

NATIONAL  
INDIAN  
GAMING  
COMMISSION

APR 11 1994

William Kindle, President  
Rosebud Sioux Tribe  
Rosebud Indian Reservation  
P.O. Box 430  
Rosebud, South Dakota 57570

Dear President Kindle:

This letter responds to your request to review and approve the tribal gaming ordinance, Ordinance 87-03, adopted by the Rosebud Sioux Tribe (the Tribe) on December 6, 1990, and amended by Resolution 94-63 dated April 4, 1994. 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 Rosebud 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,

**Anthony J. Hope**

Anthony J. Hope  
Chairman

ROSEBUD SIOUX TRIBE  
RESOLUTION NO. 87-58

Amended 12/06/90

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of June 18, 1934, (48 Stat. 984) and amendments thereto, including the Act of June 15, 1935, whereby "Nothing in the Act of June 18, 1934, shall be construed to abrogate or impair any rights guaranteed under any existing treaty with any Indian tribe," and such treaties include the Treaty of September 15, 1851, (11 Stat. 749) and April 29, 1868, (15 Stat. 634); and

WHEREAS, the Rosebud Sioux Tribal Council, as the governing body of the Tribe, exercises its authority pursuant to powers of inherent self-government and in its Constitution; and

WHEREAS, Article IV, Section 1(a), (c), (f), (g), (h), (i), (j), (k), (m), (n), (t) and (u) of the Constitution gives the Tribal Council power and authority to enact a gaming law; and

WHEREAS, it is in the best interests of the Tribe to prescribe rules and regulations for the control of gaming in order to maintain high quality gaming free from corrupt, incompetent or dishonest practices and association with undesirables; and

WHEREAS, the Tribal Council adopted Resolution No. 87-02 on January 8, 1987, declaring that it has gaming jurisdiction on the Rosebud Reservation and directing the Judiciary Committee to reinstate a revised Gaming Ordinance into the Law and Order Code, the Governmental Affairs Committee to establish an ordinance, and the Budget & Finance Committee to revise sections of the Tribal Tax Code to include gaming; and

WHEREAS, the Governmental Affairs Committee complied with Resolution No. 87-02 and on March 27, 1987, it referred Resolution No. 87-58 with Ordinance 87-03, "The Omnibus Tribal Gaming Ordinance", to the Tribal Council which approved them on April 2, 1987; and

WHEREAS, the Judiciary Committee complied with Resolution No. 87-02 by referring Resolution No. 88-67 and Ordinance No. 88-02 for a first reading by the Tribal Council on April 11, 1988, with no rescission of the original resolution and ordinance; and

WHEREAS, revised Resolution No. 87-58 and revised Ordinance 87-03, combining Resolution No. 88-67 and Ordinance 88-02, and other changes, were sent by the Governmental Affairs Committee to the Tribal Council for a first reading on July 13, 1988; and

WHEREAS, at the first reading, a written amendment was offered by Rosebud Community Representative Ronald Valandra to have on site inspection by the "Gaming Commission", or its duly authorized representative appointed by Resolution or Ordinance of the Council, and officers of the BIA/Tribal Police; and

WHEREAS, the Rosebud Sioux Tribe desires to continue its law to regulate gaming in accordance with Resolution No. 87-02 adopted January 8, 1987, its previous laws, and Public Law 100-497, the Indian Gaming Regulatory Act (S. 555 passed by the

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RESOLUTION NO. 87-58

Amended 12/06/90

U.S. Senate on September 15, 1988, and the U.S. House of Representatives on September 27, 1988, without amendments, and signed into law by the President on October 17, 1988); and

WHEREAS, the Rosebud Sioux Tribal Council desires to clarify its intent to regulate, license and control the operation of bingo, pull tabs, break open cards, games of chance by use of coin operated machines or other gaming devices, and all other gaming in order to raise revenue for the support of tribal economic development, employment, health, education, welfare, and public safety programs under its police powers; and

WHEREAS, members of the Governmental Affairs Committee, after conferring with Omaha and Winnebago Tribal delegates on April 13, 1988, proposed written amendments so that the Rosebud Sioux Tribe is primarily a licenser of gaming rather than a sole operator of same, as reflected in the second reading of the Revised Ordinance 87-03 on May 10, 1989, in accordance with Title IV, Section 3 of the Tribal Law and Order Code; now

THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council hereby adopts Revised Ordinance 87-03, "The Rosebud Sioux Tribe Gaming Law", and enters it as Title 13 in the Rosebud Sioux Tribe Law and Order Code, any legally technical changes by the Tribal Attorney General, notwithstanding; and

BE IT ALSO RESOLVED, that the first reading of Ordinance 88-02 is hereby rescinded; and

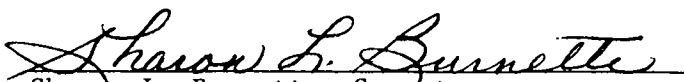
BE IT ALSO RESOLVED, that Roger Moran, Bernice Willcuts, Vernon "Ike" Schmidt, Michael Boltz and Harold James Fuller are hereby appointed to the Rosebud Sioux Tribe Gaming Commission to implement tribal law and negotiate gaming matters with the National Indian Gaming Commission, the Secretary of the Interior, and the appropriate agency of the State of South Dakota; and

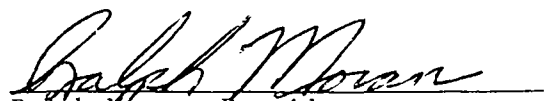
BE IT FURTHER RESOLVED, that the Tribal Council reserves final approval of any Tribal-State Gaming Compact.

CERTIFICATION

This is to certify that the above Resolution No. 87-58 establishing Ordinance 87-03 was duly reconsidered and amended by the Rosebud Sioux Tribal Council. A first reading was duly held and approved on November 13, 1990, by a vote of nine (9) in favor, zero (0) opposed and one (1) not voting. The second reading was duly held and approved on December 6, 1990, by a vote of eight (8) in favor, zero (0) opposed and zero (0) not voting. The said Resolution and Ordinance was adopted including amendments pursuant to authority vested in the Council. A quorum was present.

ATTEST:

  
Sharon L. Burnette, Secretary  
Rosebud Sioux Tribe

  
Ralph Moran, President  
Rosebud Sioux Tribe

**ROSEBUD SIOUX TRIBE**  
**Resolution No. 94-63**

- WHEREAS,** the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and
- WHEREAS,** the Federal government has passed the Indian Gaming Regulatory Act, 25 USC 2701, et seq.; and
- WHEREAS,** the Indian Regulatory Act and Regulations adopted pursuant thereto permits Indian Tribes to engage in different kinds of gaming activity; and
- WHEREAS,** the Rosebud Sioux Tribe and the State of South Dakota have entered into a gaming compact pursuant to the provisions of 25 USC 2710; and
- WHEREAS,** the Rosebud Sioux Tribe has entered into a management contract with BBC Entertainment, Inc. to manage Class II gaming and such Class II gaming as approved by the Rosebud Sioux Tribe; and
- WHEREAS,** the management contract is currently under review by the National Indian Gaming Commission; and
- WHEREAS,** as part of the submissions to the National Indian Gaming Commission, the Rosebud Sioux Tribe submitted its Gaming Ordinance 87-03, which was approved by the Rosebud Sioux Tribal Council by Resolution 87-58, for approval; and
- WHEREAS,** William Kindle, President, Rosebud Sioux Tribe, received a letter on December 7, 1993, from the National Indian Gaming Commission setting out certain matters that needed to be added to the Gaming Ordinance 87-03; and
- WHEREAS,** the Rosebud Sioux Tribal Council has given due consideration to the points made by the National Indian Gaming Commission in its letter of December 7, 1993, to President Kindle.
- THEREFORE BE IT RESOLVED,** that the Rosebud Sioux Tribal Council hereby enacts the following amendments and regulations to Rosebud Sioux Tribe Gaming Ordinance 87-03;



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**FIRST AMENDMENT**

13-5-116 (5), entitled Person Participating or Assisting in Gaming Activities or Operations, which reads as follows:

- (5) A background investigation shall be performed for each primary management official and for each key employee of a gaming operation.

**shall be amended as follows:**

- (5) A background investigation shall be performed for each primary management official and for each key employee of a gaming operation pursuant to a "description of procedures" adopted by the Rosebud Sioux Tribe Gaming Commission as a regulation.

