United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 04 1991

Honorable Michael B. Jandreau
Chairman, Lower Brule Sioux
Tribal Council
Lower Brule, South Dakota 57548

Dear Chairman Jandreau:

We are in receipt of the tribal-state compact concluded between the Lower Brule Sioux Tribe and the State of South Dakota, accompanied by the requisite tribal resolution authorizing the compact process. Pursuant to my delegated authority and Section 11 of the Gaming Act, we approve the compact.

The compact shall take effect upon publication in the FEDERAL REGISTER of notice of our approval pursuant to Section 11(d)(3)(B).

Section 11(d), (25 U.S.C. 2710) of the Indian Gaming Regulatory Act of 1988, (P.L. 100-497; 25 U.S.C. 2710 et seq.), requires the Chairman of the National Indian Gaming Commission to approve tribal resolutions authorizing Class III gaming. However, the Commission does not yet have final regulations governing such approvals.

We wish the Tribe and the State success in this economic endeavor.

Sincerely,

/S/ David J. Matheson

Acting Assistant Secretary - Indian Affairs

Enclosure

Identical letter to: Honorable George Mickelson
Governor of South Dakota
700 Governor's Drive
Pierre, South Dakota 57501

cc: Aberdeen Area Director with copy of approved compact
Lower Brule Agency Superintendent with copy of approved compact
National Indian Gaming Commission with copy of approved compact
Penny Coleman, SOL

GAMING COMPACT

BETWEEN THE

LOWER BRULE SIOUX TRIBE

AND THE

STATE OF SOUTH DAKOTA

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THIS AGREEMENT is made and entered into as of the 8th day of July, 1991, by and between the Lower Brule Sioux Tribe (Tribe), and the State of South Dakota (State), and is effective on the date provided for in paragraph 10, below.

WHEREAS, the Tribe is a federally recognized Indian Tribe in central South Dakota; and

WHEREAS, the Constitution of the Tribe provides for adequate authority for negotiations and agreements with the State government; and

WHEREAS, the State has, through constitutional provisions, legislative acts, and regulations, authorized limited gaming activities to be conducted in Deadwood, South Dakota; and

WHEREAS, the Congress of the United States has enacted the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2426, 25 U.S.C. § 2701, et seq. (1988) which requires Indian tribes, to operate Class III gaming activities in "Indian country" pursuant to a Tribal-State Compact entered into for that purpose; and

WHEREAS, the Tribe intends to operate gaming activities at locations specifically identified within this Compact; and

WHEREAS, the Tribe and the State desire to negotiate a Tribal-State Compact to permit the operation of such gaming activities; and

NOW, THEREFORE, in consideration of the foregoing, the Tribe and the State hereby do promise, covenant, and agree as follows:

1. Declaration of Policy

In the spirit of cooperation, the Tribe and the State hereby set forth in joint effort to implement the terms of the Indian Gaming Regulatory Act. The State recognizes the positive economic benefits that gaming may provide to the Tribe. The Tribe and the State recognize the need to insure that the health, safety and welfare of the public and the integrity of the gaming industry in South Dakota is protected.

2. Purpose and Scope of Compact

This Compact and the Tribe's gaming regulations and ordinances shall govern the regulation and operation of gaming placed at the gaming establishments identified in paragraph 8.5. This purpose of this Compact is to provide the Tribe with the opportunity to operate gaming activities in a manner that will benefit the Tribe economically, that will insure fair operation of the games, and that will minimize the possibility of corruption.

3. Type of Gaming Permitted

The Tribe shall operate blackjack, poker and slot machines pursuant to the terms of this Compact and the Tribe's gaming regulations and ordinances. The Tribe shall be permitted to operate such other gaming as may be authorized by State law after the date of the signing of this compact, upon written amendment of this agreement.

For the purposes of this Compact, the terms "blackjack", "poker" and "slot machines" is defined in South Dakota Codified Laws 42-7B-4(3), (18), and (21), respectfully, except that the term "slot machines" does not include "video lottery machines" as defined by SDCL 42-7A-1(13).

4. Operation of Gaming

4.1 The Tribe shall operate its gaming activities pursuant to this Compact and the ordinances and regulations enacted by the Tribe which ordinances and regulations shall be at least as stringent as those adopted by the State of South Dakota in SDCL 42-7B and ARSD 20:18, et seq. All such ordinances and regulations shall be made available to the State.

4.2 The Tribe shall appoint a Tribal Gaming Commission which shall supervise the gaming activities, issue licenses as provided herein, inspect all premises where gaming is conducted and otherwise be responsible for enforcing the Tribe's Gaming Act and regulations.

