

**PUBLIC HEARING SCHEDULED
SEPTEMBER 20, 2012 THURSDAY 6:00PM
FOUR BEARS CASINO**

INHERITANCE CODE

THREE AFFILIATED TRIBES

OF THE

FORT BERTHOLD INDIAN RESERVATION

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Part 1 – Title, Declaration of Purpose, Effective Date and Application of Code

SECTION 1.00. Title. This code shall be known as the Inheritance Code of the Three Affiliated Tribes of the Fort Berthold Indian Reservation (“Code”).

SECTION 1.01. Declaration of Purpose. The Three Affiliated Tribes does hereby find and declare:

- a) The Fort Berthold Indian Reservation was established as the permanent homeland of the Three Affiliated Tribes by the Treaty of September 17, 1851 between the United States and the Mandan, Hidatsa and Arikara Tribes;
- b) That the preservation of the land base of the Three Affiliated Tribes is critical to the vitality of the economy and sovereignty of the Three Affiliated Tribes;
- c) The Federal Allotment Policy and subsequent executive orders and congressional acts have diminished the total amount of trust lands of the Three Affiliated Tribes on the Fort Berthold Reservation created by the Treaty of September 17, 1851;
- d) The Three Affiliated Tribes are dedicated to the policy of restoring lands within the Fort Berthold Indian Reservation to trust status and to insuring that those Reservation lands currently in trust status do not leave trust status upon the death of their current owners;
- e) The transfer of trust lands by tribal members and other owners of trust lands upon their death either by devise or descent to persons who are not enrolled members of the Three Affiliated Tribes is inconsistent with the economic well-being and future prosperity of the Three Affiliated Tribes;
- f) The Three Affiliated Tribes seek to encourage and consolidate Tribal member ownership of trust lands on the Fort Berthold Indian Reservation;

- g) Pursuant to 25 U.S.C. § 2205, “any Indian tribe may adopt probate code to govern descent and distribution of trust or restricted lands that are
 - (A) located within that Indian tribes’ reservation; or
 - (B) otherwise subject to the jurisdiction of that Indian tribe.”
- h) Pursuant to Article VI, Section 5, the Tribal Business Council has the power to manage all economic affairs and enterprises of the Three Affiliated Tribes in accordance with the terms of a charter to be issued to them by the Secretary of Interior.”
- i) Pursuant to Article VI, Section 7, “any rights and powers heretofore vested in the [Three Affiliated Tribes] of the Fort Berthold Reservation, but not expressly referred to in this Constitution, shall not be abridged by the Article, but may be exercised by the people of the Fort Berthold Reservation through the adoption of appropriate bylaws and constitutional amendments.”

SECTION 1.03. Effective date and application of code. This Code shall become effective 180 days after the date of approval by the Secretary of the Interior or his designee pursuant to 25 U.S.C. § 2205(b)(3)(B). The provisions of this Code shall apply to all estates of decedents that are subject to the jurisdiction of the Three Affiliated Tribes whose deaths occur on or after the effective date of this Code.

Part 2-Definitions, Subject matter jurisdiction, Application of Code and General Provisions

SECTION 2.00. Definitions.

- a) “Child” or “children” shall mean the child(ren) of the decedent, including:
 - i. Child(ren) who were adopted in by the decedent where such adoption was formalized through an adoption decree or other adoption order issued by a state or tribal court of competent jurisdiction;

- ii. Children who were adopted in by the decedent pursuant to the Three Affiliated Tribes' customs and traditions; and
 - A. the adoption is recorded by the Three Affiliated Tribes in a manner adopted by the Tribal Council; and the child is a blood collateral relative or a lineal descendant (niece, nephew, grandchild and great-grandchild)
 - B. The child is a lineal descendant or a blood collateral relative of the decedent.
 - iii. The definition of a child shall not include a decedent's 'adopted out' children for the purposes of inheritance of trust or restricted interests.
- b) "Code" means the Inheritance Code of the Three Affiliated Tribes of the Fort Berthold Indian Reservation.
 - c) "Decedent" means a person who is deceased.
 - d) "Devise" means a gift of property by will; and to give a gift of property by will.
 - e) "Eligible Heir" means for purposes of Part 3 of this Code, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are:
 - i. Indian;
 - ii. lineal descendants within two degrees of consanguinity of an Indian;
 - or
 - iii. owners of a trust or restricted interest in a parcel of land for purposes of inheriting by descent, renunciation or consolidation agreement under this Code or 25 U.S.C. 2206, another trust or restricted interest in such parcel from the decedent.
 - f) "Enrolled Member of the Three Affiliated Tribes" means a person who meets or is eligible to meet the enrollment criteria as set forth in Article II of

the Constitution of the Three Affiliated Tribes of the Fort Berthold Reservation, as amended.

