MAR 17 2005

Mark Allen, Tribal President
Flandreau Santee Sioux Tribe
P.O. Box 283
Flandreau, SD 57028
Fax (605) 997-3878

Randy Gallo, President
Bettor Racing, Inc.
4601 E. 12th Street, Suite 7
Sioux Falls, SD 57110
Fax (605) 373-9923

Dear President Allen and Mr. Gallo:

The National Indian Gaming Commission (the "NIGC") received for review and approval the Management Agreement for Pari-Mutuel Betting (the "Contract") between the Flandreau Santee Sioux Tribe and Bettor Racing, Inc. I am pleased to inform you that I have approved the Contract.

The Indian Gaming Regulatory Act and the regulations of the NIGC require that the Chairman of the NIGC approve management contracts for gaming operations on Indian lands. Accordingly, you submitted the Contract as required by 25 U.S.C. § 2711 and 25 C.F.R. Part 533. We have reviewed the Contract and other information submitted and have determined that the standards of 25 C.F.R. Parts 531 and 533 have been met. This letter and my signature on the Contract constitute such approval.

The approval here is necessarily limited. The Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 *et seq.*, applies only to gaming on "Indian lands." Gaming that takes place off of Indian lands is beyond IGRA's purview and is necessarily subject to all other applicable state and Federal gambling laws. This approval, therefore, applies only to as much of the proposed telephone account wagering as occurs on Indian lands.

In various contexts, courts have wrestled with the question of the location of telephonic or Internet wagers, *i.e.*, whether they occur on the sending or receiving end of the transmission. *See, e.g., United States v. Cohen*, 260 F.3d 68 (2nd Cir. 2001), *cert. denied*, 536 U.S. 972 (2002); *State ex rel. Stenberg v. Omaha Exposition and Racing Inc.*, 644 *N.W.*2d 563 (Neb. 2002); *Rice v. Connolly*, 488 N.W.2d 241(Minn. 1992);

State v. World Interactive Gaming Corp., 714 N.Y.S.2d 844 (Sup. Ct. 1999). What follows from these cases is that wagers placed by telephone necessarily take place on *both* ends of the call. More specifically in the circumstances here, a pari-mutuel wager on a horse race placed by interstate telephone call to an OTB office on the Flandreau Santee Sioux reservation necessarily takes place on both on and off of Indian lands.

As various courts have pointed out, the wager cannot occur only on the receiving end of the call, for this would effectively immunize the caller from prosecution in the event that his or her wager violated local, or federal, gambling laws. *World Interactive*, 714 N.Y.S. 2d at 850; *Cohen*, 260 F.3d at 74-75. The converse is equally true. The wager cannot occur solely on the sending end of the call, for that would immunize the recipient - usually the betting operation.

In short, the telephone wagers contemplated here take place on Indian lands only to the extent that they are received and processed at Bettor Racing's OTB office on the Flandreau Tribe's Indian lands. To that extent, IGRA, and this approval, applies. To the extent that telephone wagers occur off Indian lands, IGRA is inapplicable, this approval is silent, and the wagers are governed by all other applicable state and Federal laws.

This approval is further limited in that it expresses no opinion, and takes no position, on the open questions surrounding the applicability of, or proper interpretation of, any of those other laws. These include the Wire Act, 18 U.S.C. § 1084, and the Interstate Horseracing Act ("IHA"), 15 U.S.C. §§ 3001-3007.

What is settled is that the Wire Act criminalizes the placing of bets or wagers using a "wire communications facility." 18 U.S.C. § 1084(a). What is unsettled is whether the IHA creates an exception to the Wire Act, allowing states to authorize and regulate interstate telephone account wagering on horse races.

Participating states appear to take the position that a 2001 amendment to the IHA expressly allows telephone account wagering, provided that it meets a series of conditions. 15 U.S.C. §§ 3002(3), 3004(a)-(b). Arguably, The IHA explicitly permits "interstate off-track wagers," which it defines as:

> a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State *and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State....*

15 U.S.C. § 3002(3). (Emphasis added.)

Further, the legislative history supports this argument, asserting:

> [t]he amendment clarifies that the Interstate Horseracing Act permits wagers made by telephone or other electronic media to be accepted by an off-track betting system in another state provided that such types of wagers are lawful in each state involved and meet the requirements, if any, established by the legislature or appropriate regulatory body in the state where the person originating the wager resides.

146 Cong Rec. H11271 (daily ed. October 26, 2000).

This office understands, however, that the Department of Justice has always asserted that the 2001 IHA amendment did not authorize account wagering and that the Wire Act continues to prohibit such wagering. President Clinton's statement accompanying his signing of the bill that enacted the IHA amendment into law states:

> The Department of Justice, however, does not view this provision as codifying the legality of ... interstate account wagering, even where such wagering is legal in the various States involved for horseracing, nor does the Department view the provision as repealing or amending existing criminal statutes that may be applicable to such activity, in particular, [the Wire Act.]

Administration of William J. Clinton, 2000, *Statement on Signing the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act,* 2001, p. 3156.

As a general matter, this position finds no authorization of telephone account wagering in the IHA amendment at all. At most, there is an implied exception to, or implied repeal of a part of, the Wire Act. This is so because the amendment "clarifies" the IHA, in Congress's words, and does not make substantive changes in existing law; because the United States has no regulatory or enforcement role in the IHA, 15 U.S.C. § 3006(a), *Sterling Suffolk Racecourse Ltd. P'Ship. V. Burrillville Racing Ass'n.,* 802 F. Supp. 662, 666 (D.R.I. 1992)(IHA enforcement actions limited to parties specifically identified in the statute); *aff'd.* 989 F.2d 1266 (1st Cir. 1993), *cert. den.*, 510 U.S. 1024; because the IHA is a civil, not a criminal statute; and because the Wire Act is not even mentioned in the amendment.

Further, repeals by implication are strongly disfavored. *Morton v. Mancari*, 417 U.S. 535, 549 (1974). In fact, the only permissible justification for a court to find a repeal by implication is "when the earlier and later statutes are irreconcilable." *Id.* at 550. In that light, IHA amendment may fairly be understood to clarify that all of the

information and money transfers necessary to support simulcast wagering, as opposed to the wagers themselves, are permissible under the Wire Act. That is, when a wager is placed on a simulcast race at an OTB, that office must communicate the fact of that wager to a simulcast "hub" facility, and that hub must communicate the wager to the host track, all for the purpose of including the wager in the appropriate pari-mutuel pool for the race in question. Subsequently, the OTB office, hub, and host track all have to reconcile their accounts and make wire transfers in order to do so. The 2001 amendment "clarifies" that those transmissions do not violate the Wire Act.

Again, however, this approval expresses no opinion, and takes no position, about this issue.

Finally, nothing in this approval should be understood to modify or disavow the position that the NIGC took in litigation concerning the Coeur d'Alene Tribe's National Indian Lottery, *A.T.&T. Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899 (9th Cir. 2002). There, the Commission opined, in a supplemental *amicus curiae* brief to the Ninth Circuit:

> The import of this distinction lies in a point we have repeatedly made in this Court: IGRA neither authorizes *nor prohibits* gaming off of Indian lands, regardless of whether the off-reservation gaming is associated with gaming on Indian lands. Gaming may thus be illegal under some federal law, but not under IGRA, as in this case.
>
> *Coeur d'Alene Tribe v. A.T.&T Corp.*, No. 99-35088, Supplemental amicus brief, p. 3 at n. 2. (Emphasis in original.)

So reasoning, the NIGC took the position that telephone calls for the purchase of lottery tickets originating off-reservation is not gaming on Indian lands and, therefore, is outside of IGRA's purview. Such calls, the people making them, and, presumably, any tribal operation accepting them, are subject to all other applicable state and Federal laws, including the Wire Act. So too here.

Put slightly differently, IGRA, to the extent that it applies, completely preempts the field of gaming. *Gaming Corp. of Am. V. Dorsey & Whitney*, 88 F.3d 536, 547 (8th Cir. 1996). That preemption cannot extend off of Indian lands, and the National Indian Lottery was subject to the prohibitions of the Wire Act and of laws of any state from which the calls were made. "We respectfully submit that the conduct of players in a telephone lottery is ... an indispensable element of the conduct of such a lottery and that gaming off of Indian lands occurred each time and in each location that a player participated in the Lottery." Supplemental amicus brief, p. 14.

In conclusion, please note that if we learn of any actions or conditions that violate the standards contained in 25 C.F.R. Parts 531, 533, 535, or 537, we may require modifications of, or may void, the Contract, after providing the parties with an opportunity for a hearing and a subsequent appeal to the NIGC as set forth in 25 C.F.R. Part 577.

Should you have any questions concerning this approval, please call us at (202) 632-7003.

Sincerely,

Philip N. Hogen
Chairman

cc: Terry L. Pechota, Pechota Leach LLC
Fax Only (605) 341-0716

FEB 1 1 2005

FLANDREAU SANTEE SIOUX TRIBE

MANAGEMENT AGREEMENT
FOR
PARI-MUTUEL BETTING

MANAGEMENT AGREEMENT

INDEX

RECITALS

A. The Tribe and the Reservation 1
B. The Manager 1
C. The Ordinance 1
D. Land and Project 2
E. The Compact 4
F. Desire for Management Agreement 4
G. Manager's Right to Manage 4
H. Manager's Qualifications 4
I. Exclusive Management Right 4
J. No Interest in Indian Land 5

CONDITIONS SUBSEQUENT TO CONTRACT 5

A. Formal Approval of Manager 6
B. Manager's Consent to be Bound 6
C. Tribal Gaming Commission License 6
D. Agreement on Preliminary Plans and Equipping 6

ARTICLE 1 APPOINTMENT OF MANAGER 7

ARTICLE 2 TERM 7

ARTICLE 3 GOVERNMENTAL AGENCY APPROVAL; RESUBMISSION . . 8

3.1 Approval Required 8
3.2 Modification and Resubmission After Disapproval 8
3.3 No Agreement; No Reimbursement of Manager 8

ARTICLE 4 MANAGER'S RESPONSIBILITIES; CAPITAL; COVENANT . . 9

4.1 Manager's Services 9
(a) Project Preparation 9
(b) Project Operation 11
4.2 Manager's Warranties and Representations 15
(a) Parties-in-Interest; Listing 15
(b) Parties-in-Interest; Moral Character 16
(c) Operation of Project in Compliance with Law 16

4.3 Manager's Warranties 17
(a) Inducement and Survival of Representations and Warranties 17
(1) Organization and Good Standing 17
(2) Compliance with Laws; Authorization and Permits 18
(3) Governmental Licenses: Consents, Registrations, Franchises, Etc. 18
(4) Authority of Manager 19
(5) Effect of Agreement on Manager 20
(6) Manager's Abilities 20
(7) Property Free of Liens 20

