NATIONAL
INDIAN
GAMING
COMMISSION

FILE COPY

AUG 25 1995

Michael B. Jandreau, Chairman
Lower Brule Sioux Tribe
Lower Brule, SD 57548

Dear Chairman Jandreau:

This letter responds to your request to review and approve the tribal gaming ordinance, Ordinance No. LB-95-E, adopted on June 14, 1995, by the Lower Brule Sioux Tribe (Tribe). This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Also, such approval does not constitute approval of specific games. It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

Thank you for submitting the ordinance of the Lower Brule Sioux Tribe for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,

Harold A. Monteau
Chairman

cc: Julian Brown, Esq.
General Legal Counsel
Lower Brule Sioux Tribe
P.O. Box 340
Pierre, South Dakota 57501

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ORDINANCE NO. LB-95-E
LOWER BRULE SIOUX TRIBAL COUNCIL

REVISED TRIBAL OMNIBUS CLASS II AND CLASS III GAMING ORDINANCE

The Lower Brule Sioux Tribal Council does hereby ordain:

CHAPTER OF THE LOWER BRULE SIOUX TRIBAL LAW AND ORDER CODE

Section 1. Purpose.

The Lower Brule Sioux Tribal Council (hereinafter "Tribal Council" or "Council") of the Lower Brule Sioux Tribe (hereinafter "Tribe"), empowered by the Tribe's Constitution to enact ordinances, hereby enacts this ordinance in order to set the terms for class II gaming and class III gaming operations on Tribal lands.

Section 2. GAMING AUTHORIZED.

Class II gaming and class III gaming as defined in the Indian Gaming Regulatory Act ("IGRA"), Pub. L. 100-497, 25 U.S.C. sec. 2703 (7) and sec. 2703 (8) (as amended, if applicable), and in the regulations promulgated by the National Indian Gaming Commission, 25 C.F.R. Sec. 502.3 and sec. 502.4 (as amended, if applicable), is hereby authorized.

SECTION 3. OWNERSHIP OF GAMING.

The Tribe shall have the sole propriety interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

SECTION 4. DESIGNATED AGENT FOR SERVICE OF PROCESS.

The Tribe herewith provides written notification to the National Indian Gaming Commission, pursuant to applicable laws and regulations, including but not limited to 25 C.F.R. sec. 519.1 and sec. 522.2 (g) (as amended, if applicable), that the Tribe designates as its agent, with address, for service of any official determination, order, notice of violation, or other document or item:

Tribal Chairperson
Lower Brule Sioux Tribal Office
Lower Brule Sioux Tribe
P.O. Box 187
Lower Brule, South Dakota 57548-0187

Section 5. DISPUTE RESOLUTION BETWEEN THE GAMING PUBLIC AND THE TRIBE OR THE MANAGEMENT CONTRACTOR (IF ANY).

5.1. Policy to Attempt to Satisfy Customer.

As a matter of policy of the Lower Brule Sioux Tribe, if any dispute arises between a customer in the gaming public and the Tribe, or if any dispute arises between a customer in the gaming public and the casino's management contractor (if any), each person related to the dispute who is associated with the Tribe or the casino shall use his or her best efforts to amicably and immediately resolve the dispute to the satisfaction of the customer, within the legal and commercial

constraints imposed upon each Tribal or casino person related to the dispute and within the legal and commercial constraints imposed upon the Tribal gaming enterprise.

5.2. Simplified Final Dispute Resolution.

If the dispute cannot be amicably and immediately resolved to the satisfaction of the customer, the Tribal or casino person most directly related to the dispute (a) shall refer the dispute to his or her immediate supervisor and (b) shall assure that the customer is politely, conveniently, and professionally directed to that immediate supervisor for resolution of the dispute. After consultation with the customer and with any other person deemed appropriate by that immediate supervisor, the decision of that immediate supervisor shall be final in resolving the dispute.

5.3. Unusual Chain of Command.

If the dispute does not lend itself to resolution by the immediate supervisor of the Tribal or casino person most directly related to the dispute, or if the General Manager of the casino is a party to the dispute, then the final decision shall be rendered by the General Manager of the casino.

5.4. Tribal Gaming Commission by Its Rule-Making Authority May Amend This Dispute Resolution Procedure, If Such Amendment Is Displayed at the Casino.

