



January 13, 2017

Anthony Reider, President
Flandreau Santee Sioux Tribe
P.O. Box 283
Flandreau, SD 57028

Re: Flandreau Santee Sioux Tribe amended Class II Gaming Ordinance

Dear President Reider:

This letter responds to your request, received October 24, 2016, for the National Indian Gaming Commission Chairman to review and approve the Flandreau Santee Sioux Tribe's Title 18, Class II Gaming Ordinance, as amended pursuant to Tribal Governing Board Resolution Nos. 16-93, dated October 11, 2016, and 16-113, dated December 20, 2016.

The amendments include an express authorization of the use of agents to conduct bingo and updated employee licensing provisions reflecting the most recent amendments to NIGC regulations. Thank you for bringing the amended ordinance to our attention. The Class II Gaming Ordinance is approved to the extent it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC regulations.

I must clarify, however, that I approve this ordinance, with the understanding that it extends only to agency relationships that are formed on the Tribe's Indian lands.¹ In a 1995 Multimedia opinion, NIGC Chairman Montie Deer approved a method of playing bingo with the use of agents.² Importantly, however, the Multimedia method required the principal to appear at the casino on Indian lands to specify the games to be played and the amount to be wagered.³ NIGC continues to view the act of wagering, that is, the principal's act of determining the amount to be wagered, the games to be played, and the number of cards to be played per game, is a gaming activity that must occur on Indian lands to be authorized by the IGRA.

¹ Flandreau Santee Sioux Title 18, Class II Gaming Ordinance § IV.

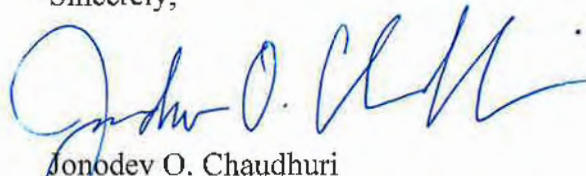
² Letter to Larry Montgomery, President and COO, Multimedia Games from Harold Monteau, Chairman, NIGC, July 26, 1995.

³ *Id.*

Additionally, the United States District Court for the Southern District of California in *State of California v. Iipay Nation of Santa Ysabel*⁴ recently similarly ruled that wagers must occur on Indian lands. The court in *Iipay* considered a game that allowed patrons physically located off tribal lands to participate in gaming via Internet connected remote devices and computer servers on the Tribe's Indian land. The game had a proxy system on its Indian lands comprised of a fully electronic system which received and processed the patron's requests to wager and personnel titled "Patron's Legally Designated Agent" and "Proxy Monitors."⁵ The court rejected *Iipay*'s contentions that because of the agent's location on Indian lands, gaming activity fell within the scope of IGRA, stating, "the gaming activity is not the software-generated algorithms or the passive observation of the proxy monitors. Rather, it is the patrons' act of selecting the denomination to be wagered, the number of games to be played, and the number of cards to play per game."⁶ Further, the court concluded, "[I]t is the patrons' activities off Indian lands that serve as the appropriate measure for determining the situs of gaming activity for purposes of IGRA and UIGEA. To entertain the fiction of proxy play would permit Tribal Defendants to readily thwart the limits Congress imposed by statute."⁷

Based on this holding, as well as past NIGC determinations, I felt it important to clarify that the ordinance is approved with the understanding that all gaming activity will occur on Indian lands as defined by IGRA. Further, it is my hope that bringing this issue to your attention will help you assess future actions. As you may know, our agency is focused on addressing anything that may amount to gamesmanship on the backs of tribes. If you have any questions, please feel free to contact Staff Attorney Jennifer Lawson at (202) 632-7003.

Sincerely,



Jonodev O. Chaudhuri
Chairman

cc: Patrick Bergin, Fredericks Peebles & Morgan

⁴ *State of California v. Iipay Nation of Santa Ysabel*, case no. 3:14-cv-02724 (S.D. Cal.) (Dec. 12, 2016) (Consolidating *United States v. Iipay Nation of Santa Ysabel*, case no. 3:14-cv-02855).

⁵ *Id.* at 5.

⁶ *Id.* at 23.

⁷ *Id.* at 30.



