (the "City"), pursuant to Omaha City Ordinance No. 32375 and related rules, agreements, memoranda of understanding, resolutions and actions (collectively, whether now or hereafter adopted or executed, the "Ordinance"), 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 County and City 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 Game Manager to act as manager of a lottery conducted by the City for community betterment purposes ("Keno Operations"). Subject to the terms of this Agreement, Game Manager hereby leases from Satellite, and Satellite leases to Game Manager, the square footage of visible and accessible floor space within the Premises (described below) determined by Game Manager to be reasonably necessary for the conduct of Keno Operations on the Premises and for the placement of the Gambling Equipment specified in this Agreement.

2. Licensing and Compliance with Laws. Satellite acknowledges that, by reason of this Agreement, Satellite shall be considered a sales outlet location for Keno Operations and that Satellite and its owners and officers shall be required to be approved by the City and licensed by the State. Satellite shall use best efforts to acquire and maintain any such approvals and licenses, and any other licenses which may be or become necessary for the conduct of Keno Operations on the Premises, including without limitation a federal wagering stamp. Satellite represents and covenants that all representations now or hereafter made by Satellite or any owner, officer or agent of Satellite on any document filed with the City or the State shall be accurate and shall be kept current. Satellite and 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 Ordinance, 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 Game Manager 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 documents which Game Manager may provide to Satellite and amend from time to time (the "Official Game Rules").

3. Rental Payments. Game Manager shall pay Satellite rent on the following basis selected by Satellite (check selection): ☐ (a) 4% of the amount wagered on keno at the Premises, or ☒ (b) 5.25% of the first \$10,000 wagered on keno at the Premises each week, plus 2.5% of any amount in excess of \$10,000 wagered on keno at the Premises each week. Satellite may, by 15 days' prior written notice to Game Manager, elect to change its rental basis selection once during the term of this Agreement. Game Manager may withhold or otherwise offset against any rent or other amounts due to Satellite any amounts due and owing to Game Manager from Satellite, whether such amounts are owed pursuant to this Agreement or otherwise. Rental payments shall be made on settlement dates chosen by Game Manager which shall occur not less than twice per month. The amount of rent paid to Satellite may be decreased at Game Manager's discretion to reflect the economic impact of any change or amendment to the Regulatory Requirements, provided however that in the event of such a decrease Satellite may request a cessation of Keno Operations on the Premises upon 30 days' written notice to Game Manager.

4. Staffing and Supplies. Satellite shall provide, direct and compensate appropriate personnel for the conduct of Keno Operations on the Premises, and familiarize such personnel and its other key personnel with, and require them to comply with, this Agreement, the Regulatory Requirements and the Official Game Rules. Satellite shall allow Keno Operations on the Premises to be carried out and the Gambling Equipment to be accessed only by Game Manager and by those employees of Satellite who have been trained and approved by Game Manager and licensed by the State for the activities which such employees conduct in relation to gaming. Satellite shall at all times maintain available for players sufficient Keno Supplies for the conduct of Keno Operations on the Premises in accordance with the Official Game Rules. Satellite shall procure such Keno Supplies at its own expense either from Game Manager or from other suppliers who are able to provide such Keno Supplies in accordance with the Regulatory Requirements and the Official Game Rules. "Keno Supplies" means all items of personal property necessary or convenient for the play of keno, including but not limited to items specified in the Official Game Rules. If at any point in time during the term of this Agreement the average weekly amount wagered on keno at the Premises for the most recent 26 and 52 week periods is \$15,000 or more, Satellite may, by 30 days written notice to Game Manager, have Game Manager provide staffing and Keno Supplies for Keno Operations on the Premises in exchange for reducing the rent paid to Satellite to (i) 1.0% of the first \$10,000 wagered on keno at the Premises each week, plus (ii) 2.0% of the amount in excess of \$10,000 wagered on keno at the Premises each week. Alternatively, if Game Manager determines that Satellite should be able to sustain an average weekly amount of \$15,000 or more wagered on keno at the Premises each week, Game Manager may offer to provide staffing and Keno Supplies for Keno Operations on the Premises in exchange for reducing the rent paid to Satellite as provided in the preceding sentence. Staffing and Keno Supply levels provided by Game Manager shall be determined at Game Manager's discretion. If at any point in time while Game Manager is providing staffing and Keno Supplies for Keno Operations on the Premises, the average weekly amount wagered on keno at the Premises for the most recent 12 week period is less than \$15,000, Game Manager may cease providing staffing and Keno Supplies upon 30 days' notice to Satellite, and Satellite shall, at the date specified in any such notice, begin providing such staffing and Keno Supplies.