This ordinance by its terms expressly authorizes the Tribal Gaming Commission to amend this procedure by rule or regulation to resolve a dispute arising between a customer in the gaming public and the Tribe, and to resolve a dispute arising between a customer in the gaming public and the casino's management contractor (if any), but only if that amendment by rule or regulation is displayed to the public at the casino, pursuant to the Tribal Gaming Commission's rule-making authority (including but not limited to that rule-making authority conferred by Regulation 1.3 (Powers of the Gaming Commission) and Chapter 6 (Promulgation of Rules) of the Lower Brule Sioux Tribe Gaming Regulations (as amended, if applicable)). Nothing contained herein shall in any way be construed as a legislative intent of the Lower Brule Sioux Tribal Council to detract from or otherwise influence any other rule-making authority of the Tribal Gaming Commission or of the Tribal Council.

SECTION 6. USE OF GAMING REVENUE.

6.1. PURPOSES.

Net revenues from Class II gaming and class III gaming shall be used only for the for the following purposes: to fund Tribal government operations and programs; to provide for the general welfare of the Tribe and its members; to promote Tribal economic development; to donate to charitable organizations; and to help fund operations of local government agencies.

6.2. PER CAPITA PAYMENTS PLAN.

If the Tribe elects to make per capita payments to Tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. sec. 2710 (b) (3) (as amended, if applicable).

SECTION 7. AUDIT.

7.1. ANNUAL AUDIT.

The Tribe shall cause to be conducted annually an independent audit of gaming operation and shall submit the resulting audit reports to the National Indian Gaming Commission.

7.2. SCOPE OF AUDIT.

All gaming related contacts that result in the purchase of supplies, services, or concessions in excess of $25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection 7.1 above.

SECTION 8. PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH AND SAFETY.

Class II gaming and class III gaming facilities shall be constructed, maintained, and operated in a manner that adequately protects the environment and public health and safety.

SECTION 9. LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS.

The Tribe shall have ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any class II gaming and class III gaming enterprise operated on Indian Lands:

9.1. DEFINITIONS.
For the purposes of this section, the following definitions apply:

9.1.1. "Key employee" means

9.1.1.1. A person who performs one or more of the following functions:

9.1.1.1.1. Bingo caller;

9.1.1.1.2. Counting room supervisor;

9.1.1.1.3. Chief of security;

9.1.1.1.4. Custodian of gaming supplies or cash;

9.1.1.1.5. Floor manager;

9.1.1.1.6. Pit boss;

9.1.1.1.7. Dealer;

9.1.1.1.8. Croupier;

9.1.1.1.9. Approver of credit; or

9.1.1.1.10. Custodian of gambling devices including persons with access to cash and accounting records within such devices;

9.1.1.2. If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or

9.1.1.3. If not otherwise included, the four most highly compensated persons in the gaming operation.

9.1.2. "Primary management official" means

9.1.2.1. The person having management responsibility for a management contract;

9.1.2.2. Any person who has authority:

9.1.2.2.1. To hire and fire employees; or

9.1.2.2.2. To set up working policy for the gaming operation; or

9.1.2.3. The chief financial officer or other person who has financial management responsibility.

9.1.3. "Tribal Gaming Commission" means the Lower Brule Sioux Tribal Gaming Commission, also sometimes described as the Lower Brule Sioux Tribe Commission on Gaming.

9.1.4. "State Gaming Commission" means the South Dakota Gaming Commission, also sometimes described as the South Dakota Commission on Gaming.

9.1.5. "Tribal Gaming Commission or its designee" means the Lower Brule Sioux Tribal Gaming Commission or the entity designated to act for and on behalf of said Tribal Gaming Commission in the Gaming Compact between the Lower Brule Sioux Tribe and the State of South Dakota (as amended, if applicable). The Tribal Gaming Commission's "designee" includes, but is not limited to, the State Gaming Commission, particularly as contemplated in said Gaming Compact.

9.1.5.1. The State Gaming Commission's description of procedures for conducting background investigations is set forth in detail in the statutes and regulations of the State of South Dakota, including but not limited to Chapter 42-7B (Limited Card Games and Slot Machines--Gaming Commission) of the South Dakota Codified Laws (SDCL Ch. 47-7B) and Chapters 20:18:06 (Applications and Fees), 20:18:07 (Application Approval), 20:18:08 (Enforcement), 20:18:09 (Grounds for Disciplinary Action), 20:18:10 (Disciplinary Proceedings), 20:18:11 (Contested Cases), 20:18;12 (Summary Suspension Procedure), 20:18:21 (Operation of Gaming Establishments), 20:18:22 (Accounting Regulations), 20:18:23 (Suitability and Unsuitability Procedure), 20:18:24 (Exclusion List), and 20:18:27 (Gaming Compact with Recognized Indian Tribes) of the Administrative Rules of South Dakota (ARSD Chs. 20:18:06, 20:18;07, 20:18:08, 20:18:09, 20:18:10, 20:18:11, 20:18:12, 20:18:21, 20:18:22, 20:18:23, 20:18:24, and 20:18:27).