Flandreau Santee Sioux Tribe

P.O. Box 283 Flandreau, SD 57028

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RESOLUTION NO. 16-93

WHEREAS, the Flandreau Santee Sioux Tribe (the "Tribe") is a federally recognized Indian Tribe organized pursuant to the Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, further amended November 16, 1967, further amended November 14, 1984, and finally amended May 17, 1997; and

WHEREAS, Article III of the Tribe's Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee; and

WHEREAS, Article VIII Section 1(f) of the Constitution provides that the Executive Committee may promulgate and enforce ordinances governing and regulating the conduct of persons on the reservation; and

WHEREAS, Article VIII Section 1(h) of the Constitution provides that the Executive Committee has the authority to adopt resolutions consistent with the Constitution and By-Laws regulating the procedures of the Executive Committee and other tribal agencies, officials, or organizations of the Flandreau Santee Sioux Tribe; and

WHEREAS, pursuant to these powers the Executive Committee enacted Title 18, Class II Gaming Ordinance on August 12, 1994 by Resolution 94-46; and

WHEREAS, the Executive Committee submitted Resolution 94-46 and Title 18, Class II Gaming Ordinance to the Chairman of the National Indian Gaming Commission for his approval in accordance with the Indian Gaming Regulatory Act of 1988; and

WHEREAS, on August 17, 1994, the Chairman of the National Indian Gaming Commission approved Title 18, Class II Gaming Ordinance was approved; and

WHEREAS, on July 21, 2016, the Executive Committee Amended Title 18 in Section II, and VII(A) to be read as follows:

In Section II, Gaming Authorized, by adding the following paragraph –

Any person who plays the game of chance commonly known as bingo, as defined by the Indian Gaming Regulatory Act of 1988 at

Section 2703(7)(A)(i) of Title 25 of the United States Code, may appoint an agent to play the game on his or her behalf so long as the agent plays the game at a gaming facility located on tribal lands. For purposes of this Title, all gaming activity performed by an agent on behalf of a principal is deemed to occur at the agent's location on tribal lands with no regard to the location of the principal.

In Section VII (A), Definitions, by renumbering the section so that the definitions appear in alphabetical order and by inserting the following two definitions –

Agent means a person who is authorized to act for or in place of another.

Principal means a person who authorizes another to act on his or her behalf as an agent.

and;

WHEREAS, the updated resolution was submitted to the National Indian Gaming Commission, and after its preliminary review, the NIGC has requested several changes be made to the Ordinance to be consistent with federal regulation; and

NOW THEREFORE BE IT RESOLVED that the Executive Committee hereby amends Title 18 entitled the "Class II Gaming Ordinance" as set forth in the attached Ordinance, and officially withdraws its July 26, 2016 submission to the NIGC; and

BE IT FURTHER RESOLVED that Executive Committee directs its attorneys to submit the recently Amended Class II Gaming Ordinance to the Chairman of the National Indian Gaming Commission for review and approval; and effective upon receipt of such approval; and

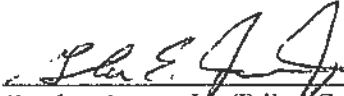
BE IT FINALLY RESOLVED that when this ordinance shall become effective and all prior inconsistent ordinance and law will be immediately revoked upon receipt of the approved by the Chairman of the National Indian Gaming Association.

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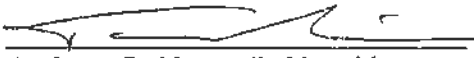
CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 11th day of October, 2016 by the Executive Committee of the Flandreau Santee Sioux Tribe during a duly called meeting with a quorum was present of 6 In Favor, 0 Opposed, 0 Abstaining, and 1 Not Voting, as follows:

Vice President, Andrew Weston:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Secretary, Gordon Jones, Jr.:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Trustee I, Jean Paul Roy:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Trustee II, David Kills-A-Hundred:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Trustee III, Michael Weston:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Trustee IV, John Jason Armstrong:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
President, Anthony Reider <i>(If Required)</i> :	YES	NO	ABSTAIN	NOT PRESENT



Gordon Jones, Jr., Tribal Secretary



Anthony Reider, Tribal President

Flandreau Santee Sioux Tribe

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RESOLUTION NO. 16-113

WHEREAS, the Flandreau Santee Sioux Tribe (the "Tribe") is a federally-recognized Indian Tribe organized pursuant to a Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, further amended November 16, 1967, further amended November 14, 1984, and further amended May 17, 1997; and

WHEREAS, Article III of the Tribe's Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee; and

WHEREAS, Article VIII Section 1(e) of the Constitution vests the Executive Committee with the power to acquire, lease, or otherwise manage all lands or other assets, either real or personal, for the benefit of the Tribe as authorized by law except that where lands or assets are under the jurisdiction of the Federal government; and

WHEREAS, Article VIII Section 1(f) of the Constitution vests the Executive Committee with the power to promulgate and enforce ordinances governing and regulating the conduct of all persons on the reservation; and

WHEREAS, Article VIII Section 1(h) of the Constitution vests the Executive Committee with the power to shall have the power to adopt resolutions consistent with such Constitution and By-laws, regulating the procedure of the Executive Committee itself and of other tribal agencies, tribal officials or tribal organizations of the Tribe; and

WHEREAS, Federal Regulations provide that the Tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation, 25 CFR § 556.4; and