ARTICLE 5 TRIBE TO HAVE SOLE PROPRIETARY INTEREST; LIENS . 21

ARTICLE 6 OPERATIONS 22

6.1 Employees 22
6.2 Implementation of Annual Budget 24
6.3 Approval and implementation of Project Policies 24
6.4 Collection, Monitoring, Handling and Payment of Proceeds 25
(a) Collection 25
(b) Monitoring 25
(c) Expenses and Profits 25
(d) Manager's Fee/Tribe's Share and Guarantee 29
(e) Computation and Payment of Project Proceeds To Manager and Tribe; Priorities 31
6.5 Compliance with Laws 32
6.6 Books and Records 32
6.7 Accounting and Audits 33
6.8 Insurance 34
6.9 Destruction, Replacement of Premises; Use of Insurance Proceeds 35
6.10 Disputes with Patrons 35

ARTICLE 7 COVENANTS OF THE TRIBE 36

7.1 Additional Covenants 36
7.2 Changes in Applicable Law 38

ARTICLE 8 COMPLAINTS AND REPORTS 39

ARTICLE 9 DEFAULT AND TERMINATION 39

9.1 Termination for Breach by Manager 39
9.2 Insolvency of Manager 39
9.3 Termination for Crime 40
9.4 Termination for Interference with Tribal Governmental Affairs 40
9.5 Mutual Agreement 41
9.6 Waiver of Breach 41
9.7 Notice of Default 42

ARTICLE 10 EFFECT OF TERMINATION 42

10.1 Termination and Reservation of Certain Rights and Obligations 42
10.2 Duty to Render Final Accounting 43

ARTICLE 11 PAYMENTS DUE UPON TERMINATION; PRIORITIES 43

11.1 Payments from Project Funds 43
11.2 Payments from Tribal Funds Generated by the Project 44

ARTICLE 12 MANAGER'S ACCESS TO BOOKS AND RECORDS AFTER TERMINATION 45

ARTICLE 13 CONDITION PRECEDENT TO VALIDITY AND ENFORCEMENT OF AGREEMENT 46

ARTICLE 14 APPROVAL OF TRIBE 46

ARTICLE 15 NON-INTERFERENCE WITH TRIBAL AFFAIRS 46

ARTICLE 16 FORCE MAJEURE 47

ARTICLE 17 INVALID OR UNENFORCEABLE PROVISIONS 47

ARTICLE 18 CONFLICT OF INTEREST 48

18.1 No Payments to Tribal Council or a Member Thereof or a Relative of a Member Thereof 48
18.2 Parties-In-Interest (Conflict of Interest) 48

ARTICLE 19 INSPECTION 49

ARTICLE 20 MANAGER'S SALARY 49

ARTICLE 21 ACCESS TO THE COURTS 50

ARTICLE 22 NOTICES 52

22.1 Notices; Manner of Service 52
22.2 Notices; Change of Address 53
22.3 Notices; Deemed Receipt 53

ARTICLE 23 MISCELLANEOUS 53

23.1 Fire Protection 53
23.2 Recitals Deemed Material 54
23.3 Not a Partnership or Joint Venture 54
23.4 Entire Agreement; Incorporation of Exhibits 54
23.5 Waiver 55
23.6 Construction 55
23.7 Counterparts 56
23.8 Other Documents 56
23.9 Arbitration of Minor Disputes 56
23.10 Parties-In-Interest 57
23.11 Applicable Law 57
23.12 Indemnification Procedure 58
23.13 No Alteration Except by Mutual Consent 59
23.14 Time of Essence 60
23.15 Tribal Resolution 60
23.16 No Present Lien or Lease 60
23.17 NIGC Fees for Class III Gaming 60
23.18 Assignments and Subcontracting; Change of Ownership 60

ARTICLE 24 INTERFERENCE BY THIRD PARTIES 60

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into at Flandreau, South Dakota, as of the 8TH day of FEBRUARY, 2005, by and between the Flandreau Santee Sioux Tribe, a federally recognized Indian tribe (hereinafter referred to as the "Tribe"), and Bettor Racing, Inc., a South Dakota Corporation, d/b/a Royal River Racing, duly authorized to do business in South Dakota with an office at Sioux Falls, South Dakota (hereinafter referred to as "Manager").

RECITALS

A. The Tribe and the Reservation. The Tribe exercises governmental authority over certain real property located in the State of South Dakota which is recognized under federal law as an Indian Reservation and is known as the reservation of the Flandreau Santee Sioux Tribe (the "Reservation").

B. The Manager. Manager is a corporation organized and existing under the laws of the State of South Dakota and is duly licensed and authorized to conduct business in the State of South Dakota. The officers, directors, and shareholders, of Manager ("Parties-In-Interest"), and their respective interest therein, as well as that information required by 25 U.S.C. Sec. 2711(a)(1) (A), (B), and (C), and Parts 556 and 558 of the National Indian Gaming Commission Rules and Regulations (25 CFR 556, 558), are set forth in Exhibit "A" attached hereto.

C. The Ordinance. The Tribe has enacted an Ordinance (the "Ordinance") in compliance with the Compact and the Indian Gaming Regulatory Act ("IGRA") for the operation, conduct, and playing of pari-mutuel betting, which may be conducted as a Class III game under a Compact with the State of South Dakota. The Tribe also,

without a Manager, offers other Class II or III games. Pari-mutuel betting is defined as Class III gaming in the Indian Gaming Regulatory Act ("IGRA"), and will be offered to the public in order to fund Tribal government operations and programs, including but not limited to programs which provide for the general welfare of the Tribe and its citizens, promote Tribal economic development and provide employment and training opportunities for Tribal citizens, Indians generally, and persons who reside in the surrounding communities. The term "Ordinance" shall mean the Ordinance (a true copy of which Ordinance and Regulations are attached as Exhibit "B" hereto) as it exists or may be amended or modified during the term hereof which is deemed for all purposes to be supplemental to the terms of this agreement as of the effective date of such amendment or modification. The Tribe agrees that it will not at any time make any changes in said Ordinance that in any way are inconsistent with the terms of this Agreement or would cause material injury to the Project as hereinafter defined, unless any such change is required by the Compact or federal law, rule or regulation, or is agreed to by Manager.

D. Land and Project. The Tribe is the beneficial owner of certain land on the Reservation located in South Dakota, which is legally described on Exhibit "C" attached hereto. A preexisting and operating casino called Royal River Casino is located on the land. The Tribe warrants that said land is eligible for Class II and Class III gaming enterprises under the Indian Gaming Regulatory Act (IGRA), the Ordinance and the Compact. The NIGC has previously determined that this land qualifies as Indian land upon which Class III gaming can be conducted under 25 USC 2703 (4) and Class III gaming has been conducted from this land for more than 10 years.

The Manager will make initial improvements, modify, or alter for a cost and according to plans and specifications mutually agreeable to the parties, up to a value of ,, two existing rooms in the northeastern part of the existing Royal River Casino building that presently are not being used. One of the rooms measures 14 feet 6 inches by 19 feet and the other measures 23 feet 6 inches by 19 feet. The parties agree that the total costs over the term of this agreement, including the initial ,, for all future improvements, modifications, or alterations, to these rooms will not exceed the cap of . The initial cost of construction of all improvements, modifications, or alterations up to as well as the total cost of all machines, equipment, and technology; the salary and related employee benefits and payroll taxes of a general manager; and expenses of employee and transmittal error required to conduct the pari-mutuel betting operation will be paid by the Manager and shall not be a Property Purchase Expense to be repaid as set forth in Article 6.4 (c) (7). From these two rooms, Manager shall have the right to operate up to 10 manual or automated totalizators and up to 50 television monitors authorized by the current compact. Customers will have ingress and egress into the rooms to place bets, collect winnings, and watch races on television. Runners will be utilized if permitted under the Compact. Manager will employ approximately 10 people at the project. The project will operate a minimum of 12 hours per day, Monday through Saturday, 9 hours on Sunday, seven (7) days a week. Manager will provide security to the project. The project will be operated in conformance with federal, state, and tribal laws.

E. The Compact. The Tribe has entered into a Compact with the State of South Dakota relating to the conduct of Class III gaming on its reservation and said Compact has been amended to authorize pari-mutuel betting, a true and correct copy of which is attached hereto as Exhibit "D".

F. Desire for Management Agreement. The Tribe wishes to enter into this Management Agreement with an entity that is able and willing to supply financing and obtain the human and physical resources to establish, operate, fund and manage Class III pari-mutuel betting games in accordance with the terms of this Agreement, the Compact, Tribal law, federal law and any applicable state law.

G. Manager's Right to Manage. The Tribe is willing to vest in the Manager the right to improve, develop, and maintain the Project and to manage the Project (as heretofore defined) in conformance with the terms and conditions of this Agreement, Tribal ordinances, rules, and regulations, rules and regulations of the Tribal Gaming Commission, IGRA, the Compact and any applicable state law.

H. Manager's Qualifications. The Manager has available the capital, management expertise and operational skills necessary to establish, operate and manage the Project (as hereinafter defined) in accordance with this Agreement.

I. Exclusive Management Right. The Tribe wishes to contract with Manager to provide for the management and operation of Class III pari-mutuel betting games as permitted under IGRA, the Ordinance, and the Compact on the Tribe's land in South Dakota in all phases of this development. The Tribe shall have the right to license or operate non-gaming activities that are unrelated to the project itself but which might be developed in proximity to the project. Included in the concept of the Project is the

Tribe's representation and warranty hereby given that the Manager during the term of this Agreement shall have the right to manage Class III pari-mutuel betting gaming activities conducted under authority of the Tribe by anyone on Indian Lands of the Tribe as that term is defined in IGRA in South Dakota. Manager shall have the right to operate up to 10 manual or automated transilators and up to 50 televisions authorized by the current compact. Manager shall have the right of first refusal on any gaming contracts conducted by anyone other than the Tribe or Manager authorizing pari-mutuel betting during the term of this Agreement. For the purpose of this warranty hereby extended by the Tribe, gaming activity shall mean only pari-mutuel betting gaming activity permitted by any federal, state, local or Tribal Government now or in the future pursuant to a Compact between State of South Dakota and the Flandreau Santee Sioux Tribe. Provided further that Manager shall not have the exclusive on any other Class II or III gaming activities including but not limited to bingo, pull tabs, slot machines, or table games.