**Adoption of Regulation**

Pursuant to Rosebud Sioux Tribe Gaming Ordinance 87-03, 13-2-119 (2), the Rosebud Sioux Tribal Council hereby adopts the below regulation with title and substance as follows:

**BACKGROUND INVESTIGATIONS  
OF  
KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS**

**"DESCRIPTION OF PROCEDURES"**

A. Section 522.22 of the National Indian Gaming Regulations requires "A description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials... ."

B. The Rosebud Sioux Tribe is responsible for the conduct of background investigations and suitability determinations as set forth herein and in the compact with South Dakota.

C. The Rosebud Sioux Tribe Gaming Commission and its Director shall be responsible for the conduct of the background investigations of key employees and primary management officials.

1. The Director, acting in accordance with the directions of the Gaming Commission, shall be responsible for conducting or causing to be conducted the background investigations, reporting the results of the background investigation to the National Indian Gaming Commission, and obtaining and processing fingerprints.

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2. In accomplishing the above, the Director may rely upon any background investigation conducted by the South Dakota pursuant to paragraph seven (7) of the compact with South Dakota providing that said background investigation is conducted in accordance with the National Indian Gaming Act and its Regulations and providing that said investigation meets all requirements of the Rosebud Sioux Tribe Gaming Ordinance 87-03, all regulations adopted pursuant thereto, including the description of procedures set forth herein.

3. The Rosebud Sioux Tribe Gaming Commission, acting with a quorum present, shall be responsible for reviewing and approving investigate work done and making suitability determinations.

4. The Director of the Rosebud Sioux Tribe Gaming Commission under Ordinance 87-03, 13-3-117, is responsible for the day-to-day operations of the Commission. The Director acts pursuant to the direction of the whole Commission. The tasks for which he is responsible as set forth in (a) above involves gathering information for review and action by the Commission as a whole and/or transmitting information to the National Indian Gaming Commission.

5. The Commission is composed of members who have been appointed by the Rosebud Sioux Tribal Council. The Commission acting as a whole, with a quorum present, makes all decisions on behalf of the Commission as a whole. Their responsibility in (3) above involves making final decisions on the investigation completed and suitability of applicants.

6. In making the investigations required by the National Indian Gaming Act and its Regulations and Ordinance 87-03 and its Regulations, the following minimum procedures shall be followed:

- a. all information submitted by an applicant shall be verified and recorded by written or oral communication;
- b. inquiry shall be made into the applicant's prior activities, criminal record, if any, and reputation, habits, and associations;

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- c. a sufficient number of people knowledgeable about the applicant's history, background, and reputation such as former employers, personal references, and others to whom referred shall be interviewed in order to provide the Gaming Commission with a basis to make a finding concerning the eligibility for employment in a gaming operation;
- d. documentation shall be made of the disposition of all potential problem areas and disqualifying information obtained in the course of their investigation.

7. An investigation report setting forth the following shall be compiled and approved by the Gaming Commission:

- a. steps taken in conducting the background investigation;
- b. results obtained;
- c. conclusions reached; and
- d. the basis for the conclusions.

**SECOND AMENDMENT**

A new section, designated as 13-5-104 (B), to be placed after 13-5-104 (A) at page 19 of the Ordinance 87-03, shall read as follows:

13-5-104 (B). The Tribe shall ensure that the policies and procedures set forth out in this chapter, which shall be at least as stringent as provided in the Regulations of the National Indian Gaming Commission, are implemented with respect to key employees and primary management officials employed at any Class II or Class III gaming enterprise operated on Indian lands:

A. Definitions.

For the purpose of this ordinance, the following definitions shall apply:

- 1. Key employee means
  - a. a person who performs one or more of the following functions:

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- i. Bingo caller;
  - ii. Counting room supervisor;
  - iii. Chief of Security;
  - iv. Custodian of gaming supplies or cash;
  - v. Floor manager;
  - vi. Pit boss;
  - vii. Dealer;
  - viii. Croupier;
  - ix. Approver of credit; or
  - x. Custodian of gambling devices including persons with access to cash and accounting records within such devices;
- b. If not otherwise included, any person whose total cash compensation is in excess of \$50,000 per year; or
- c. If not otherwise included, the four most highly compensated persons in the gaming operation.

2. Primary management officials means

- a. The person having management responsibility for management contract;
- b. Any person who has authority:
  - i. To hire and fire employees; or
  - ii. To set up working policy of the gaming operation; or
  - iii. The Chief financial officer or other person who has financial management responsibility.

B. Application Forms

- 1. Existing key employees and primary management officials shall be notified in writing that they shall either:
  - a. Complete a new application form that contains a Privacy Act notice as set forth in 13-5-116 (6); or
  - b. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

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2. 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.

**THIRD AMENDMENT**

13-5-116 (5) (A) of Ordinance 87-03 shall be amended by the following:

- A. After 13-5-116 (5) (A) (9), there shall be added a subsection 9 (A) which shall read as follows:

9 (A). For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph 8 or 9 of this section, the criminal charge, the name and address of the court involved and the date and disposition;
- B. Section 13-5-116 (5)(A)(11) is amended by adding the word "current" between the word "A" and "photograph" so as to read: 11. A current photograph;.
- C. After 13-5-116 (5) (A) (11), there shall be added a subsection 11 (A) which shall read as follows:

11 (A). Fingerprints consistent with the procedures adopted by the Tribe according to the 25 CFR 522.2 (h).
- D. After 13-5-116 (5) (A) (12), the following paragraph shall be added:

The Tribe shall conduct an investigation sufficient to make a determination under subsection B. below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.
- E. 13-5-116 (B) as found at page 23 of Ordinance 87-03 shall be deleted in its entirety and in its place the following shall be substituted:

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The Tribe shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make 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.

FOURTH AMENDMENT

After 13-5-116 on page 24 of Ordinance 87-03, a new section designated as 13-5-116 (A) shall be included, which section shall read as follows:

13-5-116 (A).

- A. When a key employee or primary management official begin 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 cause to be conducted or conduct the background investigation and make the determination referred to in 13-5-116 (5) (B).
- B. The Tribe shall forward the report referred to in subsection (D) of this section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.
- C. The gaming operation shall not employ as a key employee or primary management official a person who does not have license after 90 days.
- D. Pursuant to the procedures set out in subsection A, B, and C above, 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:

- 1. Steps taken in conducting a background investigation;
- 2. Results obtained;

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3. Conclusions reached; and
4. The basis for those conclusions.
- E. The Tribe shall submit, with the report, a copy of the eligibility determination made under 13-5-116 (5) (B).
- F. If a license is not issued to an applicant, the Tribe;
  1. Shall notify the National Indian Gaming Commission; and
  2. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records Systems.
- G. With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspections 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.
- H. 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 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 the applicant.
- I. The Tribe shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or primary management official who is the subject of a report. Such a request shall suspend the 30 day period under paragraph 8 above until the Chairman of the National Indian Gaming Commission receives the additional information.

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- J. 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.

**FIFTH AMENDMENT**

13-5-120, Revocation of License, at page 24 of Ordinance 87-03 shall be amended by deleting 13-5-120 (4) and substituting in its place the following:

- (4). 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 primary management official is not eligible for employment, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation. The revocation shall take place pursuant to the procedures for revocation under section 1, 2, and 3 above. The Tribe shall notify the National Indian Gaming Commission of its decision.

**SIXTH AMENDMENT**

After 13-2-106 at page 9 of Ordinance 87-03, there shall be added a section 13-2-106 (A), which shall read as follows:

13-2-106 (A). Individually Owned Class II and Class III Gaming Operations.

Any individually owned gaming operations licensed by the Rosebud Sioux Tribe shall be conditioned on the following:

- A. The operation shall be licensed and regulated under an ordinance or resolution approved by the Chairman of the National Indian Gaming Commission.
- B. Income to the Tribe from the operation shall be used only for the purposes listed in 13-2-104 (2).



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- C. Not less than 60 percent of the net revenues be income to the Tribe.
- D. The owner of the individually owned operation pay an assessment to the National Indian Gaming Commission pursuant to Section 514.1 of the National Indian Gaming Regulations.
- E. The individually owned operation shall comply with licensing standards that are at least as restrictive as those established by state law governing similar gaming within South Dakota.
- F. A license shall not be denied for any person or entity that would not be eligible to receive a state license to conduct same activity within the jurisdiction of South Dakota. State law standards shall apply with respect to the purpose, entity, pot limits, and hours of operation.