WHEREAS, 25 CFR § 556.4(c) specifically provides: "In conducting a background investigation, a tribe or its agents shall keep confidential the identity of each person interviewed in the course of the investigation," and Tribal gaming regulations do not currently contain this provision; and

WHEREAS, the Executive Committee finds it is in the best interests of the Tribe for the Tribe and its agents to comply with the requirements of 25 CFR § 556.4(c) and for the Tribal Gaming Commission to adopt 25 CFR § 556.4(c) as a tribal gaming regulation in accordance with its procedures and the class II and class III gaming

ordinance; and

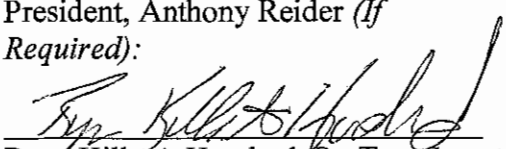
NOW THEREFORE BE IT RESOLVED that the Executive Committee affirms that the Tribe and its agents will comply with the requirements of 25 CFR § 556.4(c) when conducting background investigations; and


BE IT FURTHER RESOLVED the Executive Committee directs the Tribal Gaming Commission to adopt 25 CFR § 556.4(c) as a tribal gaming regulation in accordance with its procedures and the class II and class III gaming ordinance if it has not done so already.

CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 20th day of December, 2016 by the Executive Committee of the Flandreau Santee Sioux Tribe during a duly called meeting with a quorum was present of 4 In Favor, 0 Opposed, 0 Abstaining, and 1 Not Voting, as follows:

Vice President, Andrew Weston:	YES	NO	ABSTAIN	NOT PRESENT
Secretary, Gordon Jones, Jr.:	YES	NO	ABSTAIN	NOT PRESENT
Trustee I, Jean Paul Roy:	YES	NO	ABSTAIN	NOT PRESENT
Trustee II, David Kills-A-Hundred:	YES	NO	ABSTAIN	NOT PRESENT
Trustee III, Michael Weston:	YES	NO	ABSTAIN	NOT PRESENT
Trustee IV, John Jason Armstrong:	YES	NO	ABSTAIN	NOT PRESENT
President, Anthony Reider (If Required):	YES	NO	ABSTAIN	NOT PRESENT


Ryan Kills-A-Hundred, Pro Tem Secretary


Anthony Reider, Tribal President

July 21, 2016 Ordinance

**TITLE 18
CLASS II GAMING ORDINANCE
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I. Purpose

The Flandreau Santee Sioux Tribe, a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Statute 984) and (25 U.S.C. Section 76) and a Constitution and By-Laws approved March 13, 1936 by the Secretary of the Interior and ratified by the members of the Flandreau Santee Sioux Tribe on April 4, 1936, through the Executive Committee of the Tribe (hereinafter "Tribe") empowered by the Constitution and By-Laws pursuant to Article VIII, Section 1(f) to enact Ordinances, hereby enacts this Ordinance in order to set the terms for Class II gaming operations on tribal lands.

II. Gaming Authorized

Class II gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. Section 2703 (7) (A) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. Section 502.3 (as published in the Federal Register at 57 FR 12382-12393 April 9, 1992) is hereby authorized.

Any person who plays the game of chance commonly known as bingo, as defined by the Indian Gaming Regulatory Act of 1988 at Section 2703(7)(A)(i) of Title 25 of the United States Code, may appoint an agent to play the game on his or her behalf so long as the agent plays the game at a gaming facility located on tribal lands. For purposes of this Title, all gaming activity performed by an agent on behalf of a principal is deemed to occur at the agent's location on tribal lands with no regard to the location of the principal.

III. Ownership of Gaming

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

IV. Use of Gaming Revenue

- A. Net revenues from Class II gaming shall be used only for the following purposes: 1) to fund tribal government operations and programs; 2) to provide for the general welfare of the Tribe and its members; 3) to promote tribal economic development;

donate to charitable organizations; 4) or to help fund operations of local government agencies.

- B. If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments solely upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. Section 2710 (b) (3).

V. Audit

- A. The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.
- B. All gaming related contracts 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 A. above.