9.1.5.2. By this definition in this Gaming Ordinance, the Federal regulatory requirements of

> "{a} description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials"

(25 C.F.R. sec. 522.2 (b) (as amended, if applicable)) and

> "{i} dentification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation"

(25 C.F.R. sec. 522.2(h) (as amended, if applicable)) expressly shall be included within the background investigations conducted for the Tribal Gaming Commission by the State Gaming Commission under the within Gaming Compact. As a matter of on-going practice and procedure under said Gaming Compact, the Lower Brule Sioux Tribe and its Tribal Gaming Commission expressly confirm that the within "criminal history check" has included and shall continue to "include a check of criminal history records information maintained by the Federal Bureau of Investigation" (id.).

9.2. PRIVACY NOTICE.

9.2.1. The following notice regarding privacy shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

> "In compliance with the Privacy Act of 1974 (as amended, if applicable), the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. sec. 2701 et seq. (as amended, if applicable). The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the National Indian gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation revocation of a gaming license, or investigations of investigations of activities while associated with a a Tribe or a gaming operation. Failure to consent to the disclosures indicted in this notice will result in a Tribe's being unable to hire you in a primary management official or key employee position.

"The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application."

9.2.2. Existing key employees and primary management officials shall be notified in writing that they shall either:

9.2.2.1. Complete a new application form that contains a Privacy Act notice; or

9.2.2.2. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

9.3, Notice regarding Any False Statement.

9.31. The following notice regarding any false statement shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

" 'A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment.' (Title 18 U.S. Code sec. 1001 (as amended, if applicable).)"

9.3.2. The Tribe shall notify in writing existing key employees and primary management officials that they shall either:

9.3.2.1. Complete a new application form that contains a notice regarding false statements; or

9.3.2.2. Sign a statement that contains the notice regarding false statements.

9.4 Background Investigations.

The Tribe, through the Tribal Gaming Commission or its designee, shall perform a background investigation for each primary management official and for each key employee of any Tribal gaming operation.

9.4.1. The Tribe shall request from each primary management official and from each key employee all of the following information:

9.4.1.1. Full name, other names used (oral or written), social security number (s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

9.4.1.2. Currently and for the previous five years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;

9.4.1.3. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under the immediately preceding subsubsubsection 9.4.1.2.;

9.4.1.4. Current business and residence telephone numbers;

9.4.1.5. A description of any existing and previous business relationships with Indian Tribes, including ownership interests in those businesses;

9.4.1.6. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

9.4.1.7. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

9.4.1.8. For each felony for which there is an ongoing prosection or a conviction, the criminal charge, the name and address of the court involved, and the date and disposition (if any);

9.4.1.9. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten years of date of the application, the criminal charge, the name and address of the court involved, and the date and disposition (if any);

9.4.1.10. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten years of the date of the application and is not otherwise listed pursuant to the immediately preceding two subsubsubsections 9.4.1.8. and 9.4.1.9., the criminal charge, the name and address of the court involved, and the date and disposition (if any);

9.4.1.11. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

9.4.1.12. A current photograph;

9.4.1.13. Any other information the Tribe deems relevant; and

9.4.1.14. Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. sec. 522.2 (h) (as amended, in applicable). As described in the definition in subsubparagraph 9.1.5. defining that the "Tribal Gaming Commission or its designee" performs the within background investigations, the Federal regulatory requirements of 25 C.F.R. sec. 522.2 (b) and (h) (as amended, if applicable) expressly shall be included within the background investigations conducted for the Tribal Gaming Commission by the State Gaming Commission under the within Gaming Compact (as amended, if applicable). As a matter of on-going practice and procedure under said Gaming Compact, the Lower Brule Sioux Tribe and its Tribal Gaming Commission expressly confirm that the within "criminal history check" has included and shall continue to "include a check of criminal history records information maintained by the Federal Bureau of Investigation" (id.).

9.4.2. The Tribe, through the Tribal Gaming Commission, or its designee, shall conduct or cause to be conducted an investigation sufficient to make an eligibility and suitability determination under subsection 9.5 below. In conducting a background investigation, the Tribe, through the Lower Brule Sioux Tribal Gaming Commission or its designee, shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

9.5. Eligibility and Suitability Determination.

The Tribe, through the Tribal Gaming Commission itself, shall review a person's prior activities, criminal record (if any), and reputation, habits, and associations to make a finding concerning the eligibility and suitability of a key employee or a primary management official for employment in a gaming operation. If the Tribal Gaming Commission, in applying the standards adopted in this or any other Tribal ordinance, determines that employment of the person poses a threat to the public interest of to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices or methods or activities in the conduct of gaming, the Tribal gaming operation, and the Tribal gaming operation's management contractor (if any), shall not employ that person in a key employee or primary management official position.