Seventh Amendment

13-2-101, Definitions, is amended by the addition of a subsection 27 at page 6 of Ordinance 87-03 defining Class II gaming, which shall read as follows:

(27). "Class II gaming" means:

- 1. Bingo or lotto (whether or not electronic, computer, or other technologic aids are used), when players:
  - a. Play for prizes with cards bearing numbers or other designations:
  - b. Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
  - c. Win games by being the first person to cover a designated pattern on such cards;
- 2. If played in the same location as bingo or lotto, pull tabs punch boards, tip jars, instant bingo, and other games similar to bingo;
- 3. Non-banking cards games that:
  - a. State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the State; and


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- b. Player play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pit sizes;
4. Card games played in South Dakota if:
    - a. An Indian Tribe actually operates the same card games as played on or before May 1, 1988, as determined by the Chairman of the National Indian Gaming Commission; and
    - b. The pot and wager limits remain the same as on before May 1, 1988, as determined by the Chairman of the National Indian Gaming Commission;
  5. Individually owned Class II gaming operations:
    - a. That were operating on September 1, 1988;
    - b. That meet the requirements of 25 USC 2710 (b) (4) (B);
    - c. Where the nature and scope of the game remains as it was on October 17, 1988; and
    - d. Where the ownership interest or interests are the same as on October 17, 1988.

C E R T I F I C A T I O N

This is to certify that the above Resolution No. 94-63 was duly passed by the Rosebud Sioux Tribal Council in session on April 4, 1994 by a vote of Twelve (12) in favor, One (1) opposed and None (0) not voting. The said Resolution was adopted pursuant to authority vested in the Tribal Council. A quorum was present.

**ATTEST:**

  
Tribal Secretary  
Rosebud Sioux Tribe *Acting*

  
William Kindle, President  
Rosebud Sioux Tribe

ROSEBUD SIOUX LAW AND ORDER CODE

TITLE 13: GAMING

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ROSEBUD SIOUX LAW AND ORDER CODE  
TITLE 13: GAMING

CHAPTER ONE  
LEGISLATIVE FINDINGS, POLICY AND PURPOSE

**13-1-101. Sovereign Powers and Responsibilities.**

This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Council in Article IV. Section 1(c), (h), (i), (k), (m), (t), and (u) of the Tribal Constitution, which authorize the Council to manage and otherwise deal with tribal lands and property, to exclude by ordinance from the restricted lands of the Reservation persons not legally entitled to reside therein, to promulgate and enforce ordinance providing for the maintenance of law and order and the administration of justice on the Reservation, to regulate the conduct of trade and the use and disposition of property upon the Reservation, to engage in any business that will further the economic well being of members of the Tribe, to regulate tribal agencies and tribal officials, and to delegate to subordinate boards or tribal officials the forgoing powers, subject to review by the Council.

**13-1-102. Federal Policy of Tribal Self-Determination.**

In 1970, President Nixon announced the policy of the United States government to promote self-determination for Indian tribes. At the heart of this policy is a commitment by the federal government to foster and encourage Tribal self-government, economic development and self sufficiency. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act, Public Law 93-638, 88 Stat. 2203, 25 U.S.C. 450-450n. In 1983, President Reagan reaffirmed that commitment in his Indian policy statement and encouraged tribes to reduce their dependence on federal funds by

generating more of their own revenues and he pledged to assist tribes in that endeavor.

The federal commitment was furthered in 1988 by passage of Public Law 100-497, 102 Stat. 2426, 25 USC 2701 et seq (1988), through which the federal government recognized the inherent sovereign right of tribes to conduct and regulate gaming on their reservations and preempted state authority in the area of Indian gaming.

**13-1-103. Rosebud Sioux Tribal Self-Government.**

The Tribe is firmly committed to the principal of tribal self-government. Consistent with federal policy, tribal government provides a wide range of public services on the Reservation, including general governmental services, the maintenance of peace and good order, the establishment of educational systems and programs, and the promotion and regulation of economic activities within the sovereign jurisdiction of the Tribe.

**13-1-104. Tribal Alcohol Rehabilitation Program.**

Among the governmental services provided by Tribal government is its alcohol rehabilitation program. Increasingly dependent upon tribal funding, this program combats the most serious medical and social problem on the Reservation and is essential to the health and welfare of the Tribe.

**13-1-105. Land Consolidation Program.**

As recognized by Congress in the Act of January 25, 1983, Public Law 94-459, Title I, the continued existence of Reservations as permanent homelands for Indian Tribes and as necessary foundations for continued self-determination requires that the Tribes consolidate and increase the trust land base in their Reservations and prevent further loss of trust land. Accordingly, the Tribe has established a Land Consolidation Program which is dependent upon Tribal funding.

**13-1-106. Tribal Need for Governmental Revenue and Additional Economic Development.**

The Tribe is vigorously pursuing its goal of self-determination through the development of manufacturing and farming enterprises. The Tribal Farming Enterprise and Tribal Ranch Enterprise require a vastly expanded land base for increased efficiency and productivity, expansion of its programs and increased employment and training of tribal members. Because of the modest income level of the Tribe and because of cutbacks in federal funding and increasing costs of self-government, it is essential that the Tribe develop additional economic activities

on the Reservation to support general governmental programs, the Alcohol Rehabilitation Program and the Land Consolidation Program and to provide employment for Tribal members.

**13-1-107. Tribal Gaming Policy.**

The establishment, promotion and operation of gaming is necessary and desirable, provided that such gaming is regulated and controlled by the Tribe pursuant to tribal and federal law and any IGRA compact, and that the proceeds of such gaming is used exclusively for the purposes of the tribal government pursuant to tribal law and the IGRA. Gaming provided for hereunder include all gaming pursuant to Tribal/State compact, and operated pursuant to National Indian Gaming Regulatory Act. When operated in accordance with the provisions of this Title, such gaming will be conducive to the general welfare of all residents of the Reservation.

**13-1-108. Purposes of Title.**

The purposes of this Title are:

- (1) To regulate, control and license the operation of all gaming within the Reservation.
- (2) To promote and strengthen tribal economic development, independence and self-determination.
- (3) To generate revenue to strengthen and improve tribal self-government and the provisions of governmental services.
- (4) To enhance employment opportunities for tribal members.

**CHAPTER TWO  
GENERAL PROVISIONS**

**13-2-101. Definitions**

In this Title, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

(1) "BIA Police" means the Rosebud Agency Bureau of Indian Affairs Police Department or police officers serving as part of it, each with a tribal commission, or the Rosebud Sioux Tribe Police Department or police officers serving as part of it."

(2) "Bingo" means the game of chance commonly known as bingo whether or not electronic, computer, or other technologic aids are used in connection therewith, which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of the card covers such



numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and in which the game on such card, including instant bingo and other games similar to bingo.

(3) "Code" means this Law and Order Code of the Rosebud Sioux Tribe, comprising Titles 1 through 17, together with all amendments, additions, or modifications which may be enacted from time to time by the Tribal Council.

(4) "Commission" means the Rosebud Sioux Tribal Gaming Commission established in this Title.

(5) "Commission Member" means a member of the Commission.

(6) "Compact" means any gaming compact between Tribe and State as authorized by IGRA, or by state or tribal law.

(7) "Gaming" means any activity or game of chance in which any valuable consideration may be wagered upon the outcome determined by chance, skill, speed, strength, or endurance, and in which any valuable prize is awarded to the player so wagering, including but not limited to lotteries, keno, pull-tabs, parimutuel wagering, slot, poker, or other mechanical and electronic gaming, and the like, as well as those relying on satellites, computers or cable television, and any activity in furtherance thereof, including owning, financing, managing, participating in, conducting or assisting in any way such activity at the site at which it is being conducted, directly or indirectly, whether at the site in person or off the Reservation.

(8) "Gaming Establishment" means any site on the Reservation at which any gaming activity is conducted, whether by a license or not.

(9) "IGRA" means the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2426, 25 USC 2701 et seq (1988), as amended.

(10) "Indian" means any person who is of Indian descent who is a member of any recognized Indian Tribe under federal jurisdiction at the time of the event under consideration.

(11) "Indian Gaming Commission" means the National Indian Gaming Commission established by the IGRA.

(12) "Immediate Family" means, with respect to the person under consideration, a husband or wife, whether married by tribal custom and traditional practice or under the laws of any state or tribe, father, mother, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter,

stepbrother, stepsister, half brother, or half sister.

(13) "**Judge**" means a Judge or Associate Judge of the Tribal Court which is the subject of the particular section of this Title in which the reference is made.