**THIS AGREEMENT IS SUBJECT TO THE TERMS ON THE BACK OF THIS PAGE**

Satellite Name: <u>McMillan's Inc</u> <u>D/B/a Muggsys Hillside Lounge</u>	I have read and understand this Agreement SATELLITE
Premises Address: <u>8033 Blondo St</u> <u>Omaha, NE 68134</u>	By: <u>Wanda J McMillan</u>
(Premises legal description attached as Exhibit A)	Name: <u>Wanda McMillan</u>
	Title: <u>Treas</u>

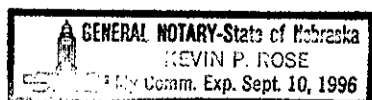
STATE OF NEBRASKA, COUNTY OF Douglas ss:

The foregoing instrument was acknowledged before me on June 14, 1994 by  
[NAME] Wanda McMillan the [TITLE] Treasurer of  
[BUSINESS NAME] McMillan's Inc a  
[STATE AND TYPE OF ENTITY] Neb. Corp., on behalf of the  
[TYPE OF ENTITY] Corporation.

[Signature], Notary

SPACE BELOW RESERVED FOR GOVERNMENT USE

RECEIVED



JUL 1 3 47 PM '94

GEORGE J. BUGLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

8086 53-23500  
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DEL 100  
LOCAL 73 1001 PV

Accepted: Big Red Keno Ltd.  
by Big Red Keno Inc. as  
Managing General Partner

By: [Signature]  
Daniel G. Pankow  
Vice President & C.O.O.

Dated: 6/20/94

# ADDITIONAL TERMS AND CONDITIONS

5. Obligations of Satellite. In addition to its other obligations under this Agreement, Satellite shall: (a) Provide all necessary electrical outlets, phone lines, and other improvements necessary for the lawful and effective conduct of Keno Operations on the Premises as determined by Game Manager in its reasonable discretion; (b) conduct its food and beverage business in an orderly, respectable fashion, substantially in the same manner as on the date of commencement of Keno Operations on the Premises, and in concert with such Keno Operations; (c) 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 operation of its business; (d) maintain the Premises, and such parking facilities as are available to patrons of the Premises, in a clean, safe and respectable condition suitable for the conduct of Satellite's food and beverage business and for the conduct of Keno Operations, sufficient to satisfy the Regulatory Requirements and otherwise substantially in the same condition as on the date of the commencement of Keno Operations on the Premises; (e) make all structural and other repairs and changes necessary to the operation of Satellite's business or the conduct of Keno Operations on the Premises or mandated by the Regulatory Requirements; (f) maintain in good standing its right to possession of the Premises as on the date of this Agreement, subject only to such encumbrances as existed on such date, and obtain and maintain all approvals necessary to enter into and perform its obligations under this Agreement; (g) maintain complete, current and accurate records regarding its business and all transactions related to Keno Operations on the Premises, including without limitation such records as may be prescribed from time to time by the Regulatory Requirements or the Official Game Rules; (h) provide Game Manager, the City, and the State such access to the Premises, the Gambling Equipment and the books and records of Satellite relating to Keno Operations, as reasonably requested during ordinary and customary business hours of Satellite; (i) keep safe and exercise due diligence in the operation and care of the Gambling Equipment, provide secure areas for the storage of Keno Supplies, assume all risk of loss or damage to the Gambling Equipment and the Keno Supplies except to the extent such loss or damage is caused by Game Manager, and promptly notify Game Manager of any loss, damage, or malfunction of the Gambling Equipment or the Keno Supplies; (j) maintain commercially reasonable insurance covering the Premises and the Gambling Equipment, with Game Manager named as an additional insured; (k) pay when due all federal excise taxes and federal and local occupational taxes which become due as a result of the conduct of Keno Operations on the Premises; (l) use best efforts to detect attempts to cheat the lottery or tamper with the Gambling Equipment, and immediately report all such incidents to Game Manager; and (m) keep confidential, during and after the termination of this Agreement, all documents and information provided to Satellite by Game Manager, and all other documents and information related to the conduct of Keno Operations (this clause (m) shall survive termination of this Agreement).