The Lower Brule Sioux Tribal Gaming Commission shall have primary responsibility for the supervision and regulation of gaming conducted under the authority of this Compact. This shall include, but not be limited to, the licensing of gaming employees and the inspection and regulation of all gaming devices. Any discrepancies in the gaming operation and any violation of Tribal Gaming Commission regulations and rules or this Compact shall be immediately reported to the Tribal Gaming Commission and the South Dakota Commission on Gaming for appropriate action by the Tribal Gaming Commission pursuant to the terms of this Compact.

4.3 Disciplinary action for misconduct by licensees

Any suspected violation of any law or rule, adopted in this Compact, shall be reported to the Tribal Gaming Commission and the South Dakota Gaming Commission. If either the State or the Tribe concludes that a violation has occurred, the violation will be addressed by the Tribe within five (5) days. If, after consultation with the Tribal Gaming Commission and after efforts to resolve any difference of opinion reflecting an appropriate penalty for such violation have been made, the executive director of the South Dakota Gaming Commission concludes that the disciplinary action undertaken by the Tribal Gaming Commission is inadequate, a more severe penalty shall be imposed by the Tribal Gaming Commission as requested by the executive director of the South Dakota Gaming Commission.

5. Law Enforcement

5.1 Criminal proceedings against defendants who are members of the Lower Brule Sioux Tribe shall occur in tribal court. Criminal

proceedings against defendants who are non-members shall occur in South Dakota state court. Nothing contained in this provision shall deprive the federal courts of any jurisdiction which they might otherwise have.

5.2 The Tribe has adopted and agrees to adopt gaming ordinances and regulations to regulate gaming in the gaming establishments identified in paragraph 8.5 which ordinances and regulations are at least as stringent as those statutes and administrative rules adopted by the State of South Dakota to regulate gambling in Deadwood, South Dakota. The Tribe shall furnish the State with copies of such ordinances and regulations and shall advise the State of any amendment, revision or rescission of the gaming regulations. The Tribe agrees that in no event shall it amend, revise or rescind any gaming regulations which would result in the tribal regulations being less stringent than the statutes and rules adopted by the State of South Dakota.

6. Civil Jurisdiction (other than appeals from the commission)

Cases involving only tribal members shall be heard in tribal court. Cases involving one or more persons who are not tribal members shall be heard in state court, unless all parties stipulate the action shall be heard in tribal court. This provisions shall not be construed to be a waiver of the sovereign immunity of the Lower Brule Sioux Tribe except that by signing this Compact, the Lower Brule Sioux Tribe waives the sovereign immunity of the Tribe for civil actions for money damages up to the limit of any policy of insurance covering the subject matter of such civil action.

7. Licensing of Gaming Operators and Employees

All individuals who operate or manage a gaming operation under the authority of this Compact shall be

licensed by the Tribal Gaming Commission. All individuals employed to work directly with the gaming operation shall be licensed by the commission.

The Lower Brule Sioux Tribal Gaming Commission shall have primary responsibility for the licensing of individuals who operate or manage a gaming operation or who are employed in the tribal gaming operation. Any person seeking to be licensed hereunder shall first submit an application to the Tribal Commission which application shall include a written release by the applicant authorizing the State to conduct a background investigation of the applicant on behalf of the Tribal Gaming Commission. The State shall agree to conduct an investigation of the applicant on behalf of the Commission, upon receipt of the executed release and payment of the fee as provided in the South Dakota Commission on Gaming rules and regulations for such investigations. The State shall provide the Commission with a written report regarding each applicant within thirty (30) days of the receipt of the request and fee or as soon thereafter as practical.

The Commission shall not issue a license to any unsuitable applicant. A suitable applicant is one who is determined suitable by the Tribal Gaming Commission according to tribal ordinance and by the South Dakota Gaming Commission pursuant to SDCL ch. 42-7B and the South Dakota Gaming Commission rules and regulations.

Because each licensee must, in any case, be relicensed annually, the State agrees not to require additional relicensing of any person to operate, manage or be employed in any gaming operation conducted under the authority of this Compact, provided that the person has obtained the applicable license to operate, manage or be employed in any gaming operation in Deadwood, South Dakota or any gaming operation conducted under the authority of a compact between the State of South Dakota and any Indian tribe.