(14) "**Licensee**" means the person licensed by the Commission to conduct any gaming activity or operation under the provisions of this Title.

(15) "**Manager**" means the highest executive employee of the Commission.

(16) "**Officer**" means an officer of the Commission.

(17) "**Participate**" or "Participation" or Participating" in any gaming activity or operation means operating, directing, owning, financing or in any way assisting in the establishment of or operation of any class of gaming or nay site at which such gaming is being conducted, directly or indirectly, whether at the site in person or off the Reservation.

(18) "**Person**" means any individual, partnership, joint venture, corporation joint stock company, company, firm, association, trust, estate, club, business trust, municipal corporation, society, receiver, assignee, trustee in bankruptcy, political entity, and any owner, director, officer or employee of nay such entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(19) "**Property**" means realty and personalty, of whatever nature, including fixtures, money, claims, intangible rights and interests in property.

(20) "**Pull-Tab**" means any disposable card, board, or ticket which accords the player an opportunity to win something of value by opening, pulling, detaching, or otherwise removing tabs form the card, board, or ticket to reveal a set of number, letters, symbols, configurations, or combinations thereof which have been previously specified as a winning combination.

(21) "**Reservation**" means the Rosebud Sioux Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent of right-of-way, and such other lands, islands, waters, or any interest therein hereafter added to the Reservation, to the extent not prohibited by federal law.

(22) "**State**" means the State of South Dakota.

(23) "Tribal Council" or "Council" mean the Tribal Council of the Rosebud Sioux Tribe established by and functioning pursuant to the Tribal Constitution and By-laws.

(24) "Tribal Court" means either the trial court created, existing and operating under the provisions of Chapter One of Title 9 of this Code, or that one of the Courts of the Tribe to which the reference is intended to apply as determined by the particular section of this Title in which the reference is made, and each and all of the Judges of that Tribal Court acting collectively or individually in that office and capacity.

(25) "Tribe" means the Rosebud Sioux Tribe, recognized by the federal government and operating pursuant to the Constitution and By-laws of the Rosebud Lake Sioux Tribe, and "tribal means belonging or pertaining to the Tribe.

(26) "Wager" means the initial bet made in any game.

(27) "Class II gaming" means:

1. Bingo or lotto (whether or not electronic, computer, or other technologic aids are used), when players:
  - a. Play for prizes with cards bearing numbers or other designations;
  - b. Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
  - c. Win games by being the first person to cover a designated pattern on such cards;
2. If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo;
3. Non-banking card games that:
  - a. State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the State; and
  - b. Players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes;
4. Card games in South Dakota if:
  - a. An Indian Tribe actually operates the same card games as played on or before May 1, 1988, as determined by the Chairman of the National Indian Gaming Commission;

5. Individually owned Class II gaming operations:

- a. That were operating on September 1, 1988;
- b. That meet the requirements of 25 USC 2710 (b) (4) (B);
- c. Where the nature and scope of the game remains as it was on October 17, 1988; and
- d. Where the ownership interest or interests are the same as on October 17, 1988.

13-2-102. Sovereign Immunity and Waiver.

(1) **Sovereign Immunity.** The Rosebud Sioux Tribal Gaming Commission created by this Title is hereby clothed with all the privileges and immunities of the Tribe, except as specifically limited by the Tribe, including sovereign immunity from suit in any state or federal court. The Tribe expressly reserves all its inherent sovereign rights as a federally-recognized Indian tribe with respect to the existence and activities of the Commission, including sovereign immunity from suit in any state or federal court.

Nothing in this Chapter shall be deemed or construed to be a waiver of sovereign immunity of the Commission or the Tribe from suit or to be consent of the Commission or the Tribe to any such waiver of sovereign immunity, which may only be waived pursuant to Subsection (2). Except as provided in Subsection (2), nothing in this Chapter shall be deemed or construed to be a consent of the Commission or the Tribe, to the jurisdiction of the United States or of any state with regard to the business or affairs of the Commission or the Tribe or to any cause of action, case or controversy.

(2) **Waiver of Sovereign Immunity.** Sovereign Immunity of the Commission and the Tribe may be waived only by express resolution by a positive vote of two thirds of the entire Council after consultation with its attorneys. All waivers of sovereign immunity must be preserved with the resolutions of the Council and of the Commission of continuing force and effect. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Commission and the Tribe. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Commission or the Tribe subject thereto, court having jurisdiction pursuant thereto and law applicable thereunder.

Neither the power to sue and be sued provided in 13-3-118, nor any activity of the Commission, nor any express waiver of sovereign immunity by resolution of the Council, shall be deemed a consent to the levy of any judgment, lien, or attachment upon property of the Commission or the Tribe other than property

specifically pledged or assigned, or to be a consent to suit in respect of land within the exterior boundaries of the Reservation or a consent to the alienation, attachment or encumbrance of any such land.

(3) **Credit of the Tribe.** Nothing in this Chapter, nor any activity of the Commission, nor any indebtedness incurred by it, shall implicate or in any way involve the credit of the Tribe.

(4) **Credit of the Commission.** Nothing in this Chapter, nor any activity of the Commission, nor any indebtedness incurred by it, shall implicate or in any way involve the credit of the Commission except as provided herein.

(5) **Assets of the Commission.** The Commission shall have only those assets assigned to it by Council or acquired by it thereafter. No activity of the Commission, nor any indebtedness incurred by it, shall implicate or in any way involve any assets of the Commission nor any indebtedness incurred by it shall implicate or in any way involve any assets of tribal members or the Tribe not assigned in writing to the Commission.

#### **13-2-103. Tribal Gaming Commission Account Established.**

(1) There is hereby authorized and directed to be established an account in federally-insured financial institution to be know as the Tribal Gaming Commission Account.

(2) The Tribal Gaming Commission Account shall be an interest-bearing account and the funds therein may be invested and reinvested as approved by the council.

(3) No monies shall be released or expended form the Tribal Gaming Commission Account except upon written resolution of the Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe. Such appropriated amount shall be directly transferred to the account of the receiving department, agency, or program named in the appropriation resolution.

(4) All income, fees, penalties, interest, charges, or other monies collected by the Commission in the administration and enforcement of this Title shall be deposited in the Tribal Gaming Commission Account.

#### **13-2-104. Allocation and Use of Gaming Revenue.**

(1) The Tribe shall receive not less than 65% of the net revenues of any Class II or III gaming on the Reservation or licensed under this Title; provided, however, that all such net revenue of any such gaming operated by a recognized tribal community shall be allocated to an agreement by and between the

Rosebud Gaming Commission and such community exclusively for the uses listed herein.

(2) Revenue from tribal gaming shall be used only for the following purposes:

- (a) To fund tribal government operations or programs;
- (b) To provide for the general welfare of the Tribe and its members;
- (c) To promote tribal economic development;
- (d) To provide donations for charitable organizations;
- (e) To help fund operations of local government agencies.

(3) Rosebud Tribe Gaming Commission will use any and all fees and penalties collected by the Rosebud Gaming Commission at its discretion.

#### 13-2-105. Savings Clause.

If any of this Title is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

#### 13-2-106. Sole Interest.

The Rosebud Sioux Tribe shall have the sole proprietary interest in and responsibility for conduct of any gaming operation on the Rosebud Indian Reservation. No licenses shall be issued by the Rosebud Sioux Tribe to allow the operation of any individually owned gaming operations on the Rosebud Indian Reservation unless it elects to allow individually owned gaming under the Indian Gaming Regulatory Act.

#### 13-2-106 (A). Individually Owned Class II and Class III Gaming Operations.

Any individually owned gaming operations licensed by the Rosebud Sioux Tribe shall be conditioned on the following:

A. The operation shall be licensed and regulated under an ordinance or resolution approved by the Chairman of the National Indian Gaming Commission.

B. Income to the tribe from the operation shall be used only for the purposes listed in 13-2-104 (2).

C. Not less than 60 percent of the net revenues be income to the Tribe.

D. The owner of the individually owned operation pay an assessment to the Indian Gaming Commission pursuant to Section 514.1 of the National Indian Gaming Regulations.

E. The individually owned operation shall comply with licensing standards that are at least as restrictive as those established by state law governing similar gaming within South Dakota.

F. A license shall be denied for any person or entity that would not be eligible to receive a state license to conduct the same activity within the jurisdiction of South Dakota. State law standards shall apply with respect to the purpose, entity, pot limits and hours of operation.