J. No Interest in Indian Land. The parties acknowledge that this Agreement is not intended to create and shall not be deemed to create an interest in Indian land or any facilities thereon, such as but not limited to a license, tenancy lien, easement, leasehold interest, estate or any other form of possessory or non-possessory interest, either express or implied.

CONDITIONS SUBSEQUENT TO CONTRACT

The parties agree that the following conditions subsequent must be waived by Manager or Tribe or fulfilled on or before sixty (60) days subsequent to approval of the Management Agreement by the National Indian Gaming Commission ("NIGC") or this

Management Agreement shall become void. In the event any of said conditions are not waived, extended or fulfilled within such time limit, the parties agree that the Manager or Tribe shall have the option to waive or extend the time for fulfillment or to declare contract null and void at such time.

Said conditions are:

A. Formal Approval of Manager. The Manager has received all required (if any) formal approvals from all authorities of the State of South Dakota and approvals of all authorities of the Tribe and federal government which are required to approve the Manager to conduct the management of the Project and approval of the term of this contract.

B. Manager's Consent to be Bound. The Manager shall have consented in writing to be bound by all rules and regulations adopted by the Tribe's Tribal Gaming Commission, together with all gaming laws adopted by the Tribe as required by the Compact, after an opportunity to inspect the same. When completed, all such rules, regulations and laws shall be attached to this Agreement and marked Exhibit "B".

C. Tribal Gaming Commission License. The Tribal Gaming Commission required under the terms of the Compact shall have issued a license to the Manager to permit it to perform the terms of this Agreement, which shall not be unreasonably withheld.

D. Agreement on Preliminary Plans and Equipping. The parties have reached agreement on the preliminary plans for the construction of and equipping of that part of the existing gaming casino where pari-mutuel betting will be conducted as provided in Article 4.1(a) (1).

ARTICLE 1

APPOINTMENT OF MANAGER

The Tribe hereby engages Manager as an independent contractor with exclusive rights with respect to the operation and management of the pari-mutuel betting project for the Tribe's benefit on the terms and conditions set forth below and Manager hereby accepts such engagement.

ARTICLE 2

TERM

This Agreement shall be enforceable between the parties until the failure of a condition subsequent not waived by the Manager, termination for cause or by mutual agreement, or the expiration of the Term. The Term ("Term") of this Agreement shall commence the day the pari-mutuel betting activities of the project are open for business to the public and shall continue thereafter for [ ], until midnight of the last day of said Term. In the event the Tribe determines to contract with a management company at the end of the term hereof it is agreed that Manager shall have the right of first refusal to accept the terms of that management contract so that if Manager agrees to the terms and conditions offered, Tribe will continue Manager's services based on those terms and conditions provided that any future management contract must be approved by the NIGC before it becomes effective or implemented.

64

ARTICLE 3

GOVERNMENTAL AGENCY APPROVAL; RESUBMISSION

3.1 **Approval Required**. It is understood that this Agreement must be, and shall not be effective notwithstanding the date of the signatures of the parties until, approved in writing by the Chairman of the NIGC pursuant to the IGRA, which exercises the federal government's authority over Indian gaming (the "Governmental Agency").

3.2 **Modification and Resubmission After Disapproval**. In the event there is a Governmental Agency disapproval but recommendations for modification of the Agreement are made by such Governmental Agency at or about the time of such disapproval, or the parties hereto determine for any reason that the modification of the Agreement may overcome such disapproval, each party will have ninety (90) days after receipt of such disapproval to negotiate with the other party with respect to such modifications and resubmit the Agreement for approval, unless the Governmental Agency designates a shorter period for resubmission, in which case such shorter period shall control. The decision concerning whether or not to agree to such modifications shall not be unreasonably withheld, and such negotiations shall be conducted in good faith with the intent to reach agreement. If a new Agreement cannot be reached between the Tribe and the Manager which is acceptable to the appropriate agencies, then the entire Agreement shall be void from that date.

3.3 [

64

ARTICLE 4

MANAGER'S RESPONSIBILITIES; CAPITAL; COVENANT

4.1 **Manager's Services**. As soon as practicable, and subject to the approval of the Tribe, Manager agrees to develop plans for the construction within the existing casino of premises sufficient to provide the space to conduct pari-mutuel betting at a cost, size, scope and finish as agreed upon by the parties. Manager agrees to commence and complete the construction of the Project as soon as practicable following agreement upon the plans and costs. Within such time after the execution of this Agreement as Manager determines and throughout the Term of this Agreement, Manager will provide those management services which are necessary or desirable, to design, construct, market, develop, operate and maintain the Project and the conduct of the Class III pari-mutuel betting, together with such capital as may be necessary for the operation of the Project. Manager warrants it will conduct the Project in the best interest of the Tribe and Manager and to assure the attending public that operations are conducted in a fair, honest and professional manner. Without limiting the foregoing, Manager will use its best efforts to provide, and Tribe shall permit Manager to so provide, such services as may be necessary to implement the above. The Tribe agrees to provide such assistance and suggestions to the Manager in the furnishing of such services as the Manager from time to time may request.

(a) Project Preparation.

(1) Within such time as the Manager determines to be practicable, and subject to the approval of the Tribe, the Manager agrees to construct

premises within the existing casino sufficient to offer pari-mutuel betting to the public through not more than 10 manual or automated transilators and up to 50 televisions. The Manager agrees to commence construction of the Project, according to such plans and specifications as are mutually agreeable to the parties within the time determined by the Manager, and to pursue the completion of such construction with due diligence thereafter. The Tribe owns the real estate upon which the existing casino is situated within which the Project shall be located, which shall be contributed by Tribe at no cost to the Manager other than the cost of alteration, improvement, modification, and equipping. The parties agree that the maximum (agreed ceiling) development and construction cost of all such construction and equipping of the Project shall not exceed the aggregate sum of

. purchase transilators, televisions, and other equipment necessary to conduct the operation, and pay the salary and related employee benefits, payroll taxes of a general manager; and expenses of employee and transmittal error. The Tribe does hereby exempt the Project from any Tribal Employment Rights Ordinance.

(2) An operating budget will be developed for a year's operation ("Annual Budget") for the fiscal year agreed upon by the parties which shall estimate income, wages and salaries, prizes, utility, insurance and other overhead costs, reserves for prizes and other items, and Operating Expenses which may be appropriate to best estimate the income and expenses for the coming year. An initial budget for the first year of operation shall be completed within one hundred eighty (180) days after the

execution of this Agreement. The Annual Budget shall be revised, if necessary, from time to time as the need may arise and as the parties shall agree, but in any event not less than annually. The Manager agrees that all budgets shall have the prior approval of the Tribe before they are implemented.

(b) Project Operation. During the Term of this Agreement, the Manager agrees to:

(1) Operate the Project as the Manager deems best.

(2) Assume sole responsibility to recruit, interview, screen and hire needed employees for the Project, taking into account any recommendations of the Tribe, and provide all training necessary to assure that the project shall be operated in a professional and competent manner. Approximately four people will be hired depending on the volume of business.

(3) Supervise and direct all procedures and activities necessary for Project operations giving first consideration on all hired employees to qualified or trainable Native Americans who are members of the Tribe if they are available. A core group of approximately eight pre-existing employees will be employed at the Project.

(4) Assist the Tribe in entering into such contracts and making such other plans and arrangements as will be necessary to improve and expand operations of the Project.

(5) Provide for ongoing daily supervision of and direction to Project operations and personnel, including the hiring, training, promotion and discharging of personnel, and maintain and administer comprehensive employment practices.

(6) Supervise and manage only the operation of Class III pari-mutuel betting and implement such rules, regulations and procedures, and modifications thereof as required. No responsibility rests with manager to manage or operate food and beverage operations or other services, goods, or gaming offered at the casino.

(7) Comply with IGRA, applicable Federal law, the Compact and all laws and ordinances of the Tribe and the rules and regulations of the Tribal Gaming Commission and state law (if and where applicable).

(8) Conduct regular meetings with and report to the Tribe, at least monthly, about the status of the Project operations, matters that may need improvement or change, and resolution of any problems areas.

(9) Supervise and conduct the collection, safeguarding and receipting of all revenues and the prompt deposit of same, which shall be put into the Project's operating accounts; make disbursements in payment of operating expenses and required remittances to the Tribe and the Manager; and supervise and administer the bookkeeping and accounting therefor as governed herein.

(10) Provide for adequate safety personnel and assure that the Project is secure and safeguarded at all times to assure the safety of patrons, personnel, monies and property of the Project, and arrange for fire protection services which comply with all applicable safety regulations.

(11) Take all measures to assure that the Project is managed by Manager's personnel in a professional, orderly, and attractive manner, including the supervision of regular cleaning, painting, decorating, plumbing, and all other ordinary

and customary maintenance and repair to the premises that may be necessary from time to time, and that the Project is operated in good taste and in a professional and businesslike fashion.

(12) Not later than forty-five (45) days prior to the beginning of each fiscal year agreed upon by the parties, an Annual Budget shall be prepared by the Manager and submitted to the Tribe for its approval, which approval shall not be unreasonably withheld. If the Tribe disapproves the Annual Budget or any portion thereof, it shall advise the Manager as soon possible thereafter and the parties shall make every good faith effort to resolve their differences; if they are unable to do so, however, the matter shall be submitted to dispute resolution pursuant to Article 23.9 of this Agreement.

(13) Enter into all contracts for provision of gaming devices, and secure equipment necessary to the operation of the Project during the Term.

(14) Provide all financing as may be necessary or desirable for the operations of the Project and its business, installation of equipment, personal property and fixtures, procurement of supplies, management of operation of the Project, and provide sufficient operating cash to commence and carry on the Project's operations in the manner and on the scale contemplated hereby.

(15) Keep the Project, its premises, improvements, and Tribal trust land of which they are a part, free and clear of all mechanics and other liens or encumbrances, of whatever kind or nature.

(16) To the extent that the parties agree that it is necessary, within the , cap as established by Article 4.1(a)(1), but

beyond the initial development and construction costs, as provided in Article 4.1(a)(1), the Manager agrees to construct, renovate, or add to the Project in a manner so as to comply with the substance of any applicable county, state or federal building, electrical, plumbing, solid waste and sewage disposal, fire, health and safety codes and all applicable laws relating to the satisfaction of applicable access requirements for handicapped persons. The parties agree that the cost of such construction or renovation beyond the cost of the initial development and construction costs, as provided in Article 4.1(a)(1), shall be charged as provided in Article 6.4(c)(6). Any additional construction or renovation must comply with the National Environmental Policy Act (NEPA). However, nothing in this Agreement shall be construed to grant any jurisdiction to any state government, local, city, county or any agency or instrumentality of any subdivision of any of the foregoing. Any relevant county or state permits or similar approvals the parties wish to obtain, shall be obtained only after the Tribe's prior written consent and for satisfaction of the Tribe's desire for public safety, and conformity with local building codes and requirements, and shall not be sought or obtained unilaterally by the Manager. The Tribe shall have the right, at all times, to have the Project inspected for such compliance, with the cost to be treated as an Operating Expense as defined in Article 6.4(c)(4).