VI. Protection of the Environment and Public Health and Safety

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

VII. Licenses for Key Employees and Primary Management Officials

The Tribe shall 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 enterprise operated on Indian lands:

- A. **Definitions** – For the purposes of this section, the following definitions apply:
 - 1. AGENT means a person who is authorized to act for or in place of another.
 - 2. KEY employee means:
 - (a) A person who performs one or more of the following functions:
 - 1. bingo caller
 - 2. counting room supervisor
 - 3. chief of security
 - 4. custodian of gaming supplies or cash
 - 5. floor manager
 - 6. pit boss
 - 7. dealer

8. croupier
 9. approver of credit, or
 10. custodian of gaming devices including persons with access to cash and accounting records with such devices,
- (b) if not otherwise included, any other person whose total cash compensation is in excess of \$50,000.00 per year, or
- (c) if not otherwise included, the four most highly compensated persons in the gaming operation.
3. PRIMARY MANAGEMENT OFFICIAL Means:
- (a) The person having management responsibility for a Management Contract.
 - (b) Any person who has authority:
 1. To hire and fire employees; or
 2. To set up working policy for the gaming operation; or
 - (c) The Chief Financial Officer or other person who has financial management responsibility.
4. PRINCIPAL means a person who authorizes another to act on his or her behalf as an agent.

B. Application Forms

1. The following notice 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, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et. Seq. 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 their 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 of a gaming license, or investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated 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.

2. Existing key employees and primary management officials shall either:
 - a. complete a new application form that contains a Privacy Act notice; or
 - b. sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.
3. The following notice shall be placed in the application form for a key employee or a primary 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. (U.S. Code, Title 18, Section 1001).

4. The Tribe shall notify in writing existing key employees and primary management officials that they shall either:
 - a. Complete a new application form that contains a notice regarding false statements; or
 - b. Sign a statement that contains the notice regarding false statements.

C. Background Investigations

1. The Tribe shall request from each primary management official and from each key employee all of the following information:
 - a. full name, other names used (oral or written), social security number(s), birthdate, place of birth, citizenship, gender, all languages (spoken or written);
 - b. 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;
 - c. the names and current addresses of at least three personal references who were acquainted with the applicant during each period of residence listed under paragraph (1) (b) of this section;
 - d. current business and residence telephone numbers;
 - e. a description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
 - f. 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;

- g. for each felony for which there is an ongoing prosecution for a conviction, the charge, the name and address of the Court involved, and the date and disposition if any;
- h. for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within (ten) 10 years of the date of the application, the name and address of the Court involved and the date and disposition;
- i. for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (1) years of the date of the application and is not otherwise listed pursuant to paragraph (1) (h) or (1) (i) of this section, the criminal charge, the name and address of the Court involved and the date and disposition;
- j. 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;
- k. a current photograph;
- l. any other information the Tribe deems relevant; and
- m. fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. Section 522.2 (h).

D. Eligibility Determination

The Tribe shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

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

- 1. When a key employee or primary management official begins work at a gaming operation authorized by this Ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection D. of this section.

2. The Tribe shall forward the report referred to in subsection F. of this section to the National Indian Gaming Commission within sixty (60) days of the approval of this Ordinance by the Chairman of the National Indian Gaming Commission.
3. The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after ninety (90) days.

F. Report to the National Indian Gaming Commission:

1. Pursuant to the procedures set out in subsection E. of this section, the Tribe 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:
 - a. steps taken in conducting a background investigation;
 - b. results obtained;
 - c. conclusions reached; and
 - d. the basis for those conclusions.
2. The Tribe shall submit, with the report, a copy of the eligibility determination made under section D. of this section.
3. If a license is not issued to an applicant, the Tribe :
 - a. Shall notify the National Indian Gaming Commission, and
 - b. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for the inclusion in the Indian Gaming Individuals Record System.
4. 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 (3) years from the date of termination of employment.

G. Granting a Gaming License

1. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the Tribe that it has no objection to the issuance 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.
2. The Tribe shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty (30) day period under paragraph G. 1. of this section until the Chairman of the National Indian Gaming Commission receives the additional information.
 3. If, within the thirty (30) day period described above, 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 National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

H. License Suspension

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 D. above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.
2. The Tribe shall notify the licensee of a time and a place for a meeting on the proposed revocation of a license.
3. After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the National Indian Gaming Commission of its decision.

VIII. Procedures for Resolving Disputes Between the Gaming Public and the Tribe or the Management Contractor

The Flandreau Santee Sioux Tribe recognizes the possibility of disputes concerning gaming activities with the public. To resolve these disputes and promote the best interest of the Royal River Casino, the Tribe shall implement the following procedures for dispute resolution between the public and the Tribe or the Management Contractor.

- A. Any person who has any dispute or disagreement that involves currency, tokens, coins, jackpot wins or any other thing of value may pursue resolution in the following order if the issue is unresolved:

1. Submit the dispute in writing to the Manager of Royal River Casino.
 2. Submit the dispute with a copy of the Manager's decision to the FSST Gaming Commission.
 3. Submit the written dispute, with both written decisions, to the Flandreau Santee Sioux Tribal Court, pursuant to the Tribal Law and Order Code.
- B. The Complainant shall submit a written dispute to the General Manager of Royal River Casino. The General Manager is hereby given the authority to resolve the dispute. A record of all proceedings, meetings or negotiation shall be preserved in written form by the General Manager. The General Manager shall file a written report detailing the resolution of any matter at this level.