13-2-107. Internal Revenue Compliance.

All laws administered by the United States Internal Revenue Service dealing with gaming, including but not limited to all laws dealing with reporting gaming winnings and the withholding of taxes from such winnings, shall be complied with."

13-2-108. Designation of Agent For Service.

The President of the Rosebud Sioux Tribe is hereby designated as agent for service of any official determination, order, or notice of violation. The address of the President is Rosebud Sioux Tribe, Box 430, Rosebud, South Dakota 57570. The phone number is 605-747-2381 and the fax number is 605-747-2243.

CHAPTER THREE  
TRIBAL GAMING COMMISSION

13-3-101. Creation of Commission.

The Tribe hereby creates and establishes, pursuant to this Title, the Tribal Gaming Commission, a governmental agency and subordinate subdivisions of the Tribe.

13-3-102. Number of Selection of Commissioners.

The Commission shall comprise five voting members appointed by the Council, all of whom shall be members of the Rosebud Sioux Tribe.

13-3-103. Terms of Office.

Commissioners shall serve three year terms and shall hold office until their successors have been appointed and have qualified: Provided however, the first Commission shall have terms of office as described in 13-3-104.

**13-3-104. First Commission.**

Two Commissioners appointed to the first Commission shall serve terms of three years. Two Commissioners appointed to the first Commission shall serve terms of two years. The remaining Commissioner appointed to the first Commission shall serve a term of one year.

**13-3-105. Disqualification of Commissioner.**

No person who has ever been convicted of a federal, state or tribal felony, or who has ever entered a plea of nolo contendere to any felony charge, or who is determined by the Commission to have ever participated in organized crime, unlawful gaming activities, bootlegging or drug trafficking, or who has been convicted of a misdemeanor involving dishonesty or moral turpitude within the past five years, or whose previous activities, reputation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices methods, or activities in the conduct of gaming shall be permitted to participate in any gaming activity or operation.

**13-3-106. Vacancies.**

If any Commissioner shall die, resign, be removed or, for any reason, be unable to serve as a Commissioner, the Council shall declare his position vacant and shall appoint another person to fill the position. Terms of office of all persons appointed to replace the initial Commissioners shall be for the balance of any unexpired term for each such position.

**13-3-107. Resignation.**

Any Commissioner may resign by delivering a written resignation to the President of the Commission. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof. A Commissioner's resignation under this Section or removal under 13-3-108 shall also terminate that Commissioner's status, if applicable, as a presiding officer of the Commission.

**13-3-108. Removal.**

Pursuant to Commission regulations, a Commissioner may be removed by the Council for serious inefficiency or neglect of duty or for malfeasance, misfeasance or nonfeasance or for misconduct in office, but, except as provided below, only after a



hearing before the Council, and only after the Commissioner has been given written notice of the specific charges at least ten days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses on his or her behalf. If the Council determines that immediate removal of the Commissioner is necessary to protect the interests of the Tribe, the Commissioner may be temporarily removed immediately, and the question of permanent removal shall be determined pursuant to Commission hearing procedures. A written record of all removal proceedings together with the charges and findings thereon shall be kept by the Tribal Secretary. The decision of the Council upon the removal of a Commissioner shall be final.

**13-3-109. Officers of the Commission.**

(1) **President.** The President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of one year. Any Commissioner may serve as President for two consecutive terms. The President shall preside over all Commission meetings; sign on behalf of the Commission all documents, decisions, orders, notices, or other papers approved for such execution by the Commission; and shall have such other powers and duties as may from time to time be assigned to him by the Commission.

(2) **Vice President.** The Vice President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of one year. Whenever the President is unable to preside or fulfill his duties as President, the Vice President shall do so, and when so acting, shall be clothed with all of the powers and duties of the President.

(3) **Secretary/Treasurer.** The Secretary/Treasurer of the Commission shall be elected by and from the Commission membership for a term not to exceed his term of office as Commissioner. His duties shall be those assigned him by the Commission.

**13-3-110. Annual Budget.**

The commission shall prepare an annual operating budget for all Commission activities and present it the Council by August 15 of each year.

**13-3-111. Office of Tribal Gaming Commission.**

The Commission shall be provided with suitable office space, necessary office furniture, stationary, books and maps and supplies, the expense thereof to be included in the annual budget of the Commission and paid from funds appropriated by the Council

from the Tribal Gaming Commission Account.

**13-3-112. Compensation of Commissioners.**

Compensation of Commissioners, if any, shall be determined by the Council, the expense thereof to be included in the annual budget of the Commission and paid from funds appropriated by the Council from the Tribal Gaming Commission Account.

**13-3-113. Quorum.**

Three Commissioners shall constitute a quorum of the Commission. A majority of those Commissioners present at a meeting at which there is no quorum may by resolution adjourn the meeting from time to time for a period not exceeding ten days in any one instance.

**13-3-114. Majority Vote.**

All questions arising in connection with the action of the Commission shall be decided by majority vote of the Gaming Commission.

**13-3-115. Conflict of Interest.**

No Commissioner shall participate in any matter, hearing or proceeding in which he or a member of his immediate family has any pecuniary interest.

**13-3-116. General Procedures of the Commission.**

The Commission shall in all cases conduct its proceedings in the manner most conducive to the proper dispatch of business and to the ends of justice pursuant to such general rules, adopted by the Council pursuant to 13-3-118, as may be necessary for the orderly regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as possible to those in use in the Tribal Court. Any party may appear before the Commission and may be heard in person or by attorney. Every vote and official action of the Commission shall be entered into a record and its proceedings shall be published upon the request of any interested person. Every Commissioner shall have the right to administer oaths and affirmations in any proceeding pending before the Commission.

**13-3-117. Tribal Gaming Commission Director.**

The Council shall appoint a Tribal Gaming Commission Director who shall be a full time paid employee of the Tribe and shall be subject to the Personnel Policies and Procedures Manual, provided, however, that the expense of the Director's salary shall be included in the annual budget of the Commission and paid

from funds appropriated by the Council from the Tribal Gaming Commission Account.

The Director shall have primary responsibility for the day-to-day operation of the Commission, pursuant to delegation of authority by the Commission, including supervision of all Commission employees. The Director shall not be a member of the Commission.

**13-3-118. Powers of the Commission.**

In addition to those powers and duties specified in detail elsewhere in this Title, the Commission shall have the following general powers and duties.

(1) To supervise, inspect and regulate any phase of any gaming activity or operation.

(2) To investigate the operation and premises of any person who is subject to the provisions of this Title pursuant to 13-3-122.

(3) To examine the financial books and other records of any person or entity participating in gaming.

(4) To require by regulation the filing of monthly reports to the Gaming Commission of any records, forms, reports and all other information desired by the Commission for implementation of this Title relating to any gaming activity or operation, or any investigation as required by tribal law and the IGRA.

(5) Schedule of fees to be determined on an annual basis by the Rosebud Gaming Commission.

(6) To prepare and recommend to the Council a schedule of fees to be charged for gaming licenses pursuant to the IGRA.

(7) To prepare and recommend to the Council a schedule of fees and charges for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records.

(8) To process applications for tribal gaming licenses for Class II and Class III gaming pursuant to the IGRA and to recommend to the Council issuance or denial of such licenses.

(9) To process applications for management contracts for Class II and III gaming pursuant to the IGRA, and to recommend to the Council approval or rejection of such applications.

(10) To prepare and recommend to the Council an annual

operating budget pursuant to 13-3-110.

(11) To establish by regulation tribal gaming licensing criteria and to require that such criteria are at least restrictive as those required by the IGRA or state law.

(12) To recommend to the Council that the Tribe become self-regulating whenever the Tribe becomes eligible for a certificate of self-regulation under the IGRA.

(13) To advise the Council whenever, in the opinion of the Commission, the State is negotiating upon any IGRA compact in bad faith and to recommend legal action against the State in federal court.

(14) To employ and fix the compensation of such advisors, gaming experts, and other expert help and assistance for carrying out its duties and conducting hearings, investigations, and proceedings relating to gaming activities, subject to Subsection (15), (16) and 13-3-110 as it deems necessary. The expense of any hearings, investigations, and proceedings, and the compensation and the actual expenses of any employees of the Commission while engaged in any such hearing, investigation, or proceeding shall, upon appropriate order of the Commission, be paid by any person being investigated or involved in such hearing, investigation or proceeding.