6. Obligations of Game Manager. Game Manager shall: (a) provide training to one or more representatives of Satellite regarding the proper operation of the Gambling Equipment; (b) maintain the Gambling Equipment and repair defects, or, if unable to repair, replace the Gambling Equipment, within a reasonable time after Game Manager is notified by Satellite of specific problems; (c) maintain a central auditing computer to track results of Keno Operations, and prepare all reports relating to Keno Operations as required by the Regulatory Requirements; and (d) remain responsible to the City for the conduct of Keno Operations in conformity with the Ordinance.

7. Equipment. Game Manager 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 purchased on the Premises, computing the results of each keno game, authenticating keno tickets, communicating with a central auditing computer 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 Game Manager. "Gambling Equipment" shall also include any other equipment installed by Game Manager pursuant to this Agreement or pursuant to Satellite's request or assent.

8. Marketing. Satellite acknowledges that Game Manager is the owner of the name "Big Red Keno", the "Big Red" ball (which is a federally registered trademark) and other marks, names, slogans, materials and information regarding gaming provided to Satellite by Game Manager. Satellite shall not during or after the term of this Agreement, do or allow any act which might impair such ownership (this sentence shall survive termination of this Agreement). Any advertising or promotion of Keno Operations on the Premises must have the prior written approval of Game Manager. Satellite shall prominently post promotional and informational materials supplied by Game Manager.

9. Conduct of Keno Operations. Satellite shall conduct Keno Operations in accordance with the Regulatory Requirements and the Official Game Rules. Satellite shall not knowingly permit the issuance of keno tickets or the making of wagers by or for the benefit of persons not physically present on the Premises, and Satellite shall use reasonable efforts to ensure that persons purchasing tickets and placing wagers through the Premises are limited to patrons of Satellite physically present on the Premises at the time the ticket is purchased or the wager is made. Except in the case of Extended Multi-Game Tickets (which are defined as tickets written for 21 or more keno games), Satellite shall require all players to redeem all winning tickets immediately after the last game to which they relate is called and prior to the calling of the next game. Satellite shall redeem all winning tickets in the presence of all persons having purchased tickets at the Premises for the game to which such ticket relates, and shall not permit players to purchase tickets, leave the Premises and return later for redemption. In the case of Extended Multi-Game Tickets, Satellite may permit delayed redemption in accordance with the Official Game Rules.

10. Funds from Keno Operations. All funds derived from Keno Operations on the Premises shall be the sole and exclusive property of Game Manager, shall be held by Satellite in trust for Game Manager, shall not be subject to set off, lien, attachment, or similar action or remedy by Satellite or by Satellite's creditors or other third parties, and shall not be commingled with Satellite's own funds nor used by Satellite for any other purpose. All wagers purchased at the Satellite shall be paid for in Cash at the time they are made. "Cash" means valid United States currency. Satellite may, in its own discretion and at its own risk, cash checks for customers. Such checks shall not be made payable to Game Manager nor commingled with funds derived from or wagered in Keno Operations, and Game Manager shall bear no risk of loss with regard to such checks. Any item other than Cash accepted in payment of wagers or commingled with funds from Keno Operations shall become the property of Game Manager until reimbursed by Satellite in Cash for the amount wagered. Satellite shall have a duty to make such reimbursement immediately and any amount not immediately reimbursed shall earn interest from the date the wager was made, at the highest rate for which Game Manager and Satellite may contract under applicable law, or twenty four percent per annum, whichever is less. Satellite shall indemnify and hold harmless Game Manager for all damages, costs and expenses arising out of or related to any ticket written or wager made on the Premises or through the Premises which ticket or wager is alleged to have violated any of the Regulatory Requirements or the Official Game Rules (this sentence shall survive termination of this Agreement). Satellite shall deposit Daily Net Proceeds not later than noon of the next banking day following the date of receipt into a separate account maintained by Satellite in a bank designated by or acceptable to Game Manager. "Daily Net Proceeds" means the aggregate amount wagered at the Premises less prizes paid by Satellite in accordance with the Official Game Rules. Game Manager has the right to cause the Daily Net Proceeds to be transferred to its account by automatic electronic funds transfer pursuant to a funds transfer agreement executed by Satellite in such form as the bank for Game Manager may from time to time require.