(17) Maintain a current and complete inventory of all Project property, other than real property, including all personal or intangible property. All such inventories shall be available to the Tribe at their request. The Manager and its employees may, from time to time, have their own personal property on the Project site or in it facilities and shall maintain the right to remove such property.

(18) Perform all other acts necessary to fulfill the goals and comply with the policies and procedures of the Project, and to otherwise satisfy Manager's duties and obligations under this Agreement, including but not limited to those described elsewhere in this Agreement.

(19) Operate the Project a minimum of 12 hours per day, Monday through Saturday, 9 hours on Sunday, seven (7) days per week.

(20) Advertise the Project in such ways as Manager shall deem in the best interest of the Project, and to spend the amount represented in its annual budget on advertising.

(21) Comply with all applicable provisions of the Internal Revenue Code.

(22) Supply the NIGC with all information necessary for the Commission to comply with its regulations issued pursuant to the National Environmental Policy Act.

4.2 **Manager's Warranties and Representations**. Manager represents and warrants as follows:

(a) Parties-in-Interest; Listing. Exhibit "A" is a list of all Parties-in-Interest to this Agreement. All parties on this list will be approved and licensed by the State of South Dakota (if applicable) and the Flandreau Santee Sioux Tribe. Exhibit "A" includes the following:

(1) All of the Manager's management level personnel and corporate officers and directors;

(2) All persons who will be, directly or indirectly, investors in

Manager, including all general and limited partners, corporate officers, directors stockholders, and holders of stock options or warrants;

(3) Those persons who signed this Agreement on behalf of Manager;

(4) The lists in subsections (1) through (3) above, will be updated by Manager on a periodic basis, if changes occur, but not less than annually, so as to always accurately disclose the required information at all times during the Term of this Agreement and all extensions hereof. The initial list of information required by this Article 4.2 (Exhibit "A") is attached hereto. All future lists of information required by this Article 4.2, IGRA or the Compact shall be deemed to be supplemental to this Agreement and incorporated by reference. Any changes must be submitted to the NIGC for approval prior to the effective date of any change.

(b) Parties-in-Interest; Moral Character. Manager represents and warrants that it shall use its best efforts to assure that all Parties-in-Interest employees are of good moral character and have never been convicted of any felony, of any other misdemeanor involving moral turpitude or any gaming offense and are and will continue to be eligible to be licensed by the Tribe in accordance with the Compact, the Tribal Ordinance and rules and regulations governing gaming.

(c) Operation of Project in Compliance with Law. Manager shall operate the project in accordance with applicable federal and state laws, including the Internal Revenue Code, the Compact, the Tribal Ordinances, and rules and regulations of the Tribal Gaming Commission authorizing and regulating the conduct of gaming as amended from time to time.

4.3 Manager's Warranties.

(a) Inducement and Survival of Representations and Warranties. The representations and warranties of Manager contained in Article 4.2, supra, shall be true as of the date of this Agreement and throughout the Term of this Agreement, and any extensions thereof shall be deemed to survive execution of this Agreement and shall further be deemed to be material and to have been relied upon by the Tribe in making the decision whether to enter into this Agreement and the transactions contemplated hereby, notwithstanding any investigation or prior knowledge of the Tribe, and are made as an inducement to the Tribe to enter into this Agreement, and the parties further acknowledge that but for the representations and warranties of Manager as contained Article 4.2, supra, and this Article 4.3, and the absolute truth thereof, the Tribe would not have entered into this Agreement. Accordingly, Manager hereby represents and warrants to the Tribe as follows:

(1) Organization and Good Standing. Manager is a South Dakota Corporation and is duly organized, validly existing and in good standing under the laws of the State of South Dakota and duly qualified to do business in South Dakota with full power and authority to conduct its business as presently conducted and to own and operate the assets and properties now owned and operated by it and to conduct all transactions and activities contemplated hereby. At the date of all required approvals of this Agreement and throughout the Term hereof, management will possess all authorizations, charters, licenses, registrations, consents, and franchises necessary or required by law to carry on the activities in which Manager is presently engaged and the activities and transactions contemplated hereby.

(2) Compliance with Laws; Authorization and Permits. Manager in the conduct of its business and transactions and activities contemplated hereby, and its use and occupancy of its assets and properties where located, will be in all material respects in compliance with all licenses, permits, charters, and franchises, and Manager is not aware of any claim or notice that such conduct, use, or occupancy is not or has not been in compliance with any, use, applicable laws, authorizations, codes and ordinances, orders, rules and regulations insofar as any case of non-compliance, singly or in the aggregate, could result in any material adverse effect upon the operations of Manager and the conduct of the activities and transactions contemplated hereby or cause any of its operations to be suspended or terminated. Without limiting the generality of the foregoing, Manager's conduct of its business, activities and transactions contemplated hereby and occupancy and use of assets and properties is, and will be, in compliance with all applicable laws, authorizations, rules and regulations for the conduct of its business and transactions and activities contemplated hereby, by any governmental authority, agency, commission, subdivision or body having jurisdiction over the transactions and activities contemplated hereby.

(3) Governmental Licenses; Consents, Registrations, Franchises, Etc. Manager will have all governmental licenses, charters, consents, registrations, franchises, permits, and other authorizations which are material in connection with the conduct of its business and the activities and transactions contemplated hereby, and has complied or will comply in all material aspects with the terms thereof, and such licenses, consents, registrations, franchises, permits, and other authorizations are, and will continue throughout the Term of this Agreement and any

extensions hereof, to be valid and sufficient for such ownership and conduct of its business, and the activities and transactions contemplated hereby, and are, and will, during the term hereof be unimpaired, and in full force and effect, and Manager has received no written notice that any such license, charter, registration, franchise, permit or other authorization is not valid or sufficient or is impaired in any manner or is not in full force and effect. As of the date of execution of this Agreement, Manager has filed, and throughout the Term hereof will continue to file, all applicable reports, returns and filing information or data with, and pay the applicable taxes, fees, or assessments of all state, tribal and federal authorities and regulatory agencies, including the NIGC and the Tribal Gaming Commission as required by applicable law, rule or regulation. All such taxes, fees or assessments, as they relate to project operations, except any initial fee to the Tribe, shall be operating expenses as defined in Article 6.4(c)(4).

(4) Authority of Manager. Manager has full power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions and activities contemplated hereby in the manner herein provided. The execution and delivery of this Agreement by Manager and the consummation and performance of the transactions and activities contemplated hereby in the manner herein provided have been duly and validly authorized by all necessary action of Manager, including approval of its Board of Directors, and this Agreement assuming due execution by the Tribe and subsequent approval of the Governmental Agency constitutes and, when executed, delivered and approved by the Governmental Agency, will constitute legal, valid, and binding obligations of Manager enforceable against it and in accordance with the term hereof.

(5) Effect of Agreement on Manager. Neither the execution, nor the delivery of this Agreement by Manager nor the consummation or performance of the transactions contemplated hereby or the manner herein provided, will violate: (i) the good standing, validity or effectiveness of the Corporate Charter of Manager in effect on the date hereof, (ii) any agreement or instrument to which Manager on the date hereof is a party to or by which it or its assets or properties is bound, or (iii) any law, judgment, referendum or understanding, order, writ, injunction, rule, regulation, decree or award in effect on the date hereof of any court, arbitrator, governmental agency, commission or body.

(6) Manager's Abilities. Manager has the experience and present ability to obtain such financing as may be necessary or desirable for the operation of the Project and the full, faithful and complete performance of all of Manager's obligations hereunder and all activities contemplated hereby and will fulfill its obligations under this Agreement and will provide sufficient operating capital to commence and carry on operations of the Project in the manner and on the scale contemplated hereby.

(7) Property Free of Liens. Throughout the Term of this Agreement, Manager will keep the Project, its buildings, assets, personal property, fixtures, and the Tribal trust land of which they are a part, free and clear of all mechanic's liens and other liens and encumbrances of whatever kind or nature, whether imposed voluntarily, involuntarily, or by operation of law; provided, however, that the parties agree that Manager shall have the right, if required, to use project assets necessary to conduct pari-mutuel betting furnished by Manager, other than real

property, to secure loans made for project equipment, and the Tribe hereby grants an Article 9 security interest for all personal property, the expenditures for which are treated as Property Purchase Expenses or Preapproved Lease/Purchases or Finance Contracts. Nothing in this section authorizes any encumbrance or lien whatsoever on any real property or any other assets owned by the Tribe.

ARTICLE 5

TRIBE TO HAVE SOLE PROPRIETARY INTEREST; LIENS

The parties acknowledge and agree that the Tribe has and will continue to have the sole proprietary interest in the Project (including but not limited to all construction accomplished thereon by the Manager) and all other real and personal property of the Project.

The parties understand, however, that the Manager may be requested to construct certain facilities beyond the initial development and construction costs, but within the) cap, as provided in Article 4.1(a)(1), and purchase or lease certain furniture, fixtures, equipment, gaming devices and other items

64

All property shall be owned by the Tribe free of all liens if fully paid for. If not fully paid for, the provisions of Article 6.4(c)(7) shall govern. Notwithstanding the foregoing, all Project personal property including building components purchased on lease/purchase agreements or on a conditional sales basis, shall be paid for, and expended to the

Project on such terms as shall be required by the source of the financing.

In the event that any property, the cost of which is treated as part of the Property Purchase Expense, is repossessed by a creditor or vendor, the total Property Purchase Expense for that item shall be reduced by the unpaid balance of such purchase price.

ARTICLE 6

OPERATIONS

6.1 Employees.

(a) All management and other employees of the Manager will be supervised, disciplined, promoted and discharged on a day to day basis by the Manager. Any general manager hired by the Manager shall be approved in advance by the Tribe. Manager recognizes that an important purpose of the Project is to provide training and employment opportunities and in accordance herewith shall give preference in employment and training first to available, qualified or trainable members of the Tribe, then to other available, qualified or trainable members of other tribes, then to other available, qualified or trainable Native Americans, and then to other available qualified or trainable persons who reside in the area, including opportunities to participate in the Project at the management level, and to advance such persons whenever possible and practicable to do so in accordance with these preferences. Manager shall place special emphasis on the recruiting, training and employment of Tribal members. Manager shall take all steps necessary to implement the foregoing, consistent with the terms of this Agreement and the requirements of law.