Should any dispute not be resolved at level one, the General Manager shall inform the Complainant of their right to appeal the complaint to the Flandreau Santee Sioux Tribal Gaming Commission at level two. The Manager shall provide the Gaming Commission all necessary and pertinent information regarding the complaint. The Gaming Commission shall utilize Section 10.3 of the FSST Gaming Regulations to attempt to informally resolve the complaint. If there is no informal resolution of the complaint, the Gaming Commission shall proceed to a formal resolution pursuant to Section 10.5 of the Gaming Regulations.

The above two sections of the Gaming Regulations are utilized only for the dispute resolution within this context shall not be utilized as disciplinary proceedings pursuant to Chapter 10 of the Gaming Regulations. The Gaming Commission shall have the authority to overrule any decision of the General Manager of the Royal River Casino for dispute resolution.

The Gaming Commission shall document and maintain each dispute resolution matter presented for resolution and shall notify in writing the Complainant and the General Manager of the Gaming Commission's decision on the respective dispute. The complainant may appeal to level three if dissatisfied with the resolution at level two.

The Complainant may appeal the decision of the Gaming Commission to the Flandreau Santee Sioux Tribal Court. The Complainant shall be required to follow the rules of civil procedure as established within the Flandreau Santee Sioux Tribal Law and Order Code.

IX. Designation of Agent Per Service of Process

The Flandreau Santee Sioux tribal agent for service of process of any official determination, order, or notice of violation from the National Indian Gaming Commission shall be the President of the Flandreau Santee Sioux Tribe, PO Box 283, Flandreau SD 57028.

X. Identification of Law Enforcement Agency for Fingerprints and Procedures for Criminal History Check

The Flandreau Santee Sioux Tribe has entered into a Contract with the Moody County Sheriff whereby the Moody County Sheriff will provide law enforcement duties for the Flandreau Santee Sioux Tribe within Indian country on the Flandreau Santee Sioux Reservation. The Contract is negotiable and renewable on an annual basis.

Pursuant to and in addition to the Tribal Gaming Ordinance No. 89-03 and the Tribal Gaming Regulations, the following procedures shall apply for fingerprints and criminal history investigation.

- A. The Sheriff or his designated agent will be the responsible official to perform fingerprints for all persons applying for a gaming license with the Royal River Casino.
- B. The Sheriff or his designated agent will submit the following information to the Gaming Commission for the State of South Dakota for a criminal history or background investigation:
 - 1. a completed application for employment at the Royal River Casino;
 - 2. applicable fees – paid by check, money order or cashier's check;
 - 3. original fingerprint card.

XI. Criminal History/Background Information

The Flandreau Santee Sioux Tribe entered into a Compact with the State of South Dakota pursuant to the Indian Gaming Regulatory Act. The Tribe has authorized the South Dakota State Gaming Commission to perform all background investigations on behalf of the Tribe and the Tribal Gaming Commission. The State has agreed to conduct investigations upon receipt of an executed release of information from an applicant, a completed application for employment with the tribal gaming facility and payment of applicable fees, all as provided in the South Dakota Commission on Gaming rules 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 State of South Dakota Gaming Commission pursuant to SDCL Ch. 42-7B and the South Dakota Gaming Commission Rules and Regulations.

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 be selected by the State Gaming Commission, 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 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.

D. Eligibility Determination

The Tribe shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

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

1. When a key employee or primary management official begins work at a gaming operation authorized by this Ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the

background investigation and make the determination referred to in subsection D. of this section.

2. The Tribe shall forward the report referred to in subsection F. of this section to the National Indian Gaming Commission within sixty (60) days after an employee begins work or within sixty (60) days of the approval of this Ordinance by the Chairman of the National Indian Gaming Commission.
3. The gaming operation shall not employ as a key employee or primary management official a person who does not have license after ninety (90) days.

XIII. License Locations

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

XIV. Repeal

To the extent of inconsistency with this Ordinance, all prior Gaming Ordinances are hereby repealed.

DATE ADOPTED: July 21, 2016.

RESOLUTION NO.: 16-70

TITLE 18
CLASS II GAMING ORDINANCE

I. Purpose

The Flandreau Santee Sioux Tribe, a federally recognized Indian tribe, organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Statute 984) and (25 U.S.C. Section 76) and a Constitution and By-Laws approved March 13, 1936 by the Secretary of the Interior and ratified by the members of the Flandreau Santee Sioux Tribe on April 4, 1936, through the Executive Committee of the Tribe empowered by the Constitution and By-Laws pursuant to Article VIII, Section 1(f) to enact Ordinances, hereby enacts this Ordinance in order to govern and regulate the operation of Class II gaming operations on the Tribe's Indian lands.