11. Term. The initial term of this Agreement will begin on the effective date of this Agreement and end on May 15, 1996. Game Manager has the right to renew this Agreement on the same terms and conditions for three additional terms of five years each.

12. Exclusivity and Right of First Refusal. Satellite acknowledges and agrees that Game Manager will make a significant capital investment in establishing Keno Operations on the Premises, and that other legalized gambling on the Premises would likely impair such investment. Satellite therefore grants Game Manager the exclusive right during the term of this Agreement to install and operate legalized gambling activities on the Premises, including, without limitation, gambling activities which become legal after the execution date of this Agreement, provided that this Agreement shall not apply to such activities until such time as they become legal. Game Manager may ask Satellite for permission to install or operate any such legalized gambling activity which Game Manager is or may become qualified and licensed to operate at any time, provided that Game Manager may not install or operate any legalized gambling activity on the Premises, other than Keno Operations, without Satellite's consent which may be freely withheld. With regard to any legalized gambling activity for which Satellite has become properly licensed, other than Keno Operations, Satellite may request in writing that Game Manager install and operate such legalized gambling activity and deliver or supply appropriate equipment (without regard to make, model or manufacturer) necessary to conduct such legalized gambling activity at the Premises. If Game Manager notifies Satellite of Game Manager's intent to install and operate such legalized gambling activity, Game Manager shall commence operation of such legalized gambling activity within a reasonable time, subject to ability to obtain equipment and supplies and ability to obtain necessary approvals and licenses. In the event Game Manager: (a) does not respond to Satellite within sixty days after receipt of the Satellite's request; or (b) denies Satellite's request for any reason other than restrictions on the availability of the requested equipment or the ability of Satellite or Game Manager to become properly licensed or qualified for such equipment or activities at the Premises, Satellite shall have the right to install and operate the requested legalized gambling activity using the services of, and with equipment purchased from, persons other than Game Manager, on terms substantially similar to those presented to Game Manager. With regard to any legalized gambling activity installed and operated by Game Manager on the Premises, other than Keno Operations, rental payments to Satellite shall be in an amount mutually agreed between Satellite and Game Manager. This section shall not apply to any activity allowed by the Nebraska Pickle Card Lottery Act as it presently exists.

13. Indemnification. Satellite for itself, its successors, and assigns, hereby agrees to indemnify and save harmless Game Manager, its successors and assigns from any and all costs, claims, losses, expenses (including reasonable attorneys' fees), damages and injuries of, from or related to loss, damage, injury or casualty to persons or property, including the Gambling Equipment, caused or occasioned by, or occurring as a result of activities or conditions at the Premises or actions of Satellite, its agents or employees, including without limitation Keno Operations, unless, and only to the extent, caused by the negligence of Game Manager (this section on indemnification shall survive termination of this Agreement).

14. Termination or Cessation. Game Manager may terminate this Agreement or may cease Keno Operations on the Premises without termination of this Agreement if: (a) Game Manager finds that Satellite, or any officer or owner of Satellite has violated any of the Regulatory Requirements or the Official Game Rules or breached this Agreement; (b) Satellite has had its right to continue to act as a Satellite disapproved, revoked or otherwise terminated by the City or the State; (c) any change in the Regulatory Requirements has made the continuation of Keno Operations on the Premises impractical or unprofitable; (d) Satellite has failed to maintain an average amount wagered on keno at the Premises of at least \$10,000 per week during any 12 week period; or (e) there has been any material adverse change in the condition of Satellite, the Premises or other factors which in Game Manager's opinion could have a negative impact on Keno Operations on the Premises or on the overall condition of Game Manager's Keno Operations. Except during any period when Game Manager is providing staffing and Keno Supplies, after a period of one year from the commencement of Keno Operations on the Premises pursuant to this Agreement, Satellite shall have the right to request cessation of such Keno Operations which request shall be honored by Game Manager if Satellite reasonably determines that Keno Operations on the Premises have been unprofitable for Satellite. Game Manager's obligations hereunder shall be suspended during any period of cessation of Keno Operations on the Premises. The parties acknowledge and understand that cessation of Keno Operations on the Premises shall not be deemed a termination of this Agreement, which shall remain in full force and effect for its entire term and any renewals. Resumption of Keno Operations on the Premises following any cessation shall be subject to the consent of Game Manager, the City and the State, any of which may freely withhold or condition their consent.