(15) To delegate to an individual Commissioner, or to the Director or other members of the Commission staff or, upon approval by the Council, to Tribal staff such of its functions as may be necessary to administer this Title efficiently, provided, however, that the power to conduct hearings pursuant to 13-3-124 shall not be delegated except to a member of the Commission or to a hearing officer as provided in 13-3-124.

(16) To retain and use the services of only the tribal attorney or other attorneys designated by the Council upon a contract approved by the Council and the Secretary of the Interior.

(17) To employ and use the services of only the tribal accountants or other accountants designated by the Council upon a contract approved by the Council.

(18) To cooperate with and receive technical and financial assistance from the United States or any state for any purposes relating to gaming laws that deal with matters subject to the jurisdiction of the Commission, and to file any reports and hold any hearing for any such purposes.

(19) To prepare and recommend to the Council regulations pursuant to 13-3-119.

(20) To conduct background investigations of all persons who propose to participate in any gaming activity or operation.

(21) To provide to the Indian Gaming Commission and to the State the results of background check upon proposed management entities, all owners, directors, officials, and key employees thereof, and all persons proposed for employment as tribal employees in any Class III gaming activity or operation before any such entity or person is employed either by the Tribe or any licensee.

(22) To hold hearings pursuant to 13-3-123 of this Title.

(23) To examine under oath either orally or in writing any person, agent, officer, or employee of any person subject to the provisions of this Title, or any other witness with respect to any enforcement action authorized by this Title.

(24) To discipline any licensee or other person participating in any gaming activity or operation by ordering immediate compliance with this Title or Commission regulations and to issue an order of temporary suspension of any license issued under this Title, whenever the Commission is notified of a violation by any such person of this Title, applicable state law or any IGRA compact. Any licensee under temporary suspension will be assessed another fee to dissolve temporary suspension. Fee will be determined by the Rosebud Gaming Commission.

(25) To issue an order of temporary closure of any gaming activity or operation in the event the Commission determines that immediate closure is necessary to protect assets or activities of the Tribe or any recognized tribal community, pursuant to Commission regulations, or whenever the Commission shall receive information from the Indian Gaming Commission that a management official or employee of such licensee does not meet the standards for being licensed provided in the IGRA.

(26) To compel obedience to its lawful orders by proceeding of mandamus or injunction or other proper proceedings, in the name of the Tribe in the Tribal Court or any other court having jurisdiction of the parties or of the subject matter.

(27) To recommend to the Council whether the Council whether the Council should file any other court actions in regard to gaming activities or operations.

(28) To name an arbitrator in connection with any arbitration proceeding instituted pursuant to any IGRA compact.

(29) To sue and be sued in any court of competent jurisdiction, subject, however, to the provisions of 13-2-102.

(30) To exercise all other authority delegated to it by law for the implementation of any provisions of this Title.

13-3-119. Commission Regulations.

(1) The Commission shall prepare and recommend to the Council such regulations as are necessary to carry out the orderly performance of all its duties and powers, including but not limited to regulations relating to

(a) Internal operational procedures of the Commission and its staff;

(b) Interpretation and application of this Title as may be necessary to carry out its duties and exercise its powers;

(c) A regulatory system for all gaming activities and operations, including accounting, contracting, management and supervision;

(d) The findings of any report or other information required by or necessary to implement this Title; and

(e) The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Commission authorized by this Title.

(2) No regulation of the Commission shall be of any force or effect unless it is adopted by the Council by written resolution and copies of the regulation and Council resolution have been filed for record in the office of the Secretary of the Tribe and in the office of the Clerk of the Tribal Court.

(3) The Tribal Court and any other court of competent jurisdiction shall take judicial notice of all Commission regulations adopted pursuant to this Title.

13-3-120. IGRA Compact.

Pursuant to the IGRA, the Commission shall negotiate with the State and prepare and recommend to the Council any IGRA compact governing Class III gaming activities or operations. Such compact shall be effective only after it has been approved by the Tribe, the State, the Chairman of the Indian Gaming Commission and has been published in the Federal Register; provided that any such compact must be approved, amended or revoked by a positive vote of two thirds of the entire Council and provided, further, that such compact shall be revocable only pursuant to the IGRA.

13-3-121. Right of Entrance; Inspection.

The Commission and duly authorized officers and employees of the Commission, during regular business hours, may enter upon any premises of any licensee or gaming establishment for the purpose of making inspections and to examine the accounts, books, papers, and documents, of any such licensee or gaming establishment. Such licensee shall facilitate such inspection or examinations by giving every reasonable aid to the Commission and to any officer or employee.

**13-3-122. Investigations.**

The Commission, upon complaint or upon its own initiative and whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any person who is subject to the provisions of the Title. In conducting such investigation, the Commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording the affected parties notice and an opportunity for a hearing pursuant to Commission regulations.

**13-3-123. Hearings; Examiner.**

Pursuant to regulations, the Commission may hold any hearing it deems to be reasonably required in administration of its powers and duties under this Title. Whenever it shall appear to the satisfaction of the Commission that all of the interested parties involved in any proposed hearing have agreed concerning the matter at hand, the Commission may issue its order without a hearing.

The Commission may designate one of its members to act as examiner for the purpose of holding any such hearing or the Commission may appoint another person to act as examiner under 13-3-124. The Commission shall provide reasonable notice and the right to present oral or written testimony to all persons interested therein as determined by the Commission.

**13-3-124. Appointment of Examiner; Power of Examiner.**

The Commission may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Commission, or any member thereof, has power or authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Commissioner under this Title with respect to any such hearing.

**CHAPTER FOUR  
CLASSES OF GAMING**

**13-4-101. Classes of Gaming.**

Gaming activities shall be classified as follows:

(1) Class I. Class I shall comprise social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations, which require permission only of the tribal community in which they are conducted. Class I includes raffles for charitable purposes and with prizes of minimal value.

(2) Class II. Class II shall comprise bingo of every kind if played at the same location, whether or not electronic, computer, or other technologic aids are used in connection therewith, pull tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo; also card games, but not banking card games such as baccarat, chemin de fer or blackjack (21), or electronic or electromechanical facsimiles of any game of chance and slot machines of any kind.

(3) Class III. Class III shall comprise all forms of gaming not classified as Class I or Class II.

**CHAPTER FIVE  
REGULATION OF GAMING**

**13-5-101. Gaming Regulated.**

All Class I, II and III gaming activities or operations are subject to the provisions of this Title.

**13-5-102. Authority of the Commission.**

The Commission is given exclusive authority to regulate all gaming activities or operations under provisions of this Title.

**13-5-103. License Requirement.**

(1) Class I. A tribal license shall not be required for any Class I gaming activity or operation, provided, however, that each Class I gaming activity or operation must have written permission of the Tribal Community in which it is conducted, and such permission must be on file with the Tribal Secretary before any such Class I gaming is conducted.

(2) Class II. A separate tribal license issued by the Commission pursuant to specific authority of the Council shall be required for each Class II gaming activity or operation for every primary management official and key employee thereof.



(3) Class III. A separate tribal license issued by the Commission pursuant to specific authority of the Council shall be required for each Class III gaming activity or operation and for every management official and employee thereof.

(4) Only gaming stated in the tribal license therefor shall be permitted by any licensee at any gaming establishment.

#### 13-5-104. Application for License.

Every person seeking a license from the Commission shall file an application which shall contain:

(1) The name of the applicant and all pertinent information required by Commission regulations.

(2) A release authorizing the Commission and, in the case of an application relating to a Class III license, the State, to conduct a background investigation of the applicant. In the latter case the application shall be accompanied by the fee provided in the State Commission on Gaming regulations for such an investigation.

#### 13-5-104(A). Separate Licenses

A separate license shall issue to each place, facility, or location on Indian lands where gaming is allowed.

13-5-104 (B). The Tribe shall ensure that the policies and procedures set out in this chapter, which shall be at least as stringent as provided in the Regulations of the National Indian Gaming Commission, are implemented with respect to key employees and primary management officials employed at any Class II or Class III gaming enterprise operated on Indian lands:

##### A. Definitions.

For the purpose of this ordinance, the following definitions shall apply:

##### 1. Key employee means

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

i. Bingo caller;

ii. Counting room supervisor;

iii. Chief of Security;

- iv. Custodian of gaming supplies or cash;
  - v. Floor manager;
  - vi. Pit boss;
  - vii. Dealer;
  - viii. Croupier;
  - ix. Approver of credit;
  - x. Custodian of gambling devices including persons with access to cash and accounting records within such devices;
- b. If not otherwise included, any person whose total cash compensation is in excess of \$50,000 per year; or
  - c. If not otherwise included, the four most highly compensated persons in the gaming operation.