- g) “Estate” means the land and personalty owned by the decedent at the time of death.
- h) “Indian” shall have the meaning set forth in 25 USC. § 2201(2).
- i) “Ineligible Devisee” means a person named in a will to receive trust lands within the Fort Berthold Indian Reservation who is not an enrolled member or a lineal descendant two degrees of consanguinity from an enrolled member of the Three Affiliated Tribes.
- j) “Ineligible Heir” means a person who is an heir at law to trust lands within the Fort Berthold Indian Reservation who is not an enrolled member of the Three Affiliated Tribes or two degrees of consanguinity from an enrolled member of the Three Affiliated Tribes.
- k) “Life Estate without Regard to Waste” shall have the same meaning as set forth in 25 U.S.C. §2201 (10) as amended which states that the life tenant is entitled to all rents, royalties and bonuses from the trust interest.
- l) “Lineal Descendant” means a person who descends in a direct line from the decedent, such as a child or grandchild.
- m) “Secretary” means the Secretary of the Interior or an authorized representative. The authorized representative of the Secretary for the performance of probate functions is BIA. The authorized representative of the Secretary for adjudication of probate for trust and restricted interests is OHA.
- n) “Testate” means the decedent executed a valid will.
- o) “Three Affiliated Tribes” means the Three Affiliated Tribes of the Fort Berthold Indian Reservation.

SECTION 2.01. Subject matter jurisdiction-Department of Interior. The Department of Interior has exclusive jurisdiction over the adjudication of probate estates for owners of trust or restricted property.

SECTION 2.02. Subject matter jurisdiction-Tribal Court. The Tribal Court of the Three Affiliated Tribes shall have jurisdiction over the devise and descent of all non-trust property as provided in this Code.

SECTION 2.03. Application of Tribal Probate Code. When probating an estate, the Department of Interior will apply this Code for all trust and restricted lands within the jurisdiction of the Three Affiliated Tribes. All trust personalty will be distributed pursuant to the American Indian Probate Reform Act, 25 U.S.C. § 2201 et. seq.

SECTION 2.04. Paternity. Any party attempting to establish that a decedent is the biological parent of an heir or devisee shall comply with the Tribal Law and Order Code.

SECTION 2.05 Presumption of Death. A member of the Three Affiliated Tribes that has been absent and his/her whereabouts are unknown for a period of seven (7) years shall be presumed dead after either the Tribe or the BIA makes the following efforts to locate the absent person:

- (a) Search of available electronic data;
- (b) inquire into other published information sources such as telephone directories and other available directories;
- (c) examine BIA land title and lease records;
- (d) examine the IIM account ledger for disbursements from the account; and
- (e) engage the services of an independent firm to conduct a search of the absent person.

Part 3 – Intestacy

SECTION 3.00. Intestate estate—rules of descent. Any trust or restricted interest in land that is not disposed of by a valid will shall descend according to:

- (a) Sections 3.01 and 3.02; and
- (b) Other applicable Federal law.

SECTION 3.01. Interests less than five percent (5%). Any trust or restricted interest in land in the decedent’s estate that is not disposed of by a valid will; and represents less than five percent (5%) of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent’s estate inventory at the time of the heirship determination, shall descend in accordance with sections (a) and (b).

(a) Share of surviving spouse. If there is a surviving spouse of the decedent, and such spouse was residing on a parcel of trust or restricted land representing less than five percent (5%) of the entire undivided ownership of the parcel of land which such interest is a part, at the time of the decedent’s death, the spouse shall receive a life estate without regard to waste in the decedent’s trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with the single heir rule, as provided in section (b).