15. Remedies. In addition to any and all remedies at law or in equity which Game Manager may have, if Satellite breaches this Agreement: (a) Satellite shall indemnify and hold harmless Game Manager against any cost, expense (including reasonable attorneys' fees), obligation, or liability incurred by Game Manager in pursuit of, or in reliance upon, this Agreement; (b) Game Manager shall be entitled to liquidated damages in an amount equal to Game Manager's net income earned at the Premises from Keno Operations for a period of six months immediately prior to the date of breach by the Satellite (or a period equal to the remaining period of this Agreement and any renewals, if shorter) and computed according to generally accepted accounting principles, which formula the parties specifically acknowledge constitutes a reasonable assessment of the damages which would be suffered by Game Manager, which would otherwise be difficult or impossible to ascertain; and (c) in the event of a breach of the exclusivity provisions of this Agreement, Game Manager shall be entitled to an amount equal to Satellite's revenue derived from any legalized gambling activities installed or operated in violation of such provisions. Upon termination of this Agreement or cessation of Keno Operations on the Premises, Satellite agrees to promptly surrender all Gambling Equipment, Keno Supplies and other property of Game Manager, including, without limitation, any funds derived from Keno Operations, to Game Manager. Satellite consents to Game Manager's entry upon the Satellite's premises for removal of such equipment, supplies and property.

16. Miscellaneous. (a) Transfer. Satellite shall not, without Game Manager's prior written approval (which shall not be unreasonably withheld) and all necessary government approvals: (i) transfer all or any part of its interest in the Premises, the business conducted at the Premises, or any of its rights under this Agreement; (ii) allow any change in the ownership of Satellite; or (iii) move or expand the business conducted at the Premises to a different location. This Agreement shall be binding upon the parties and their successors and assigns and shall apply to any location to which the business of Satellite is moved or expanded. (b) Cooperation. Satellite agrees to cooperate with Game Manager regarding the activities contemplated by this Agreement and shall execute and deliver any such other instruments and documents and take such other actions as may be reasonably requested from time to time by Game Manager in order to carry out, evidence and confirm the intended purposes of this Agreement. (c) Notices. Any notice permitted or required to be given by the parties to this Agreement may be given by posting by prepaid registered mail addressed to Satellite or Game Manager at the address appearing in this Agreement or by personal delivery to either of them, and any such notice shall be considered given when received. (d) Governing Law and Interpretation. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska. In the event of a conflict between this Agreement and the Official Game Rules, the Official Game Rules shall govern. Headings are used throughout this Agreement solely for the convenience of the parties and shall be given no weight in the interpretation of this Agreement. (e) Severability. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions hereof are determined to be invalid, such invalidity shall not impair the operation of or affect the remainder of this Agreement. (f) Waiver. Game Manager's failure at any time to seek redress for violation of, or to enforce strict performance of, any provision of this Agreement shall in no way affect Game Manager's rights thereafter to enforce the same, nor shall Game Manager's waiver of any breach of any provision hereof be held to be a waiver of any other breach of this Agreement. Neither shall Game Manager's nonenforcement or waiver of any provision under any similar agreement or agreements be deemed a waiver of any provisions under this Agreement. (g) Disclaimer. Satellite acknowledges and agrees that it is not an employee of, or joint venturer or partner with, Game Manager. This Agreement does not give rise to any claim, loss, or damages against Game Manager in the event Game Manager is prevented from performing hereunder due to legal disabilities or technical problems which cannot be overcome at reasonable cost in the opinion of Game Manager. (h) Final Agreement. This Agreement sets forth and is intended by the parties to be an integration of all promises, agreements and understandings between the parties hereto with respect to the transactions contemplated herein, and there are no promises, agreements, or understandings, oral or written, express or implied, between them other than as set forth, incorporated or contemplated in this Agreement. (i) No Representations. Satellite acknowledges that no officer, employee or representative of Game Manager has made any representations to induce execution of this Agreement other than as set forth herein.

Muggsy's Hillside Lounge 8033 blondo St.

Part of Lt. 1 blk 18 ~~Maenner~~ Hillside  
Maenner - Westbrook  
S. 45 ft. N. 125 ft. E. 129.5 ft.  
N. 8 W. 315.49 E. 472.89 ft. NW 7.5 ft.,  
triangular  
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