(b) All employees hired by the Manager shall be of good moral

character and shall, as a condition of their employment, be eligible for and receive and maintain in good standing an appropriate license from the Tribal Gaming Commission and shall be required to submit to any lawful means of testing, background examination and licensing as required by Ordinance or other law, including, but not limited to, testing in connection with the handling, collection or dispersal of money, property, supplies or the like. Refusal to submit to such testing may, to the extent permitted by law, be grounds for termination. Employees shall also agree to follow all ordinances, laws and rules of the Tribe and the conditions of any licenses issued by Tribe or its agencies.

(c) To the extent not otherwise specified in this Agreement, all personnel who handle or have any contact with Project monies or proceeds shall, as a condition of employment, be eligible for and be bonded in amounts to be mutually approved by the Tribe and Manager, which approvals shall not be unreasonably withheld, unless such bonding is impossible or economically prohibitive to obtain.

(d) Manager shall arrange for the provision of such security personnel as may be necessary to insure the safety and security of the Project and its guests and employees and of the monies incident to managing and operating the same at all times.

(e) All employees performing services in connection with the Project shall be employees of Manager and not the Tribe, and hired "at will" unless otherwise specifically set forth to the contrary in writing.

(f) The parties agree that the manager shall have one hundred eighty (180) days from the execution of this Agreement within which to create written personnel policies covering employee fringe benefits, vacations and grounds for termination of employment or it may elect to abide by the personnel policies of the

Royal River Casino. Such policies shall be subject to approval by the Tribe.

(g) Employees will be encouraged to first discuss all disputes with their supervisor. If that fails the employee can take the matter to the department head and then to the Human Resource Manager. If none of these steps resolve the matter, the employee can request a hearing with the General Manager. Any employee who has completed a probationary period and feels that they have been unfairly or unjustly terminated or suspended can utilize the grievance procedures established by Manager or utilize the grievance procedures set forth in the personnel policies of the Royal River Casino that Manager has elected to be governed by. However, nothing herein shall modify the "at will" status of an employee.

6.2 **Implementation of Annual Budget**. Manager shall implement the most recent Annual Budget approved by the Tribe in accordance with this Agreement and Manager shall be authorized, without the need for further approval by the Tribe, to supervise Project personnel in making the specified expenditures and incurring the specified obligations provided for in the Annual Budget. Manager shall not vary Operating Expenses in excess of of the total amount thereof in any Annual Budget approved by the Tribe without first providing a suitable written explanation therefor. Manager shall notify the Tribe of gaming program changes at the monthly meetings.

6.3 **Approval and Implementation of Project Policies**. Tribe and Manager agree that the Project shall be operated in accordance with the Tribe's Ordinances, rules and regulations of the Tribal Gaming Commission and accounting procedures.

6.4 Collection, Monitoring, Handling and Payment of Proceeds.

(a) Collection. Manager shall collect and receipt for all "Gross Receipts" (defined hereinbelow), and the payment therefrom of the amounts hereinafter provided. All Gross Receipts shall be deposited into the Operating Accounts as provided below. Such Operating Accounts shall be located in any bank or banks mutually agreeable to the parties. The Tribe shall have the irrevocable right to participate as an observer in the performance of such functions of the Manager, including video and audio surveillance.

(b) Monitoring. The Manager shall submit to the Tribe for approval all procedures to be used for monitoring "Gross Receipts," gaming materials and bank deposits. After such approval, if the Manager wishes any changes in such procedures in the future, it agrees to submit the changes to the Tribe for approval and not to implement any such changes until the Tribe has approved them. The Tribe shall have access to all procedures at any time.

(c) Expenses and Profits.

(1) As used in this Agreement, the term "Profits" is intended for accounting and convenience purposes only, and shall not be construed to alter the tax exempt and sovereign political entity status of the Tribe.

(2) "Gross Receipts" means all monies actually received in connection only with the pari-mutuel betting. It shall not include "gross receipts" from any Class II or Class III gaming conducted by the Tribe. It will not include "gross receipts" from any non-gaming activity because Manager will not be involved in any non-gaming activity.

(3) "Net Profits" means the excess, if any, of gaming revenues from pari-mutuel betting (Gross Receipts) over "Operating Expenses" as defined in Article 6.4(c)(4) below, or other items identified as Operating Expenses in other places in this Agreement. Net profits shall have the same meaning as net revenue under 23 CFR 502.16. The Manager's Fee and Tribe's share (as defined below in Article 6.4(d) shall not be deemed an Operating Expense for the purpose of determining the net profit.

(4) "Operating Expenses" shall mean all sums required for the maintenance and operation of the Project, including but not limited to the following:

A. Utilities;

B. Insurance and bonds;

C. Heating and air conditioning;

D. Cleaning and maintenance;

E. Payroll, including taxes, insurance, employee benefits, etc.;

F. Purchase of inventory and supplies;

G. Maintenance and repair of the premises;

H. Advertising, marketing and promotional expenses, including but not limited to cost of busing or other customer transportation;

I. Prizes; payouts; payment of tickets;

J. Professional fees and costs, including legal and accounting expenses; provided, however, that no legal or other professional expenses relative to a dispute between the parties shall be an Operating Expense;

K. Training costs;

L. Security services;

M. Travel expenses and lodging;

N. Lease payments;

O. Decoder fees;

P. Interface fees;

Q. Track fees;

R. Taxes;

S. Voucher incentives;

T. Simulcast fees;

U. Taxes, fees or assessments imposed on the Project under the Compact, Tribal law, and rules or regulation of the Tribal Gaming Commission, IGRA, Tribal Ordinance, or applicable law.

V. Inspection fees as provided in Article 4.1(b)(16).

W. Taxes, fees or assessments as provided in Article 4.3(a)(3).

X. Costs of arbitration as provided in Article 23.9.

Y. Actual interest expense incurred by the Project.

(5) There shall be an "Operating Expense Reserve." This Reserve will be used to provide working capital and financial stability to the project during times when Gross Receipts from the Project are not sufficient to pay the Operating Expenses as defined in Article 6.4 (c) (4).

64

64

(6) Capital improvements to the Project premises, including but not limited to major repairs or replacement of the heating, air conditioning, plumbing, roof, exterior walls or structural building components, drainage or the like shall be made up to an amount to be agreed upon by the parties, which sum(s) shall be set aside into a reserve for future capital improvements (the "Capital Improvement Reserve") at the rate of

is Reserve is to ensure that monies will be available to make needed improvements to the Project. The Capital Improvement Reserve will be funded by the Manager and y the Tribe. In the event that capital improvements as described in this subsection (6) to any Project premises exceed the budgeted amount of which fact must be

approved in advance by the Tribe, then such amount in excess thereof shall be deemed Capital Expenditures and shall, if the useful life of such Capital Expenditures as determined by Generally Accepted Accounting Principles (GAAP) exceeds the length of the Term,

64

(7) For purposes of repaying any loan required for capital improvements, beyond the initial development and construction costs

the parties agree as follows:

64

(d) Manager's Fee/Tribe's Share and Guarantee. Manager shall receive, as compensation for services rendered hereunder, the following percentages of net revenues as determined by gross handle volume and the Tribe shall receive the remainder, both the Manager's fee and Tribe's share to be payable in monthly installments:

Gross Handle Volumes | Percentage of Net Revenues

The remaining net profits after payment of Manager's fee as set forth above, i.e.,

shall be the Tribe's share of net profits, provided that the Tribe's share of the profits shall never be less than

This guarantee shall have preference over repayment of any development and construction costs.

In the event there are insufficient net profits to guarantee the Tribe

(e) Computation and Payment of Project Proceeds to Manager and Tribe; Priorities. Monthly pro forma reports shall be made available to the Tribe. All Net Profits shall be calculated on a monthly basis (within forty five (45) days after the first month of operation) based upon the accrual method of accounting. The Tribe's Share and Manager's Fee shall, to the extent available, be paid simultaneously each month from Project funds, except as stated above, such payments to be calculated and made as follows:

(1) Not more than forty-five (45) days after the end of each calendar month, Manager will prepare and submit to the Tribe a statement estimating, on the basis of the books and records of the Project and actual data collected, the Net Profits, if any, or Operating Losses for the preceding month. Said statement shall itemize the Gross Receipts and Operating Expenses. The effect of said statement shall be to allocate the Net Profits to Tribe and Manager as set forth in Article 6.4(d), above. One hundred percent (100%) of the Net Profits so determined will be used as the basis for paying, if applicable, concurrently with the rendition of such statement, and in the following order of priority:

(A) The Guarantee;

(B) All other principal payments, note payments, and all other project costs incurred by manager beyond the initial development and construction costs

and not recovered elsewhere in this agreement.

(C) Then (simultaneously) Manager's fee and Tribe's share.

The parties agree that, pursuant to any of the audits, adjustments may be required to payments made on the above-described basis. If so, such adjustments shall be made within sixty (60) days after completion of such audit for the period covered by said audit.

6.5 **Compliance with Laws**. Manager and Tribe mutually covenant and agree that they shall use their best efforts to comply with, and assure that the Project is in compliance with the Compact and requirements imposed thereby, all laws of the United States, and any Tribal Ordinances, rules, or regulations and rules and regulations of the Tribal Gaming Commission applicable to the operation of the Project as amended from time to time, all of which are incorporated herein by reference. The Tribal Gaming Ordinances, rules and regulations of the Tribal Gaming Commissions are attached hereto as Exhibit "B."

6.6 **Books and Records**. The Manager shall maintain full and accurate original Project books and records, files, receipts, contracts, correspondence, memoranda, inventory records, supporting documentation for all expenses and disbursements, and all other business books, books of account of records normally maintained by a prudent businessman. The Tribe and Manager shall at all times, have complete access to said books and records, including the right to inspect, photocopy and examine such records.

6.7 **Accounting and Audits**. Monthly statements of all Gross Receipts, Operating Expenses, Net Profits, Manager's Fees, Tribe's Share, and other amounts collected and received and all deductions and disbursements made therefrom, and a balance sheet, statement of income, cash flow, and all assets and liabilities of the Project (the "Monthly Statements"), shall be accurately issued in detail by Manager.

The Manager shall establish an accounting system and procedures which shall at all times be in place which shall, at a minimum: (1) Include an adequate system of internal accounting controls; (2) permit the preparation of financial statements in accordance with generally accepted accounting principles; (3) be easily susceptible to audit; (4) allow a Class III operation, the Tribe, and the National Indian Gaming Commission to calculate the annual fee under 25 CFR 514.1; (5) permit the calculation and payment of the Manager's fee; and (6) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Tribal gaming operation, the Manager, and any other user of shared facilities and services.