II. Applicability

Unless specifically indicated, all provisions of this Ordinance shall apply to Class II gaming on the Tribe's Indian lands.

III. Definitions

A. **Agent** means: A person who is authorized to act for or in place of a principal.

B. **Class II Gaming** means:

- (1) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—
 - (a) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,
 - (b) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and
 - (c) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards.
- (2) Pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo if played in the same location as bingo, and
- (3) card games that—
 - (a) are explicitly authorized by the laws of the State, or
 - (b) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

C. **Facility License** means: A separate license issued by the Tribe to each place, facility or location on Indian lands where the Tribe elects to allow class II or III gaming.

D. **Gaming Commission** means: The Gaming Commission established to perform regulatory oversight and to monitor compliance with tribal, federal, and applicable state regulations.

E. **Indian lands** means:

- (1) Land within the limits of the Flandreau Santee Sioux Tribe reservation; or
- (2) Land over which the Tribe exercises governmental power and that is either:
 - (a) Held in trust by the United States for the benefit of the Tribe or individual; or
 - (b) Held by the Tribe or individual subject to restriction by the United States against alienation.

F. **Key Employee** means:

- (1) A person who performs one or more of the following functions:
 - (a) bingo caller
 - (b) counting room supervisor
 - (c) chief of security
 - (d) custodian of gaming supplies or cash
 - (e) floor manager
 - (f) pit boss
 - (g) dealer
 - (h) croupier
 - (i) approver of credit, or
 - (j) custodian of gaming devices including persons with access to cash and accounting records with such devices;
- (2) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000.00 per year;
- (3) If not otherwise included, the four most highly compensated persons in the gaming operation;
- (4) Any other person designated by the Tribe as a key employee.

G. **Primary Management Official** means:

- (1) The person having management responsibility for a management contract.
- (2) Any person who has authority:
 - (a) To hire and fire employees; or
 - (b) To set up working policy for the gaming operation; or

(c) The Chief Financial Officer or other person who has financial management responsibility.

(3) Any other person designated by the Tribe as a primary management official.

H. **Principal** means: A person who authorizes another to act on his or her behalf as an agent.

I. **Tribe** means: The Flandreau Santee Sioux Tribe, a federally recognized Indian tribe,

IV. Gaming Authorized

Class II gaming, as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. Section 2703 (7) (A) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. Section 502.3 (as published in the Federal Register at 57 FR 12382-12393 April 9, 1992), is hereby authorized to be conducted on the Tribe's Indian lands. Nothing herein shall prohibit the use of agents for the conduct of bingo, as defined herein. For purposes of this Title, the acts of an agent, which occur on the Tribe's Indian lands, are deemed to be the acts of the principal.

V. Ownership of Gaming

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

VI. Use of Net Gaming Revenue

A. Net revenues from Class II gaming shall be used only for the following purposes:

- (1) To fund tribal government operations and programs;
- (2) To provide for the general welfare of the Tribe and its members;
- (3) To promote tribal economic development;
- (4) Donate to charitable organizations; or
- (5) To help fund operations of local government agencies.

B. If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments solely upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. Section 2710 (b) (3).

VII. Audit

- A. The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.
- B. All gaming related contracts 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 conducted under subsection A.

VIII. Protection of the Environment and Public Health and Safety

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

IX. Procedures for Resolving Disputes Between the Gaming Public and the Tribe or the Management Contractor

The Flandreau Santee Sioux Tribe recognizes the possibility of disputes concerning gaming activities with the public. To resolve these disputes and promote the best interest of the Royal River Casino, the Tribe shall implement the following procedures for dispute resolution between the public and the Tribe or the Management Contractor.

- A. Any person who has any dispute or disagreement that involves currency, tokens, coins, jackpot wins or any other thing of value may pursue resolution in the following order if the issue is unresolved:
 - (1) Submit the dispute in writing to the Manager of Royal River Casino.
 - (2) Submit the dispute with a copy of the Manager's decision to the Gaming Commission.
 - (3) Submit the written dispute, with both written decisions, to the Flandreau Santee Sioux Tribal Court, pursuant to the Tribal Law and Order Code.
- B. The Complainant shall submit a written dispute to the General Manager of Royal River Casino. The General Manager is hereby given the authority to resolve the dispute. A record of all proceedings, meetings or negotiation shall be preserved in written form by the General Manager. The General Manager shall file a written report detailing the resolution of any matter at this level.