Should the Tribal Gaming Commission disagree with the State's determination on suitability, the Tribal Gaming Commission may invoke the following arbitration procedure:

The dispute shall be determined by a three-person binding Arbitration Board. One member of the Board shall be selected by the Tribal Gaming Commission, one member shall be selected by the State Gaming Commision, and one member shall be jointly selected by the State Gaming Commission and the Tribal Gaming Commission. Within thirty (30) days of the signing of this Agreement, the parties hereto shall appoint the members to the Arbitration Board for a three-year term. In the event of death, resignation, or expiration of a term, new members shall be appointed on the same basis as the original members. The Arbitration Board shall determine whether the applicant is deemed suitable, taking into consideration the ordinance and regulations adopted by the Tribal Gaming Commission and the statutes and rules adopted by the State of South Dakota. The Arbitration Board shall further decide the suitability issue in the best interest of the public. If permitted by law, either the State or the Tribe may appeal the arbitration decision to federal district court.

8. Regulatory Standards for Gaming

In recognition of the valid public policy interests of the State, which are similarly appreciated as desirable by the Tribe, the following regulatory standards are established for gaming operated and played within the gaming establishments identified in paragraph 8.5.

8.1 No Credit Extended

All gaming shall be conducted on a cash basis. Except as herein provided, no person shall be extended credit for gaming by the gaming facility operated within the Reservation, and no operation shall permit any person or organization to offer such credit for a fee. This restriction shall not apply to credits won by players who

activate play on gaming machines after inserting coins or currency into the game, and shall not restrict the right of the Tribe or any other person to offer check cashing or to install or accept bank card or credit card transactions in the same manner as would be normally permitted at any retail business within the State.

8.2 Minimum Age for Players

No person under the age of eighteen (18) shall be permitted on the premises where gaming is conducted pursuant to this Compact unless and until alcohol is permitted to be sold on the premises. In the case alcohol is permitted to be sold on the premises, no person under the age of twenty-one (21) shall be permitted on the premises where gaming is conducted pursuant to this Compact.

No person under the age of twenty-one (21) shall play or be allowed to play any slot machine authorized by this Compact. Any violation of this provision shall be enforceable pursuant to paragraph 5.1. Violations prosecutable in state court shall proceed under SDCL 42-7B-35. Violations prosecutable in tribal court shall proceed under applicable tribal law.

8.3 Technical Standards for Gaming Devices

All gaming machines operated and played within the establishments identified in paragraph 8.5 pursuant to this Compact shall meet or exceed the hardware and software specifications set forth by the South Dakota Gaming Commission and SDCL 42-7B-43 prior to play. Gaming machine prototypes will be tested and approved prior to play by the State according to State procedures.

8.4 Approval of Gaming Devices

No gaming device shall be operated in the gaming operations identified in paragraph 8.5 unless:

1) The gaming device is purchased, leased or acquired from a manufacturer or distributor licensed to sell, lease or distribute gaming devices by the State, pursuant to SDCL Ch. 42-7B and ARSD 20:18, and

2) The gaming device or a prototype thereof, as been tested, approved and certified by a gaming test laboratory as meeting the requirements and standards of this Compact. For purposes of this Compact, a gaming test laboratory shall be a laboratory agreed to and designated in writing by the South Dakota Gaming Commission and the Tribal Gaming Commission.

8.5 Number of Gaming Devices

The Tribe shall be authorized to operate a cumulative total of one hundred eighty (180) gaming devices in the tribal gaming establishment to be located on the following described trust land of the Tribe located within the boundaries of the Lower Brule Sioux Tribe Reservation, to-wit:

> The Northwest Quarter (NW¼) of Section Sixteen (16), Township One Hundred Six (106) North, Range Seventy-two (72), West of the 5th P.M., Lyman County, South Dakota, adjacent to and on the South side of South Dakota Highway 47.

It is acknowledged between the parties hereto that the gaming device limitation of one hundred eighty (180) constitutes two times the number of gaming devices permitted per individual in State law. Any increase or

decrease of this gaming device limitation contained in State law will automatically result in a proportional increase or decrease in the gaming device limitation of one hundred eighty (180) set forth in this Compact.

It is further understood and agreed that a cumulative total of seventy (70) additional gaming devices shall be authorized in the tribal gaming establishments provided the following conditions are met:

1) At least nine (9) months have elapsed since the gaming authorized by this Compact has commenced; and

2) Within the last sixty (60) consecutive business days from the date of determining whether these conditions have been met, an average of Sixty-three Dollars and Seventy-five Cents ($63.75) per gaming device per day has been realized on all one hundred eighty (180) gaming devices.