9.6. Report to the National Indian Gaming Commission.

9.6.1. When the Tribe employs a primary management official or key employee, the Tribe, through the Tribal Gaming Commission or its designee, shall forward to the National Indian Gaming Commission a completed application containing the information listed in the preceding subsection 9.4 on Background Investigations.

9.6.2. Before issuing a license to a primary management official or to a key employee, the Tribe, through the Tribal Gaming Commission or its designee, shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

9.6.2.1. Steps taken in conducting the background investigation;

9.6.2.2. Results obtained;

9.6.2.3. Conclusions reached; and

9.6.2.4. The bases for those conclusions.

9.6.3. When the Tribe forwards its report to the National Indian Gaming Commission, the Tribe shall include a copy of the eligibility and suitability determination made under the preceding subsection 9.5.

9.6.4. If the Tribe does not license an applicant --

9.6.4.1. The Tribe, through the Tribal Gaming Commission or its designee, shall notify the National Indian Gaming Commission; and

9.6.4.2. The Tribe, through the Tribal Gaming Commission or its designee, may forward copies of its eligibility and suitability determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

9.6.5. With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three years from the date of termination of employment.

9.7. Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission.

9.7.1. When key employee or a primary management official begins work at a gaming operation authorized by this ordinance, the Tribe, through the Tribal Gaming Commission or its designee, shall:

9.7.1.1. Forward to the National Indian Gaming Commission the completed application for employment that contains the notices and information listed in subsection 9.2 (Privacy Notice), 9.3 (Notice regarding Any False Statement), and 9.4 (Background Investigations); and

9.7.1.2. Conduct the background investigation under subsection 9.4 to determine the eligibility of the key employee or the primary management official for continued employment in the gaming operation.

9.7.2. Upon completion of a background investigation and a determination of eligibility for employment in a Tribal gaming operation, the Tribe, through the Tribal Gaming Commission to its designee, shall forward the investigative report referred to in the preceding subsubsection 9.6.2. to the National Indian Gaming Commission within sixty days after an employee begins work or within sixty days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission under 25 C.F.R. Part 523 (as amended, if applicable). The counting of the sixty days shall begin after the latter of the two dates that both the employee begins work and the ordinance is approved by the Chairman of the National Indian Gaming Commission.

9.7.3. The gaming operation shall not employ as a key employee or as a primary management official a person who does not have a license within ninety days after the Tribe forwards to the National Indian Gaming Commission the investigative report referred to in the preceding subsubsection 9.6.2.

9.7.4. During the thirty-day period beginning when the National Indian Gaming Commission receives a report submitted under the preceding subsubsection 9.7.2., the Tribe acknowledges the Chairman of the National Indian Gaming Commission may request additional information from the Tribe concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty-day period until the Chairman receives the additional information.

9.8. Granting a Gaming License.

9.8.1. If, within the thirty-day period after the National Indian Gaming Commission receives the report described in the immediately preceding subsubsection 9.7.4., the National Indian Gaming Commission notifies the Tribe that it has no objection to the insurance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant.

9.8.2. If, within the thirty-day period described in the preceding subsubsection 9.7.4., the National Indian Gaming Commission provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe shall reconsider the application, taking into account the objections itemized by the Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

9.9 License Suspension.

9.9.1. If, after the issuance of a gaming license, the Tribe receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection 9.5 above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

9.9.2. The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of the license.

9.9.3. After the revocation hearing, the Tribe shall decide to revoke or to reinstate the gaming license. The Tribe shall notify the National Indian Gaming Commission of the Tribe's decision.

SECTION 10. LICENSE LOCATIONS.

The Tribe shall issue a separate license to each place, facility, or location on Indian lands where class II gaming and class III gaming is conducted under this ordinance.

SECTION 11. REPEAL

To the extent that they are inconsistent with this ordinance, all prior gaming ordinances are hereby repealed.

CERTIFICATION

The foregoing Ordinance was duly adopted by the Lower Brule Sioux Tribal Council, assembled in Regular Session, with quorum present, on the 14th day of June, 1995, by affirmative vote of five members for, none opposing, none absent, and none not voting.

MICHAEL B. JANDREAU, CHAIRMAN
LOWER BRULE SIOUX TRIBAL COUNCIL

ATTEST:

SHIRLEY CRANE, SECRETARY/TREASURER
LOWER BRULE SIOUX TRIBAL COUNCIL