Should any dispute not be resolved at level one, the General Manager shall inform the Complainant of their right to appeal the complaint to the Flandreau Santee Sioux Tribal Gaming Commission. The Manager shall provide the Gaming Commission all

necessary and pertinent information regarding the complaint. The Gaming Commission shall utilize Section 10.3 of the FSST Gaming Regulations to attempt to informally resolve the complaint. If there is no informal resolution of the complaint, the Gaming Commission shall proceed to a formal resolution pursuant to Section 10.5 of the Gaming Regulations.

The above two sections of the Gaming Regulations are utilized only for the dispute resolution within this context shall not be utilized as disciplinary proceedings pursuant to Chapter 10 of the Gaming Regulations. The Gaming Commission shall have the authority to overrule any decision of the General Manager of the Royal River Casino for dispute resolution.

The Gaming Commission shall document and maintain each dispute resolution matter presented for resolution and shall notify in writing the Complainant and the General Manager of the Gaming Commission's decision on the respective dispute. The complainant may appeal to level three if dissatisfied with the resolution at level two.

The Complainant may appeal the decision of the Gaming Commission to the Flandreau Santee Sioux Tribal Court. The Complainant shall be required to follow the rules of civil I procedure as established within the Flandreau Santee Sioux Tribal Law and Order Code.

X. Facility Licenses

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

XI. Agent For Service of Process

The Flandreau Santee Sioux Tribe's agent for service of process of any official determination, order, or notice of violation from the National Indian Gaming Commission shall be the President of the Flandreau Santee Sioux Tribe, PO Box 283, Flandreau SD 57028.

XII. License Application Forms

- A. The following notice 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, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. § 2701 *et. seq.* 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 their 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 of a gaming license, or investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated 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.

- B. Existing key employees and primary management officials shall either:
- (1) complete a new application form that contains a Privacy Act notice; or
 - (2) sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.
- C. The following notice shall be placed in the application form for a key employee or a primary 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. (U.S. Code, Title 18, Section 1001).

- D. The Tribe shall notify in writing existing key employees and primary management officials that they shall either:
- (1) Complete a new application form that contains a notice regarding false statements; or
 - (2) Sign a statement that contains the notice regarding false statements.

XIX. Background Investigations

- A. The Tribe shall perform a background investigation for each primary management official and key employee in its gaming operation.
- B. The Tribe shall obtain from each primary management official and key employee all of the following information:
- (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);
 - (2) Currently, and for the previous five (5) years, business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver license numbers;
 - (3) The names and current addresses of at least three (3) personal references who were acquainted with the applicant during each period of residence listed under paragraph (B) (2) of this section;
 - (4) Current business, residential and cellular telephone numbers;
 - (5) A description of any existing and previous business relationships with other tribes, including any ownership interests in the businesses;
 - (6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
 - (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;
 - (8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date of disposition, if any;
 - (9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten (10) years of the date of the application, the name and address of the court involved and the date of disposition, if any;
 - (10) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (1) years of the date of the application and is not otherwise listed pursuant to paragraph (B) (8) or (B) (9) of this section, the criminal charge, the name and address of the Court involved and the date of disposition, if any;
 - (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 licensee or permit was granted;
 - (12) A current photograph;
 - (13) Any other information the Tribe deems relevant; and
 - (14) Fingerprints obtained in accordance with procedures adopted by the Tribe according to 25 C.F.R. § 522.2 (h).

- C. When a primary management official or key employee is employed by the Tribe, a complete application file, containing all of the information listed in Section 1, shall be maintained.

XX. Procedures for Conducting Background Investigations

- A. The Gaming Commission, or its designee, shall employ or engage an investigator to conduct a background investigation of each applicant for a primary management official or key employee position. The investigation must be sufficient to allow the Gaming Commission to make an eligibility determination under this ordinance. The investigator shall:
- (1) Verify the applicant's identity through items such as a social security card, driver's license, birth certificate or passport;
 - (2) Contact each personal and business reference provided in the license application, when possible;
 - (3) Conduct a personal credit check;
 - (4) Conduct a civil history check for past or outstanding judgments, current liens, past or pending lawsuits, and any other information deemed to be relevant;
 - (5) Conduct a criminal history records check by submitting the applicant's fingerprints to the National Indian Gaming Commission or to another law enforcement agency for forwarding to the Federal Bureau of Investigation to perform a criminal history records check utilizing the Federal Bureau of Investigation's data base;
 - (6) Based on the results of the criminal history records check, as well as information acquired from an applicant's self-reporting or from any other source, obtain information from the appropriate court regarding any past felony and/or misdemeanor convictions or ongoing prosecutions within the past 10 years;
 - (7) Inquire into any previous or existing business relationships with the gaming industry, including with any Indian tribes with gaming operations, by contacting the entities or tribes;
 - (8) Verify the applicant's history and current status with any licensing agency by contacting the agency; and
 - (9) Take other appropriate steps to verify the accuracy of the information, focusing on any problem areas noted.