(b) Share of remainderman—single heir rule. Where there is no life estate created for a surviving spouse under subsection 3.01 (a) or there is a remainder interest under subsection 3.01(a), the trust or restricted interest or remainder interest that is subject to this Part shall descend, in trust or restricted status as follows, except that under no circumstances shall an individual who was adopted out by the decedent be considered a “child” for purposes of intestate distribution under this part:

(i) The decedent’s surviving child, but only if such child is an eligible heir, and if two or more surviving children are eligible heirs, then to the [oldest or youngest] of such children. For purposes of this section only, an adopted out child shall

(ii) If the interest does not pass under subsection (i) of this section, the decedent’s surviving grandchild, but only if such grandchild is an eligible heir; and if two or more surviving grandchildren are eligible heirs, then to the [oldest or youngest] of such grandchildren;

(iii) If the interest does not pass under subsections (i) or (ii) of this section, the decedent’s surviving great grandchild, but only

if such grandchild is an eligible heir; and if two or more surviving great grandchildren are eligible heirs, then to the [oldest or youngest] of such great grandchildren;

- (iv) If the interest does not pass under subsections (i), (ii), or (iii) of this section, the decedent's surviving parent, and if both parents survive the decedent, then to the parent who is an eligible heir, and if both parents are eligible heirs, then to the [oldest or youngest] of such parents.
- (v) if the interest does not pass under subsections (i), (ii), (iii) or (iv) of this section, the decedent's surviving sibling, but only if such sibling is an eligible heir; and if two or more surviving siblings are eligible heirs, then to the [oldest or youngest] of such siblings;
- (vi) If the interest does not pass under subsections (i), (ii), (iii), (iv) or (v) of this section, the Three Affiliated Tribes.

3.02. Interests greater than or equal to five percent (5%). (a) Any trust or restricted interest in land in the decedent's estate that is not disposed of by a valid will; and represents greater than or equal to five percent (5%) of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent's estate inventory at the time of the heirship determination, shall descend in accordance with subsections (a) and (b).

- (i) **Share of member surviving spouse—100% vested interest.** If there is a surviving spouse of the decedent at the time of decedent's death, and the surviving spouse is a member of the Three Affiliated Tribes, and there are no children outside the marriage the spouse shall receive all of decedent's trust land interests representing greater than or equal to five percent (5%) of the entire undivided ownership of the parcel of land of which such interest is a part.
- (ii) **Share of member surviving spouse – 50% vested interest.** If there is a surviving spouse of the decedent at the time of decedent's death, and the

surviving spouse is an enrolled member of the Three Affiliated Tribes, and the decedent has one or more surviving children who are not the children of the surviving spouse, the spouse shall receive a fifty (50%) interest in each trust and restricted interest representing greater than or equal to five percent (5%). The remaining interests shall pass in accordance with subsection (2)(a).

(iii) **Share of non-member or non-Indian surviving spouse—life estate.** If there is a surviving spouse of the decedent at the time of decedent's death, and the surviving spouse is enrolled in a tribe other than the Three Affiliated Tribes, or the surviving spouse is not an Indian, the surviving spouse shall receive a life estate without regard to waste in each trust or restricted interest representing greater than or equal to five percent (5%) of the entire undivided ownership of the parcel of land of which such interest is a part. The remainder interest shall pass in accordance with subparagraph (b).

(b) **Share of heirs other than surviving spouse—equal shares.** Any part of the estate under subsection (a) not passing to the decedent's surviving spouse shall pass as follows:

(i) to those of the decedent's children who are eligible heirs (or if 1 or more of such children do not survive the decedent, the children of any such deceased child who are eligible heirs, by right of representation, but only if such children of the deceased child survive the decedent) in equal shares;

(ii) if the property does not pass under subsection (i), to those of the decedent's surviving great-grandchildren who are eligible heirs, in equal shares.

(iii) if the property does not pass under subsection (i) or (ii), to decedent's surviving parent who is an eligible heir, and if both parents survive the decedent and are both eligible heirs, to both parents in equal shares.

(iv) if the property does not pass under subsection (i), (ii), or (iii), to those of the decedent's surviving siblings who are eligible heirs, in equal shares.

(v) if the property does not pass under (i), (ii), (iii), or (iv), then to the Three Affiliated Tribes.

(c) **Share of ‘adopted out’ child of decedent.** An adopted out child of the decedent shall receive 25% of the proceeds generated by the decedent’s estate, during the adopted out child’s life, but shall not inherit an ownership interest in the trust interests.