2. Primary management official means

- a. The person having management responsibility for a management contract;
- b. Any person who has authority:
  - i. To hire and fire employees; or
  - ii. To set up working policy for the gaming operation; or
  - iii. The Chief financial officer or other person who has financial management responsibility.

B. Application Forms

- 1. Existing key employees and primary management officials shall be notified in writing that they shall either:
  - a. Complete a new application form that contains a Privacy Act notice as set forth in 13-5-116 (6); or
  - b. Sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that notice.

2. 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.

13-5-105. **Form and Display of License.**

Every license issued by the Commission shall contain the following data:

(1) The name and address of the authorized licensee of gaming.

(2) A recital that the licensee is authorized to conduct the type of gaming specified or be employed in the management of or serve as a key employee of any gaming enterprise.

(3) A statement that all participants in gaming activities or operations conducted pursuant to the license shall be deemed to have consented to the civil jurisdiction of the Tribe and the Tribal Court.

(4) The signature of the Commission Director.

Such license shall be posted in a conspicuous place on the premises at which the gaming activity authorized thereby is conducted or the premises at which such person manages or serves as a key employee of any gaming enterprise.

13-5-106. **Financial Reports.**

Every licensee shall furnish to the Commission an annual statement of all sales, revenues, and all other amounts collected and received, all deductions and disbursements made therefrom and all expenses incurred or paid in connection with any gaming activity or operation by such licensee.

13-5-107. **Audits.**

(1) **Semi-annual Audit.** An audit by an independent Certified Public Account of the Commission's choice and acceptable to the Commission shall be performed semi-annual at the expense of each licensee.

(2) **Additional Audits.** Additional audits as may be deemed necessary by the Commission shall be performed from time to time

at the expense of the Commission, provided, however, that such audits shall not be unreasonably performed.

(3) **Supplies, Services and Concessions Audits.** Every contract for supplies, services or concessions in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to the gaming activities or operations of each such licensee shall be subject to an annual audit at the expense of such licensee pursuant to the IGRA.

(4) **Audits Furnished to the Indian Gaming Commission.** The annual audit and each audit for supplies, services or concessions of each licensee and each tribal gaming operation shall be furnished to the Indian Gaming Commission pursuant to the IGRA.

(5) **Audits Furnished to the State.** Copies of every audit required hereby for any Class III licensee shall be made available to the State pursuant to any IGRA compact.

**13-5-108. Equal Opportunity to Win By Each Player.**

Each gaming activity or operation must be conducted so that each of multiple players has an equal opportunity to win.

**13-5-109. Determination of Winners.**

All winners shall be determined and all prizes awarded within a time specified by the Commission.

**13-5-110. Employee Disqualifications.**

No employee of any gaming activity or operation shall be permitted to participate in any game in which he is employed. An employee may participate in any game in which he is not employed after paying an admission fee and any other fee incident thereto.

**13-5-111. Age Limitation.**

No person under 16 years of age shall be permitted to participate in any Class I or II gaming activity or operation or be an employee thereof, and no person under 21 years of age shall be permitted to participate in any Class III gaming activity or operation or be an employee thereof.

**13-5-112. Wager Limitation; Notice.**

A player shall not make an initial wager of more than the amount specified in any IGRA compact, and each gaming table in any gaming establishment shall be equipped with a sign that indicates permissible minimum and maximum wager for it.

**13-5-113. Credit Restriction.**

All gaming shall be conducted on a cash basis and, except as provided herein, no licensee or gaming establishment shall extend credit for gaming to any person or permit any person to offer such credit for a fee, provided, however, that 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 any person to cash a check or use a bank or credit card for gaming in the same manner as would normally be permitted at any retail business within the Reservation.

**13-5-114. Gaming Location.**

Class II or Class III gaming activities or operations shall be conducted only on fee or trust land specifically approved by Council resolution.

**13-5-115. Construction, Maintenance and Operation Standards.**

The construction and maintenance of every gaming establishment and the conducting of any gaming activity or operation therein shall be done in a manner which adequately protects the environment and the public health and safety.

**13-5-116. Person Participating or Assisting In Gaming Activities or Operations.**

(1) No person who has ever been convicted of a federal, state or tribal felony, or who has ever entered a plea of nolo contendere to any felony charge, or who is determined by the Commission to have ever participated in organized crime, unlawful gaming activities, bootlegging or drug trafficking, or who has been convicted of a misdemeanor involving dishonesty or moral turpitude within the past five years, or whose previous activities, reputation, habits or associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices methods, or activities in the conduct of gaming shall be permitted to participate in any gaming activity or operation.

(2) Any person who participates in any gaming activity or operation shall submit to fingerprinting and photography by the BIA Police and shall agree to any lawful means of testing, including but not limited to drug or polygraph testing, at any time and without prior notice concerning the handling, collection and disbursement of monies in connection with such gaming.

(3) No person shall be eligible to receive a tribal license to own a Class II gaming activity or operation who would not be eligible to receive a state license to conduct such gaming within the jurisdiction of the State.

(4) A criminal history check shall be completed by the Federal Bureau of Investigation, Bureau of Indian Affairs, State of South Dakota, or other cooperating law enforcement agency on all persons participating in any gaming activity or operation. Such a criminal history check shall include, but is not limited to, a check through the Federal Bureau of Investigation National Criminal Information Center. All applications for licenses shall request the applicants set forth all names used in the past, social security number, birth date, criminal history background, and any other information deemed relevant by the commission. The Gaming Commission shall then take such steps to complete the criminal history background check.

(5) a background investigation shall be performed for each primary management official and for each key employee of a gaming operation pursuant to a "description of procedures" adopted by the Rosebud Sioux Tribe Gaming Commission as a regulation.

(A). "The Rosebud Sioux Tribe Gaming Commission shall request from each primary management official and from each key employee all of the following information:

1. Full Name, other names used (oral and written), social security number (s), birthdate, place of birth, citizenship, gender, all languages (spoken or written);
2. For the previous five years: Business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
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 paragraph (a) (2) of this selection;
4. Current business and residence telephone numbers;
5. A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;
6. A description of any 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 conviction, the charge, the name and address of the court involved, and the date and disposition;

9. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date of disposition;

a. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph 8 or 9 of this section, the criminal charge, the name and address of the court involved and the date and disposition;

10. 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;

11. A current photograph; and  
a. Fingerprints consistent with the procedures adopted by the Tribe according to 25 CFR 522.2 (h).

12. Any other information the Rosebud Sioux Tribe Gaming Commission deems relevant.

The Tribe shall conduct an investigation sufficient to make a determination under subsection B below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(B). 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.

(C). If the Rosebud Sioux Tribe Gaming Commission possesses an investigative report for an employee, the Commission may update that report instead of performing an entirely new investigation."

(6). The Rosebud Sioux Tribe Gaming Commission shall place the following notice 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 the 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 of a gaming license, or investigations of activities while associated with a tribe or 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.

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 under 18 USC 100.

13-5-116 (A).

A. 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 cause to be conducted or conduct the background investigation and make the determination referred to in 13-5-116 (5) (B).



B. The Tribe shall forward the report referred to in subsection (D) of this section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

C. The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

D. Pursuant to the procedures set out in subsection A, B, and C above, 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:

1. Steps taken in conducting a background investigation;
2. Results obtained;
3. Conclusions reached; and
4. The bases for those conclusions.

E. The Tribe shall submit, with the report, a copy of the eligibility determination made under 13-5-116 (5) (B).

F. If a license is not issued to an applicant, the Tribe:

1. Shall notify the National Indian Gaming Commission;  
and
2. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

G. 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.

H. 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 primary management official for whom the Tribe has provided an application and investigative report to the National Gaming Commission, the Tribe may issue a license to the

applicant.

I. The Tribe shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or primary management official who is the subject of a report. Such a request shall suspend the 30 day period under paragraph 8 above until the Chairman of the National Indian Gaming Commission receives the additional information.

J. 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.

13-5-117. Participants in Gaming.

Any person who participates in any gaming activity or operation shall be deemed to consent to the civil jurisdiction of the Tribe and the Tribal Court.

13-5-118. Prohibition Against Intoxication.

No person shall be permitted to enter premises where gaming activities or operations are being conducted or participate in any gaming activity or operation while such person is or appears to be under the influence of nay intoxicating liquor or drugs.