The Manager shall provide the Tribe with immediate access to the gaming operation, including its books and records, by those who the Tribe designates in writing, which persons shall have the right to verify the daily gross revenues and income from the gaming operation and access to any other gaming-related information the Tribe deems appropriate.

The Monthly Statements shall be issued to Manager and Tribe on or before forty-five (45) days following the month of reporting. The Tribe shall select a certified public accounting firm to perform an audit of books, records, and internal controls of the Project, at least once each fiscal year, and to certify the accuracy of the monthly

statement issued hereunder and render its opinion thereon to Manager and Tribe. All such audits shall be conducted pursuant to the AICPA standards for audits of casinos when applicable. The expense of those audits shall be an Operating Expense. The Tribe may also conduct its own independent audit of the Project's books and records at any time at the Tribe's sole cost and expense, provided such audit is conducted in accordance with accounting practices and by persons qualified to perform such audits.

6.8 **Insurance**. The parties agree that the Manager shall secure and maintain;

(a) Public liability and property damage insurance in the amount of at least [illegible] per person and [illegible] per occurrence, protecting against any claim arising out of an occurrence taking place or act or omission during the Term of the policy, regardless of whether the claim is made during such Term or thereafter;

(b) Sufficient insurance to keep the premises, improvements and contents thereof insured for their full replacement value against loss or damage by fire, with such extended coverage endorsements as determined by Tribe and Manager.

(c) Business interruption insurance in an amount to be agreed upon by Tribe and Manager, when and if available and if obtainable at a reasonable cost.

(d) Any bonding that shall otherwise be required under this Agreement.

Manager and Tribe shall each be named as insured in all policies and Manager shall submit to the Tribe written evidence satisfactory to the Tribe of such insurance coverage. All insurance policies shall provide that the Tribe reserves unto itself the sole and absolute right to waive its sovereign immunity from suit (with the consent of the

United States, if necessary) in any amount should it wish to do so for any reason whatsoever or for no reason. The Tribe must receive notices of alteration, termination or cancellation of any policy or coverage by certified mail not less than thirty (30) days prior to such alteration, termination or cancellation. Manager will promptly notify Tribe in connection with any matter related to the Project, and Tribe shall do likewise as to Manager.

6.9 **Destruction, Replacement of Premises; Use of Insurance Proceeds**. In the event of any destruction of a Project premises or other catastrophic event causing interruption of the Project, any available insurance proceeds must be utilized to rebuild or repair the premises and recommence Project operations hereunder unless mutually agreed otherwise. The term of this Agreement shall be suspended upon such destruction or interruption for each day until the Project recommences operation. Reconstruction shall begin or recommencement shall occur within ninety (90) days after destruction or interruption. In the case of reconstruction, it shall proceed promptly and the Project shall commence operations as soon as possible after completion. In the event that the Project is not rebuilt in accordance herewith, this Agreement shall be terminated and the Term shall come to an end, notwithstanding anything herein to the contrary.

6.10 **Disputes with Patrons**. Patrons must be advised when they have a dispute that they have the right to the presence of a member or agent of the Tribal Gaming Commission. If the dispute involves more than

Manager shall notify the Gaming Commission Director. The dispute will be

resolved by the Gaming Commission within thirty (30) days after it receives notice of the dispute.

ARTICLE 7

COVENANTS OF THE TRIBE

7.1 Additional Covenants. In addition to any other obligations which may be contained in this agreement, Tribe hereby covenants and agrees as follows:

(a) The Tribe shall act in good faith and take all necessary steps and execute, ratify and endorse all documents, contracts and agreements required of it pursuant to the provisions of this Agreement and shall not unreasonably withhold its approval of any act or thing for which such approval may be required hereby.

(b) The Tribe shall indemnify and hold manager harmless from and against any cost, expense or damage incurred by or claimed against Manager as a result of the willful, or intentional tortious act by the Tribe.

(c) The Tribe agrees to perform necessary acts and duties in order to expedite Governmental Agency approval of this Agreement and compliance with the National Environmental Policy Act to the extent applicable. Any expenses incurred by the Tribe or Manager in connection therewith shall be considered Operating Expenses.

(d) The Tribe shall maintain Tribal government operations and be solely responsible for disseminating information concerning the Project to its members. This does not prohibit advertising by the Manager.

(e) For all purposes under this Agreement, the Tribe shall be represented by the Tribal Council. The Manager shall be entitled to rely upon any

decision or representation made by the Council. Any action or inaction required or permitted of the Tribe hereunder shall be taken only by Council meeting in official session. All actions of the Council shall be reviewed at monthly meetings.

(f) The Tribe will cooperate with Manager in all efforts necessary to fulfill its duties herein and to ensure that the Project is operated, and Manager's duties are performed, in compliance with the Compact, applicable laws, ordinances, rules and regulations. Manager shall comply at all times with all Tribal Ordinances, laws, rules and regulations, and rules, regulations and procedures of the Tribal Gaming Commission including those governing gaming and in effect from time to time. Tribe shall not be required to take any action which will violate its sovereignty or right to self government unless expressly provided herein. The Tribe warrants that it will not change its laws, rules and regulations regarding Class III Gaming pertaining to pari-mutuel betting authorized under this Agreement to be managed by Manager in any way that would cause unnecessary material injury to the Project or change the terms of this Agreement unless such changes are required to be made by the Compact or applicable Federal Laws, rules or regulations, in which event Manager may terminate this Agreement within thirty (30) days of the change in such law, rule or regulation by giving notice to the Tribe of its intent to terminate the Agreement, pursuant to this subsection, but no such notice of termination shall be effective until thirty (30) days following receipt by the Tribe. Any such termination shall be governed by Articles 10 and 11. Within ten (10) days of any changes in Tribal Laws, rules and regulations regarding any aspect of gaming of this Project, the Tribe shall cause copies to be served upon Manager in accordance with Article 22 herein.

(g) The Tribe agrees to deliver to the Manager a copy of any written notice received by the Tribe from the State of South Dakota, given under the Compact, within five (5) days after receipt of such notice by the Tribe.

(h) The Tribe warrants and represents that it will not let any fee, charge or assessment, of any kind or nature, for which the economic incidence falls upon the Manager or the Project which is not explicitly authorized by this Agreement, and in the event that the Tribe breaches this warranty, then such charges shall be paid solely out of the Tribe's share of net profits, and if such charges exceed Tribe's share, Manager may pursue any remedy under this contract, at law, or in equity. This does not prohibit raising or lowering existing taxes for such items as sales, cigarette excise and taxes of a similar nature.

7.2 **Changes in Applicable Law**. It is the present understanding and intention of the parties hereto that the Project contemplated hereby does conform, and will conform in all respects with the Compact and all applicable Tribal and Federal laws. In the event this Agreement or the Project is determined to be unlawful by Congress, the Department of the Interior, the Bureau of Indian Affairs, or the National Indian Gaming Commission, the Chairman thereof, or a court of competent jurisdiction, the parties shall employ their best efforts to modify this Agreement to bring it into compliance with applicable law, including the consideration of different types of businesses which can be conducted at the Project, both gaming and non-gaming. The parties acknowledge that changes in applicable law may necessitate changes to this Agreement to reflect economic reality and the parties agree to negotiate in good faith to reach agreement.

ARTICLE 8

COMPLAINTS AND REPORTS

Manager shall carefully review any written complaint received from Tribe relating to any aspect of the Project or its operations and promptly take such action as may be appropriate to resolve Tribal concerns regarding such complaint, so long as Manager shall not be required to take any action which would be commercially unreasonable or materially injurious to the Project or its business. This article does not restrict the power of the Tribal Gaming Commission Acting pursuant to its Ordinance.

ARTICLE 9

DEFAULT AND TERMINATION

9.1 **Termination for Breach by Manager**. All duties, covenants, representations, warranties and agreements contained in this Agreement are declared to be material conditions to this Agreement. Should Manager default in the performance of any duty, covenant, representation, warranty, condition or agreement contained in this Agreement and the default is not cured after notice as provided in Article 9.7, Tribe may proceed as provided in Article 9.7 and Article 10. This article does not restrict the power of the Tribal Gaming Commission acting pursuant to its Ordinance.

9.2 **Insolvency of Manager**. Manager shall notify the Tribe within fifteen (15) days following the time Manager becomes insolvent within the meaning of 11 U.S.C. 101(31). Should Manager become insolvent, Tribe may, by giving fifteen (15) days written notice to Manager or to the person appointed to manage Manager's affairs at

the address for such appearing in the official records of the court that appointed him, terminate this Agreement. For purposes of this Article 9.2, Manager shall be conclusively presumed to have become insolvent if Manager can no longer perform its financial obligations hereunder, or:

(a) Has filed for relief under Title 11 of the United States Code or has suffered the filing of an involuntary petition under Title 11 which is not dismissed within one (1) year after filing;

(b) Has a receiver appointed to take possession of all or substantially all of Manager's property; or

(c) Has suffered an assignment for the benefit of creditors.

9.3 **Termination for Crime**. Should Manager or any of its officers, or general manager, by trial court judgement in a State or Federal or Tribal court of competent jurisdiction be found guilty of theft or embezzlement of Project funds or property, then Tribe may terminate this Agreement and forfeit Manager's interest herein. It is expressly agreed that in the event an employee of Manager (other than Manager's general manager or partners) is found by such final judgement guilty of theft, embezzlement, or any crime involving gaming, it shall not be grounds for termination of this Agreement, provided, however, Manager shall submit a claim for such loss to Project's insurance company to obtain reimbursement to the Project of any funds lost thereby.

9.4 **Termination for Interference with Tribal Governmental Affairs**. The Tribe may terminate this Agreement in accordance with this Article 9.4 if Manager has

interfered with, attempts or has attempted to influence in any manner, the internal and governing affairs of the Tribe, its government officers, members or the decisions of its government or any agency or instrumentality thereof. The Tribe will keep detailed records of all such matters so that it may determine if repeated instances of such conduct have occurred, which records will delineate each instance as to persons involved, time and place of the instance, and the exact nature of the conduct regarded by the Tribe as willful interference or attempted interference and shall notify Manager of such instance, in writing, within fifteen (15) days of discovery thereof by Tribal Council. Such notice shall contain the complete detailed records of the instance. If so notified, Manager will take such steps as are necessary to inform, instruct, and prohibit its employees from further such actions, and shall notify the Tribe, in writing, of all actions taken. If, in the judgement of the Tribe, Manager has taken the necessary steps to mitigate the impact of the instance, the instance will be removed from the record by a notation on the Tribal records signed by Manager's and Tribe's designated representatives. No attempt to comply with this Agreement or attempt to obtain the Tribe's consent hereunder or participation by Tribal members who are Project employees or Managers in the governmental processes of the Tribe shall be deemed to be in violation of this section.