The Tribe shall be entitled to have up to five (5) gaming devices to be used to replace gaming devices which are out of service as a result of mechanical problems. These additional gaming devices are only to be used in such an event and shall not be operated in addition to the maximum number of gaming devices authorized by this provision. Further, these additional gaming devices shall meet the requirements of paragraph 8.3 of this Compact.

8.6 <u>Inspection Procedure</u>

The South Dakota Gaming Commission agents shall be authorized to inspect (not to include audits) the gaming devices operated in the tribal gaming establishments in

accordance with the laws and rules adopted in this Compact.

Any periodic inspection of gaming devices shall only occur if the state inspector is accompanied by a member of the tribal gaming commission, or a designee. Any such testing shall be carried out in a manner and at a time which will cause minimal disruption of the gaming operation. The Tribal Gaming Commission and the South Dakota Gaming Commission shall be notified of all such testing and the results of such testing.

In addition to the gaming device inspections authorized above, any inspections of other gaming devices and the tribal gaming establishment by State inspectors shall be limited to a maximum of 100 hours per year plus travel. These inspections are specifically authorized to be unannounced and may be in the nature of an undercover inspection. The Tribal Gaming Commission and the South Dakota Gaming Commission shall be notified of the results of such inspections. Any violations detected pursuant to this paragraph shall be enforced consistent with theprocedure contained in the above section entitled Disciplinary Action for Misconduct by Licensees.

8.7 Remedies for Non-Complying Gaming Devices

Upon inspection pursuant to paragraph 8.6, the State may designate gaming devices which it believes do not comply with tribal gaming laws. The machines shall immediately be removed temporarily from play or sealed. Within five (5) days of receipt of such written designation, the Tribe shall either:

1) accept the finding of non-compliance, remove such gaming devices from play, and take appropriate action to ensure that

the Tribe, manufacturer, distributor or other responsible party cures the problem; or

2) contest the finding of noncompliance before the Arbitration Board as provided in paragraph 7 above. In the event the Arbitration Board finds that the gaming device is noncomplying, such gaming device shall be removed from play. Gaming devices removed from play pursuant to this section may be returned to play only after such gaming device comes into compliance with the provisions of 8.4 herein.

Nothing in this section shall limit the rights or remedies available to the parties under any other provision of this Compact or under the IGRA.

8.8 Limit on Wagers

The amount of a bet in any gaming device may not be more than Five Dollars ($5.00) on the initial bet or subsequent bet subject to rules promulgated by the Tribal Gaming Commission. Gaming devices operated in the establishments identified in 8.5 may in the future offer such higher bet limits which are consistent with South Dakota statute and regulation and which are authorized by the Tribal Gaming Commission.

9. Accounting and Audit Procedures

The Tribe shall adopt accounting standards which meet or exceed those standards established in Chapter 20:18:22 of the South Dakota Rules and Regulations for Limited Gaming.

The Tribe shall conduct independent audits of the gaming operation and provide copies to the State. At the request of the Tribe and at the Tribe's expense, the State may in its discretion audit the tribal operation.

The Tribe shall engage an independent certified public accountant to audit the books and records of all gaming operations conducted pursuant to this Compact and shall make copies of the audit and all current internal accounting and audit procedures available to the State upon written request. The Tribe shall permit the State to consult with the auditors before or after any audits or periodic checks on procedures which may be conducted by the auditors, and shall allow the State to submit written or oral comments or suggestions for improvements regarding the accounting and audit procedures. Within thirty (30) days of receipt of any written or oral comments, the Tribe shall: (a) accept the comments and modify the procedures accordingly; or (b) respond to the comments with counterproposals or amendments.

10. Duration

This Compact shall become effective upon execution by the Governor of the State and the Chairman of the Tribe, approval by the Secretary of the Interior and publication of that approval in the Federal Register pursuant to the IGRA.

The terms of this Compact shall be subject to review at two-year intervals dating from the date of execution of this Compact. Prior to the expiration of the two-year period, each party to the Compact may give notice to the other party of provisions it believes requires review or amendment. Such notice shall be in writing and shall be sent by certified mail to the Governor of the State or Chairman of the Tribe at the appropriate governmental office.

Upon receipt of such notice, the parties shall engage in good faith efforts to resolve the issues identified in the notice. The State and the Tribe may agree to extend the Compact for up to one hundred eighty (180) days without prejudice to the rights of either party.

In the event the parties are unable to resolve the issues identified in the notice upon expiration of the Compact or any extension thereof, this Compact shall terminate and the parties shall be subject to the procedures provided for in the IGRA.