13-5-119. Regulations to Be Posted.

The Commission shall post regulations relating to the conduct of bingo and any other gaming activity as it deems necessary, in a conspicuous place at the location of such gaming activity.

13-5-120. Revocation of License.

(1) Exclusive Tribal Court Jurisdiction. Except as provided in subsection (4), the Tribal Court shall have exclusive jurisdiction to revoke a license issued under this Title.

(2) Initiation by Commission. Revocation proceeding in Tribal Court shall be initiated by the Commission either before or after completion of any hearing conducted by the Commission pursuant to this Title.

(3) Commission Hearing Record. In any revocation

proceeding in the Tribal Court, no new or additional evidence may be introduced, but the matter shall be heard on the record established before the Commission as certified by the Commission. The Tribal Court shall uphold all factual findings by the Commission unless the court determines that such findings are not supported by substantial evidence in the record established before the Commission. In reviewing legal conclusions reached by the Commission, the Tribal Court shall give proper weight to the Commission's interpretation of this Title and any regulations promulgated thereunder.

(4) 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 primary management official is not eligible for employment, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation. The revocation shall take place pursuant to the procedures for revocation under sections 1. 2. and 3 above. The above shall notify the National Indian Gaming Commission of its decision.

#### 13-5-121. Reserved Power of Council.

The Council reserves the power and authority to delegate to the Commission the operation of gaming on behalf of the Tribe and to restrict to the Tribe the sole proprietary interest in all gaming activity and operations under this Title.

### CHAPTER SIX ENFORCEMENT

#### 13-6-101. Jurisdiction.

Except as provided in this Title and in any IGRA compact, the Tribal Court shall have jurisdiction over all violations of this Title.

#### 13-6-102. Prohibited Acts.

In addition to other civil and criminal offenses provided for in this Code, the following acts are prohibited by this Title and subject the violator to the civil and criminal penalties specified in this Title:

(1) Participating in any gaming activity or operation which is not authorized by this Title.

(2) Knowingly making a false statement in an application for employment with any licensee or with the Commission.

(3) Knowingly making a false statement in connection with any contract to participate in any gaming activity or operation.

(4) Attempting to bribe any person participating in any gaming activity or operation.

(5) Offering or accepting a loan, financing or other thing of value between a Commission member or employee and any person participating in any gaming activity or operation.

(6) Promoting or participating in any gaming activity or operation to win money or other valuable consideration except for the specific gaming authorized at such location pursuant to this Title.

(7) Failing to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid from any gaming activity or operation authorized pursuant to this Title.

(8) Falsifying any books and records which relate to any transaction connected with the operation of gaming pursuant to this Title.

**13-6-103. Criminal Violation of This Title or Commission Order or Regulation.**

Any Indian or non-Indian who violates or fails to comply with any provision of this Title, or who fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, direction, demand, or requirement of the Commission, or any part or provision thereof, shall be guilty of a Class A crime. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Title.

**13-6-104. Civil Violation of This Title or Commission Order or Regulation.**

Any person who is not a tribal member who violates or fails to comply with any provision of this Title, or who fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, direction, demand, or requirement of the Commission, or any part or provision thereof, shall be liable for a civil fine not to exceed \$5,000 for each violation thereof. Each day during which any such violation or failure to comply continues shall constitute a separate violation of the Title. The amount of the civil fine, when finally determined or agreed upon a compromise, if not paid, may be recovered in a civil action in the Tribal Court.

**13-6-105. Cumulative Fine.**

All civil fines accruing under this Chapter shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any licensee, or any other person.

**13-6-106. Purpose of Civil Penalties.**

The civil fines imposed under this Chapter are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Reservation, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Title. The civil fines under this Chapter are also intended to coerce all persons into complying with this Title, Commission regulations and the laws and regulations of the Tribe and not to punish such persons for violation of such laws and regulations.

**13-6-107. Civil Action for Penalties.**

In enforcing the civil infraction provisions of this Chapter, the Commission shall proceed, in the name of the Tribe, against a person for violation of such provision by civil complaint pursuant to the provisions of this Code. The commission in such action shall have the burden of showing by the preponderance of the evidence that such person violated the applicable provision of this Title.

**13-6-108. Seizure of Property.**

All property utilized in violation of this Title shall be subject to seizure by order of the Tribal Court.

**13-6-109. Disputes Under Management Agreement.**

Should litigation be necessary to enforce the obligations of the management agreement between BBC Entertainment, Inc., and the Rosebud Sioux Tribe, such litigation shall not be brought in the courts of any state. Instead, access to the courts shall be as follows:

(a) Any litigation relating to a dispute over the terms, rights or obligations set forth in this agreement shall first be initiated in Rosebud Sioux Tribal Court.

(b) The parties agree that in the event of a dispute requiring court intervention, either party may apply to the Tribal Court appointment of a special judge to preside over any such disputes. The Tribal Court shall immediately appoint such special judge to preside over disputes involving this contract or

the management of the project. The special judge must be approved by both parties to this agreement prior to presiding over the case or controversy. The special judge must be law trained, and the parties hereto will share equally in any compensation to be paid to the special judge incurred in the course of his duties on the case.

(c) Should either party request the appointment of a special judge to hear a dispute or settle a controversy, said judge must be agreed upon by both parties and selected and appointed within seven days of the application by either party. The parties may waive or extend the time limit include herein by mutual agreement.

(d) With the use of the special judge as provided herein, the Rosebud Sioux Tribal Court shall have initial jurisdiction over all disputes arising with respect to this contract, subject only to those exceptions as set forth in subparts (f) and (g) hereto.

(e) Regular appeals from the decisions of the special judge for the Rosebud Sioux Tribal Court shall be taken as provided in the Rosebud Sioux Tribal Rules of Appellate Procedure.

(f) The jurisdiction of the Rosebud Sioux Tribal Court system with respect to disputes related to this contract shall extend through the Tribal Court and Appellate Court level. Tribal Court remedies must be exhausted before any party may initiate suite in Federal Court (except as set forth herein and in Section (g) below). Once Tribal Court remedies have been exhausted, the jurisdiction of the Tribal Court shall cease, permitting any party to bring suit before the United States Federal District Court, and Tribal Court jurisdiction will terminate for purposes of allowing the Federal Court to entertain a de novo review of the case on its merits. The parties hereto expressly intend that the Federal Court shall not be limited to a review of Tribal Court Jurisdiction, but shall hear the case on its underlying merits on a de novo basis. The Federal Court may enter such relief on the merits of the controversy as it deems just and equitable or as properly requested by either party. The provisions of this section apply solely to disputes arising under this contract and establishes the jurisdiction of the Rosebud Sioux Tribal Court as set forth herein with respect to disputes under the management agreement.

(g) The parties recognize that time is of the essence in resolving any dispute which might arise related to the management agreement. Therefore, the parties hereby establish the following exceptions to the requirement of exhaustion of tribal remedies:

- (1) If no special Tribal Court Judge is appointed as provided by subparagraph (b) and (c) above, then the

jurisdiction of the Tribal Court shall divest, and the parties may proceed to Federal Court for de novo review.

- (2) After appointment of a special judge, in the event that the Tribal Court or Tribal Appellate Court fails to respond to any request for a restraining order or other injunctive relief within ten days, or to render a decision on any other matter which is submitted to it within 30 days, then the jurisdiction of the Tribal Court shall divest and the parties may proceed to Federal Court de novo review.
- (3) If either party applies for a restraining order, and the Tribal Court either grants or denies such an order, and either party can demonstrate to the Federal Court that irreparable harm will result if such restraining order or injunctive relief is not immediately reviewed and acted upon, then the parties agree that the matter may proceed to Federal Court and the Federal Court shall be afforded the consent of both parties hereto to hear the merits of the issues surrounding the request for a restraining order on a de novo basis, and enter such relief as is just and equitable.

**13-6-110 Disputes Between Gaming Public and Tribe or Management Contractor.**

In a patron dispute revolving out of gaming activity, a licensee must notify the disputing patron that he has a right to have the Gaming Commission decide the dispute. The Gaming Commission shall promulgate regulation setting out of procedure for determining such disputes. Notices shall be place in conspicuous places informing the gaming public generally of this right in cases of disputes.

**CHAPTER SEVEN  
EFFECTIVE DATE**

**13-7-101. Effective Upon Federal Approval.**

This Title shall be effective upon the date of its publication in the Federal Register.