9.5 **Mutual Agreement**. This Agreement may be terminated by mutual agreement of Tribe and Manager.

9.6 **Waiver of Breach**. Any waiver by the Tribe of any breach of any provision of this Agreement by Manager must be in writing and shall be executed by the

Tribe or it's duly authorized representative to be in effect. Any such written waiver shall be effective only for the particular breach and for the specific period provided in the terms of the written waiver. Such written waiver shall not waive any additional breach of a different provision of this Agreement

9.7 **Notice of Default**. In the event that either party believes that there has been a default or other breach of the provisions of this Agreement, it shall give the other Party written notice stating with particularity, the specific nature of the default and the provisions of this Agreement alleged to have been breached. The party claimed to be in default shall have thirty (30) days thereafter to cure the default, provided that if it is not possible to cure the default within thirty (30) days, the party claimed to be in default shall give notice to the other party of the period that it will take to cure the default with assurances to the non-defaulting party that the alleged defaulting party has the ability to cure the default within such period. If the default is not cured or if action is not taken within thirty (30) days thereafter by the defaulting party, the other party may elect to exercise its right to either terminate this Agreement and, in addition to termination or in lieu thereof, to proceed to arbitration as specified herein.

ARTICLE 10

EFFECT OF TERMINATION

10.1 **Termination and Reservation of Certain Rights and Obligations**. Termination of this Agreement for any reason shall terminate all rights and obligations of the parties hereunder, except as specifically provided otherwise in this Agreement, provided however, that unless specifically provided herein to the contrary, termination

shall not affect any warranties or indemnities of the parties to each other, nor shall termination discharge, release or prejudice the rights, remedies, or liabilities of either party from, to or against the other with respect to any default under this Agreement or as to any rights, duties or obligations with respect to termination. Notwithstanding anything herein to the contrary, upon termination, the Tribe may operate gaming for its own account or through a management contractor without any obligations or liability to Manager.

10.2 Duty to Render Final Accounting. Upon termination, the Project Accountant shall render and deliver to the parties a final and accurate accounting of project operations.

ARTICLE 11

PAYMENTS DUE UPON TERMINATION; PRIORITIES

11.1 Payments from Project Funds. Upon termination, all outstanding Operating Expenses and other Project costs shall be paid from the Operating Accounts, any reserve accounts and any other Project funds then on hand, including casualty, condemnation, and business interruption insurance proceeds, reserve accounts and other Project funds, except that liabilities covered by Project insurance shall be satisfied from the proceeds of such insurance. Subject to any other priority imposed by law, Operating Expenses and other Project costs and liabilities shall be paid and discharged upon termination in the following order:

(a) All amounts due to the Internal Revenue Service (and State Revenue Department, if any) in connection with payroll and other taxes;

(b) All other amounts payable to any federal, state or other non-Indian taxing agency;

(c) All amounts payable in connection with the Project and due to the National Indian Gaming Commission;

(d) All Operating Expenses and other amounts owing to Project creditors;

(e) Any amounts due to the Manager for contributions to the Operating Expense Reserve that have not been repaid as provided in Article 6.4(c)(5);

(f) All Operating Expenses and other amounts owing to Tribe and Manager, other than Manager's fee or Tribe's share;

(g) All amounts due to the Manager and Tribe related to contributions into the Capital Improvement Reserve.

(h) All Manager's fees and Tribe's share remaining to be paid under this Agreement, to be paid without preference or priority as between Tribe and Manager.

11.2 <u>Payments from Tribal Funds Generated by the Project</u>.

(a) Since the Tribe has the sole proprietary interest in the Project under Article 5, if the termination of this Agreement occurs for any reason prior to the end of the Term, all costs which were incurred by Manager in the performance of this Agreement,

and which have not

been repaid as provided in Article 6.4(c)(7), shall be repaid to Manager as mutually agreed upon between the parties not to exceed

64

(b) If the Tribe attempts to terminate this contract for any reason not caused by Manager and caused by the Tribe prior to the expiration of the Term, Manager's remedy is to seek an injunction in the appropriate court to prevent termination. This does not prevent the parties from attempting to negotiate a buyout on terms mutually agreed upon. If such terms cannot be agreed upon, equitable relief by way of injunctive relief shall be the sole remedy.

(c) The parties agree that if this Agreement is terminated by any governmental agency or entity other than the Tribe without the fault of the Tribe during the term, that the only monetary payments due the Manager shall be

The amounts shall be paid as mutually agreed upon not to exceed

64

(d) Nothing contained in this Article 11.2 shall require the Tribe to pay the Manager the Property Purchase Expense more than once.

ARTICLE 12

MANAGER'S ACCESS TO BOOKS AND RECORDS AFTER TERMINATION

After termination of this Agreement prior to expiration of the Term or any extension, and for four (4) years thereafter, Manager shall have access, at times and

places during ordinary business hours, to inspect and copy the books and records of the Project for all periods prior to termination, upon arrangement for such copying or inspection.

ARTICLE 13

CONDITION PRECEDENT TO VALIDITY AND ENFORCE OF AGREEMENT

This Agreement, and except as otherwise specifically provided to the contrary, the obligations of Manager and the Tribe described herein, are expressly conditioned upon execution of this Agreement, and all related agreements and documents, by Tribe and Manager, and delivery of executed copies to the parties and any Governmental Agency required by law to review and approve same.

This Agreement shall not be effective until approved by the Chairman of the National Indian Gaming Commission the dates of the signatures of the parties notwithstanding.

ARTICLE 14

APPROVAL OF TRIBE

Whenever a written request is made to the Tribe by the Manager, unless the Tribe has expressly disapproved the thing or act for which approval is sought within thirty (30) days after receipt of the request for approval, the Tribe shall be deemed to have granted its approval.

ARTICLE 15

NON-INTERFERENCE WITH TRIBAL AFFAIRS

Manager agrees that it shall not interfere with or attempt to influence the internal

affairs or governmental decisions of the Tribe, but no attempt to comply with this Agreement or attempt to obtain Tribe's consent hereunder or participation by Tribal members who are project employees in the governmental processes of the Tribe shall be deemed to be in violation of this Article.

ARTICLE 16

FORCE MAJEURE

In the event of any party being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, it is agreed that upon such parties giving notice and full particulars of such force majeure in writing within a one week period of time after the occurrence of the cause relied upon, the obligations of the party giving notice shall be suspended during the continuance of any disability so caused, and the period of such suspension shall extend the time period of any agreed upon and appropriate deadlines for a like period of time. The cause of the force majeure shall, so far as possible, be remedied with all dispatch by the claiming party. The term "force majeure" as employed herein shall include, without limitations, acts of God, strikes, lockouts, wars, governmental or judicial actions and other events not within the control of the parties.

ARTICLE 17

INVALID OR UNENFORCEABLE PROVISIONS

If any part or parts of this Agreement shall be deemed to be invalid or unenforceable for any reason by final judgement of a court of competent jurisdiction, this Agreement shall not be affected in its entirety, but shall be deemed amended or modified to accommodate said final judgement.

ARTICLE 18

CONFLICT OF INTEREST

18.1 No Payments to Tribal Council or a Member Thereof or a Relative of a Member Thereof. All parties hereto declare that no payments relative to obtaining this Agreement have been made nor shall any payments be made to any elected member of the Tribal Council or any relative of such member for the purpose of obtaining or maintaining this Agreement or any other privilege for Manager or other Parties-In-Interest.

18.2 Parties-In-Interest (Conflict of Interest). No elected member of the Tribal Government or member of the Tribal Gaming Commission or relative thereof who permanently resides in the same household with such individual may be an investor, including general and limited partners, corporate officer, director, or stockholder of Manager. Any person holding such an interest must divest himself or herself of any and all such interests in the event that such person becomes an elected member of the Tribal Government or a member of the Tribal Gaming Commission or a relative of such person who resides in such person's immediate household. For the purpose of this Agreement the term "relative" means an individual who permanently resides in the same household and is related to an elected member of the Tribal Government or a member of the Gaming Commission as a father, mother, son, or daughter. In the event that any party holding such an interest or the relative of any such party residing in his or her immediate household, becomes an elected member of the Tribal Government or a member of the Tribal Gaming Commission or is a relative residing in the immediate

household of a person who is elected to Tribal Government or becomes a member of the Tribal Gaming Commission, Tribe and Manager agree to immediately terminate the employ of such person by the Project upon his election to Tribal Government or becoming a member of the Tribal Gaming Commission or the election of any of their relatives who resides in his immediate household to Tribal Government, or selection as member of the Tribal Gaming Commission.

ARTICLE 19

INSPECTION

The Tribe, shall have the right, at any time during the Term of this Agreement, to enter the Project to inspect any aspect of the same and to make photocopies of any of its records or books, wherever the same may be located. Appropriate tribal officials shall have the right to verify the daily gross revenues and income from the gaming operation and access to any other gaming related information the Tribe deems appropriate.

ARTICLE 20

MANAGER'S SALARY

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ARTICLE 21

ACCESS TO THE COURTS

Should litigation be necessary to enforce the obligations of this Agreement, the parties agree that 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 Flandreau Santee 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 for 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 (7) days of the application by either party. The parties may waive or extend the time limit included herein by mutual agreement.

(d) With the use of the special judge as provided herein, the Flandreau Santee 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 sub-parts (f) and

(g) hereto.

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

(f) The jurisdiction of the Flandreau Santee Sioux Tribal Court system with respect to disputes related to this contract, shall extend through the Tribal Trial Court and Appellate Court level. Tribal Court remedies must be exhausted before any party may initiate suit 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. Upon adoption and execution of this contract, the provisions of this section shall be considered as an amendment to the tribal judicial code, applying solely to disputes arising under this contract and establishing the jurisdiction of the Flandreau Santee Sioux Tribal Court as set forth herein with respect to disputes under this contract.

(g) The parties recognize that time is of the essence in resolving any disputes which might arise related to this contract. 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 (10) days, or to render a decision on any other matter which is submitted to it within thirty (30) days, then jurisdiction of the Tribal Court shall divest and the parties may proceed to Federal Court for 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.