XXI. Investigative Reports

- A. The Tribe shall create and maintain an investigative report for each background investigation of a primary management official or key employee.
- B. An investigative report shall include all of the following:

- (1) steps taken in conducting a background investigation;
- (2) results obtained;
- (3) conclusions reached; and
- (4) the basis for those conclusions.

XXII. Eligibility Determination

- A. The Tribe shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation.
- B. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.
- C. Copies of the eligibility determination shall be included with the notice of results that must be submitted to the National Indian Gaming Commission before the licensing of a primary management official or key employee.

XXIII. Notice of Results of Background Investigations

- A. Before issuing a license to a primary management official or key employee, the Gaming Commission shall prepare a notice of results of the applicant's background investigation to submit to the National Indian Gaming Commission. The notice of results must be submitted to the National Indian Gaming Commission no later than 60 days after the applicant begins working for the Tribe.
- B. The notice of results shall include the following information:
 - (1) The applicant's name, date of birth, and social security number;
 - (2) The date on which the applicant began, or will begin, working as a primary management official or key employee;
 - (3) A summary of the information presented in the investigative report, including:
 - (a) licenses that have previously been denied;
 - (b) gaming licenses that have been revoked, even if subsequently reinstated;
 - (c) every known criminal charge brought against the applicant within the last 10 years of the date of the application; and

(d) every felony offense of which the applicant has been convicted or any ongoing prosecution; and

C. A copy of the eligibility determination.

XXIV. Granting a Gaming License

- A. All primary management officials and key employees of the gaming operation must have a gaming license issued by the Tribe.
- B. The Gaming Commission is responsible for granting and issuing gaming licenses to primary management officials and key employees.
- C. The Gaming Commission may license a primary management official or key employee applicant after submitting a notice of results of the applicant's background investigation to the National Indian Gaming Commission.
- D. The Gaming Commission shall notify the National Indian Gaming Commission of the issuance of a license to a primary management official or key employee within 30 days of issuance.
- E. The Tribe shall not employ an individual in a primary management official or key employee position who does not have a license after 90 days of beginning work at the gaming operation.
- F. The Gaming Commission must reconsider a license application for a primary management official or key employee if it receives a statement of itemized objections to issuing such a license from the National Indian Gaming Commission, and those objections are received within 30 days of the National Indian Gaming Commission receiving a notice of results of the applicant's background investigation.
- G. The Gaming Commission shall take the National Indian Gaming Commission's objections into account when reconsidering a license application.
- H. The Tribe will make the final decision whether to issue a license to an applicant for a primary management official or key employee position.
- I. If the Gaming Commission has issued a license to a primary management official or key employee before receiving the National Indian Gaming Commission's statement of objections or notice that the primary management official or key employee is not eligible for employment, the Tribe shall do the following:

- (1) Immediately suspend the license;
- (2) Provide the licensee with written notice of the suspension and the proposed revocation; and
- (3) Notify the licensee of a time and a place for a meeting on the proposed revocation of the license. The right to a hearing vests only when a license is granted under an ordinance approved by the Chairman of the National Indian Gaming Commission.
- (4) Following a revocation hearing, the Tribe shall decide to revoke or to reinstate the license.
- (5) The Tribe shall notify the National Indian Gaming Commission of its decision.

XXV. Denying Gaming Licenses

- A. The Gaming Commission shall not license a primary management official or key employee if an authorized Tribal official determines, that licensing the person:
 - (1) Poses a threat to the public interest;
 - (2) Poses a threat to the effective regulation of gaming; or
 - (3) Creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming.
- B. When the Gaming Commission does not issue a license to an applicant for a primary management official or key employee position, or revokes a previously issued license after reconsideration, it shall:
 - (1) Notify the National Indian Gaming Commission; and
 - (2) Forward copies of its eligibility determination and notice of results of the applicant's background investigation to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Record System.

XXVI. Fingerprints

The Tribe shall perform a background investigation for each primary management official and key employee of the gaming operation. The Tribe shall obtain fingerprints from each primary management official and key employee. Fingerprints will be forwarded to the National Indian Gaming Commission for processing through the Federal Bureau of Investigation and the National Criminal Information Center to determine the applicant's criminal history, if any.

XXVII. Records Retention

- A. The Gaming Commission shall retain, for no less than three (3) years from the date a primary management official or key employee is terminated from employment with the Tribe, the following documentation:
 - (1) Applications for licensing;

- (2) Investigative Reports; and
- (3) Eligibility Determinations.

XXVIII. Repeal

To the extent of inconsistency with this Ordinance, all prior gaming ordinances are hereby repealed.

DATE ADOPTED: October 4, 2016.
RESOLUTION NO.: 16-93.