Either party may terminate this Compact upon a substantial breach by the other party regardless of any other provision of this Compact. Upon identification of what either party believes to be a substantial breach of the terms of this Compact, such party shall notify the other party in writing, via certified mail, return receipt requested, as to the nature of the substantial breach. The complaining party may terminate this Compact in writing after at least thirty (30) days have elapsed from receipt of the notice of noncompliance by the other party, unless the breach has been remedied and the cause of the breach has been dealt with in a manner acceptable to the complaining party or unless the responding party has presented a plan to deal with the breach which is acceptable to the complaining party.

It is the intent of the parties, at the expiration of this agreement, to extend this agreement in writing for the same duration, or other negotiated duration, in the absence of a notice to the other party as set forth in this paragraph 10.

Notwithstanding any other provision of this Compact including the paragraph immediately above, it is agreed between the parties that on the day that it becomes illegal as a matter of South Dakota law to operate gaming devices within the State of South Dakota, this Compact shall expire and be of no further force.

11. General Provisions

The following conditions shall be applicable throughout the term of this Agreement:

11.1 The parties hereto agree that in the event that a dispute arises as to an interpretation of the provisions of this Compact, in any of the rights, responsibilities or obligations attaching to the parties hereto, either party may commence an action in federal district court for the purpose of resolving such dispute.

11.2 The parties hereto agree that the Tribe will be responsible for the costs incurred by the

State and associated with the State's performance of its responsibilities as provided for herein. The intent of this Compact is to provide for the reimbursement of the costs and expenses of the State in performing its responsibilities as provided herein. The parties agree that this provision does not require payment by the Tribe of costs incurred by the State of South Dakota for law enforcement officers of the State except that such payment is required with regard to costs incurred for law enforcement officers of the State who are agents and employees of the South Dakota Commission of Gaming. Attached hereto is a schedule of costs marked Appendix A which is incorporated herein by reference as though fully set forth.

11.3 Unless otherwise indicated differently, all notices, payments, requests, reports, information or demand which any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by telegram or first class certified or registered United States Mail, postage prepaid, return receipt requested, and sent to the other party at its address appearing below or such other address as any party shall hereinafter inform the other party hereto by written notice given as aforesaid:

Notice to the Tribe shall be sent to:

Chairman's office
Lower Brule Sioux Tribe
P.O. Box 187
Lower Brule, South Dakota 57548

Notice to the State shall be sent to:

Governor's Office
500 East Capitol
Pierre, South Dakota 57501

All notices, payments, requests, reports, information or demand so given shall be deemed effective upon receipt or if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

11.4 This agreement is the entire Agreement between the parties and supersedes all prior agreements whether written or oral, with respect to the subject matter hereof. Neither this Agreement nor any provision herein may be changed, waived, discharged, or terminated orally, but only by an instrument in writing.

11.5 This Agreement may be executed by the parties hereto in any number of separate counterparts with the same effect as if the signatures hereto and hereby were upon the same instrument. All such counterparts shall together constitute but one and the same documents.

11.6 The State and/or the Tribe may not assign any of its respective right, title, or interest in this Agreement, nor may the State and/or the Tribe delegate any of its respective obligations and duties under this Agreement, except as expressly provided herein. Any attempted assignment or delegation in contravention of the foregoing shall be null and void.

11.7 Nothing in this Compact shall be construed to limit the rights or remedies available to the parties hereto under the Indian Gaming Regulatory Act except that the Tribe agrees not to bring suit under the Federal Indian Gaming Act during the life of this Compact for failure of the State to compact for gaming other than that specified in this Compact.

11.8 This Compact shall not be construed to waive or diminish the sovereignty of the Lower Brule Sioux Tribe or the State of South Dakota, except as specifically provided by the terms of the Compact set forth above.

11.9 This agreement may be amended or modified in writing at any time subject to any federal approval of such amendment or modification required by the Federal Indian Gaming Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LOWER BRULE SIOUX TRIBE

Date: July 8, 1991 By _____
Chairman

STATE OF SOUTH DAKOTA

Date: July 9, 1991 By _____
Governor

BUREAU OF INDIAN AFFAIRS

Date: 9/4/91 _____
Acting Assistant Secretary - Indian Affairs

APPENDIX A

The hourly rate to be paid to the State for its services pursuant to the attached Compact is Thirty Dollars ($30.00). Travel, per diem, and other expenses shall be paid to the State at the rates set out in South Dakota Administrative Rules, ARSD 05:01:02. Should the rates set out in the Administrative Rules be changed during the time of this Compact, the rates to be paid to the State shall likewise be altered.