ARTICLE 22

NOTICES

22.1 Notices; Manner of Service. Any notices permitted or required to be given under this Agreement shall be sufficient if in writing and mailed (or sent by telecopier or telegram) to the person set forth below:

If to Tribe:

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

Phone: (605) 997-3891
Fax: (605) 997-3878

If to Manager:

President
Bettor Racing, Inc.
4601 E. 12th, Suite 7
Sioux Falls, SD 57110-2703

Phone:(605) 373-9861
Fax:(605) 373-9923

and

Executive Director
Flandreau Santee Sioux Tribe
Gaming Commission
Box 351
Flandreau, SD 57028

Phone: (605) 997-2270
Fax: (605) 997-5169

22.2 **Notices; Change of Address**. Upon any change of address, or person to whom notices should be directed, such party will notify all other parties hereto by mail. Thereafter, such new address or person will be deemed substituted for the above address or person.

22.3 **Notices; Deemed Receipt**. Notices under this Agreement shall be deemed served upon actual receipt by the party.

ARTICLE 23

MISCELLANEOUS

23.1 **Fire Protection**. Fire protection for the project is supplied by the local department. The parties agree that existing fire protection and law enforcement are adequate to protect the Project and the parties' interests therein. If existing public services of any type or character are not adequate, the parties agree that the local

agencies will be reimbursed for additional costs out of the Project and as a Project expense.

23.2 **Recitals Deemed Material**. The recitals to this Agreement shall be deemed to be representations and agreements of the Parties and are in themselves a material part hereof. All recitals, representations and warranties shall be deemed to be continuing and shall survive the execution hereof.

23.3 **Not a Partnership or Joint Venture**. Nothing herein shall be deemed or is intended to render the relationship between the Tribe and Manager as partners or joint venturers, nor is Manager authorized to act on the Tribe's behalf except where specifically authorized to do so.

23.4 **Entire Agreement; Incorporation of Exhibits**. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be changed orally, but only by an instrument in writing signed by the party against whom enforcement is sought. Any such amendment as well as any assignment by Manager of this Agreement, or transfers of ownership in Manager resulting in change in control, or subcontracts of Manager's duties hereunder, whether voluntary, involuntary or by operation of law, in whole or in part whether absolute or for purposes of security, or otherwise, must be approved in advance and agreed upon and approved in writing by the Tribe and submitted by the Tribe to the same Governmental Agency required for the initial approval of this Agreement or such other person or entity as may then exercise its powers, for its written approval. The Tribe retains the absolute right to deny consent for any proposed transfer, assignment, subcontract, pledge, or

encumbrance by Manager for any reason whatsoever or for no reason, notwithstanding anything herein to the contrary. All exhibits appended hereto shall be deemed incorporated herein by reference.

23.5 **Waiver**. This Agreement may not be amended, modified, superseded or canceled, nor may any of the terms, covenants, representations, warranties, or conditions be waived, except by written instrument executed by the party against whom such amendment, modification, supersedure, cancellation or waiver is charged. The failure of any party at any time or times to require performance of any provisions hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any conditions, or warranty contained herein, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such condition or breach of waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

23.6 **Construction**. The captions and heading contained herein are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement. Notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty in this Agreement shall not be construed against either party based upon authorship of any of the provision hereof. When this Agreement calls for the approval of any party hereto, such approval may not be unreasonably withheld. When appropriate, the use of the singular shall include the plural and the masculine shall include the feminine and vice versa.

23.7 **Counterparts**. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

23.8 **Other Documents**. The parties each hereby consent and agree that, from time to time, after the date hereof, at the request of any party, and without further consideration, they will execute and deliver such other documents and take such other action as may be required to carry out in all respects the transactions contemplated and intended by this Agreement.

23.9 **Arbitration of Minor Disputes**. Minor disputes (i.e., disputes not amounting to a material breach of this Agreement but creating an impasse), or if the Federal Court which is the exclusive forum for litigation of issues before the courts determines that it does not have subject matter jurisdiction under applicable law in accordance with Article 21 hereof, or if the parties agree, any dispute shall be arbitrated with dispatch if no agreement can be reached after good faith efforts to resolve the issues have failed, by a person or person the parties agree upon, but if they cannot agree within fifteen (15) days after the need for arbitration has been identified, then each party's nominee shall serve on a panel of three (3) arbitrators and the nominees shall name the third to serve with them. If they cannot agree, then the third shall be selected by the American Arbitration Association or the Arbitration Association for Commercial Arbitrations. Any Arbitration shall be held in Sioux Falls, South Dakota, each party to bear its own attorney's fees, but other such costs to be an Operating Expense as defined in Article 6.4(c)(4). In the event that one of the parties refuses to

participate in arbitration as provided for herein, attorneys' fees and costs incurred by reason of such refusal may be awarded as additional damages. To the extent a limited waiver of Tribal immunity from suit is necessary to enforce compliance with this paragraph and give meaning to the decision of the arbitrator, it is hereby granted for such purposes only, but only to the extent provided in Article 21 of this Agreement.

Nothing in this Article shall be construed to authorize arbitration of governmental matters or matters over which the Tribe must retain governmental control such as action of the Tribal Council or Tribal Gaming Commission, Gaming Ordinance issues, approval of annual budgets, issuance or revocation of licenses, or similar matters. Other matters such as those relating to a claimed breach of the Agreement or a claim of money damages shall be subject to arbitration.

23.10 **Parties-In-Interest**. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under, or by reason of this Agreement upon, any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any parties to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

23.11 **Applicable Law**. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between provision of this Agreement and the compact or any relevant statute, law, ordinance or regulation, then the latter shall prevail; provided, however that in any such

event the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to bring them within applicable legal requirements.

23.12 Indemnification Procedure. In any action commenced against or any claim filed or made against the Tribe whether or not subject to the Tribe's jurisdictional or liability immunity which may be waived in any amount at the Tribe's sole option, in respect to which defense or indemnity may be sought against Manager pursuant to Manager's obligation under this Agreement, the Tribe shall promptly notify Manager in writing, and Manager shall assume defense thereof, including the appointment of counsel selected by Manager, the payment of all costs, expenses, awards, judgements and other obligations and Tribe shall have the right to employ separate counsel in any such action and to participate in the defense thereof at the Tribe's sole cost and expense. Manager shall not be liable for any settlement of any such action affected without its consent; but if settled with Manager's consent, or if there be a final judgment for the claimant in any such action, Manager agrees to indemnify and save harmless the Tribe, from and against any loss or liability by reason of such judgment or judgment to the extent provided by this Agreement.

In any action commenced against Manager in respect to which defense or indemnity is sought against the Tribe pursuant to the Tribe's obligations under this Agreement, Manager shall promptly notify the Tribe in writing and the Tribe shall assume defense thereof, including the employment of counsel selected by the Tribe, the payment of all costs, fees, expenses, awards, and judgment, and the right to negotiate and consent to settlement. Upon determination made by Manager, Manager shall have the right to employ separate counsel in any such action and to participate in

the defense thereof at Manager's sole cost and expense. The Tribe shall not be liable for any settlement of any action affected without its consent; but if settled with the Tribe's consent, or if there be a final judgment for the claimant in any such action, the Tribe agrees to indemnify and save harmless Manager from and against a loss or liability by reason of such settlement or judgment to the extent provided in this Agreement.

The provision of this Agreement relating to indemnity between the parties shall survive termination hereof, but only as to matter, act, or omission arising prior to the termination hereof and brought, instituted, demand made or if a claim of any kind or nature whatsoever is otherwise asserted in accordance with applicable law within the applicable statute of limitations for such claim, cause of action, demand, or the like.

If the party against whom indemnity is sought denies liability for such indemnity, such party shall not be liable as provided in this Article 23.12 until final adjudication that such party is liable for such indemnity.

23.13 **No Alteration Except by Mutual Consent**. The Manager and Tribe hereby specifically warrant and respect to each other that neither of them shall act in any manner which would cause this Agreement to be altered, amended, modified, canceled, terminated (except for cause), revoked or otherwise frustrated, without the prior written consent of the other party. The Tribe and Manager further covenant and agree to act in good faith in all aspects of the transaction contemplated hereby and will deal fairly with the other in all matters relating hereto.

23.14 **Time of Essence**. Time is of the essence in the performance of this Agreement and all activities contemplated hereby.

23.15 **Tribal Resolution**. The Resolution attached hereto as Exhibit "E" sets forth the scope of authority of the Tribal officials who have signed this Agreement on behalf of the Tribe and identifies the provision of the Tribal organic document which authorizes this Agreement and its execution.

23.16 **No Present Lien or Lease**. The parties agree and expressly warrant to each other that this Agreement is not a lease, and that it does not convey to the Manager any interest whatsoever in the real property on which the Project is located or any personal property or fixtures located therein.

23.17 **NIGC Fees for Class III Gaming**. Manager shall comply with 25 CFR 514.1 and issue appropriate quarterly reports to the Commission for purposes of determining assessable revenues upon which Class III fees shall be calculated, which fees shall be paid as a project expense at the effective rate.

23.18 **Assignments and Subcontracting; Change of Ownership**. Manager shall not assign, sell, or subcontract any of its ownership interests, rights, responsibilities, or duties in or under this agreement without the prior consent and approval of the Tribe and NIGC.

ARTICLE 24

INTERFERENCE BY THIRD PARTIES

The parties agree that if at any time during the Term of this contract individual Tribal members or any person, firm or corporation whatever should, by any court order,

process issued by or on behalf of any court or otherwise attempt to interfere with the operation of this Agreement in accordance with its terms, the Manager shall be entitled to operate the Project according to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written at Flandreau, South Dakota, this 8 day of FEBRUARY, 2005.

FLANDREAU SANTEE SIOUX TRIBE

Mark Allen, Tribal President

BETTOR RACING, INC.

Randy Gallo, President

STATE OF SOUTH DAKOTA)
) S.S.
COUNTY OF Moody)

On this, the 8th day of February, 2005, before me, the undersigned officer, personally appeared Mark Allen known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(SEAL) FANNIE R. ARMSTRONG
NOTARY PUBLIC
SOUTH DAKOTA

Notary Public - South Dakota
My Commission Expires: 4-15-2010

FLORIDA
STATE OF ~~SOUTH DAKOTA~~)
PALM BEACH) S.S.
COUNTY OF ~~MINNEHAHA~~)

On this, the 4 day of Feb, 2005, before me, the undersigned officer, personally appeared Randy Gallo, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(SEAL)

HAROLD LEWTER
MY COMMISSION EXPIRES
June 14, 2008
#DD 329056
Bonded thru
Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

Notary Public
My Commission Expires: _____

Approved by the National Indian Gaming Commission

By: _____
Philip N. Hogen, Chairman

MAR 17 2005
_____
Date