Part 4 – Prevention of Transfer of Trust Lands to non-members of the Three Affiliated Tribes

SECTION 4.00. Policy. The Three Affiliated Tribes hereby declares its intent to exercise the full scope of its authority under the Indian Land Consolidation Act, Public Law 97-459, 25 U.S.C. § 2201 et seq., as amended. Accordingly, the Three Affiliated Tribes hereby exercise the right to prevent the transfer of trust lands within the Fort Berthold Indian Reservation to Ineligible Devisees by devise and to Ineligible Heirs by descent as permitted by this Code and federal law.

Whenever a ~~person owning trust~~ lands within the Fort Berthold Indian Reservation dies and the probate of the decedent’s trust estate implicates the rights of the Three Affiliated Tribes under this Code, the Tribes or its designee shall prepare a report with the following information:

1. Name and Tribal enrollment status of the decedent.
2. Whether decedent left a will.
3. The identity and tribal affiliation of persons named in decedent’s will or heirs of the decedent.
4. The extent, interest and nature of trust lands located within the Fort Berthold Indian Reservation owned by decedent at the time of his/her death;
5. A concise economic summary of the value of the lands or any special treaty or cultural significance of such lands.

A. Determination by Tribes or Tribe’s Designee

Authorization. Upon the death of any person owning an interest in trust lands located within the Fort Berthold Indian Reservation, this Code will govern the probate of such person's trust estate, subject to applicable Federal law.

1. **Ineligible Devisee Inheritance of Trust Land.** If a decedent dies testate and the will provides for an Ineligible Devisee to inherit trust or restricted land within the Fort Berthold Indian Reservation, the Tribe or Tribe's Designee is hereby authorized to prevent the transfer to the Ineligible Devisee only if it pays the fair market value to the Office of Special Trustee, or its successor agency, as determined by the Secretary as of the date of the decedent's death, on behalf of the Ineligible Devisee, as provided in paragraph 4 of this subsection, provided that:

- a. An Ineligible Devisee may renounce his or her interests in such trust or restricted lands in favor of an Eligible Devisee in accordance with 4.01.
- b. If the Ineligible Devisee is the surviving spouse of the decedent, the surviving spouse shall have the right to reserve a life estate without regard to waste; and
- c. If the Ineligible Devisee is an Indian and a lineal descendant of the decedent, such person can take a life estate without regard to waste in such trust lands.

To prevent the transfer, the Three Affiliated Tribes must file a Notice to Purchase as provided in paragraph 5 of this subsection. Any Ineligible Devisee who is a surviving spouse or an Indian lineal descendant of such decedent electing to take life estate in such interests shall be subject to paragraph 7.a of this subsection.

2. **Ineligible Heir Inheritance of Trust Land.** If a decedent dies without a will governing the disposition of his/her interest in the trust or restricted land within the Fort Berthold Indian Reservation, the Board of Trustees is authorized to prevent the transfer to the Ineligible Heir at law only if it pays fair market value to the Office of Special Trustee, or its successor agency,

determined by the Secretary as of the date of the decedent's death, on behalf of the Ineligible Heir as provided in paragraph 4 of this subsection. To prevent the transfer, the Three Affiliated Tribes must file a notice of purchase as provided in paragraph 5 of this subsection.

3. **Payment of Fair Market Value.** Upon conclusion of the probate hearing on the decedent's estate, transfer of trust lands to an Ineligible Devisee or Ineligible Heir may be prevented pursuant to this Code by the Three Affiliated Tribes paying to the Office of Special Trustee, or its successor agency, on behalf of the heir(s) or devisee(s), the fair market value of the interests in trust lands as determined by the Secretary as of the date of the decedent's death. The Three Affiliated Tribes shall make this payment within sixty (60) days of the date of the Notice of Purchase filed under paragraph 5 of this subsection.
4. **Notice and Publication.** In order for the Three Affiliated Tribes to exercise its option to prevent transfer of trust lands to an Ineligible Devisee or Ineligible Heir, the Three Affiliated Tribes shall file a written notice of purchase with the Superintendent of the Fort Berthold Agency, together with certification by the Three Affiliated Tribes that copies of the Notice to Purchase have been mailed on the same date to the Administrative Law Judge presiding over the probate and the affected heir(s) or devisee(s). The Notice of Purchase may be filed in the probate hearing or within sixty (60) days after the date of the probate decision or within twenty (20) days from the date of the decision on rehearing or hearing, unless and until the filing deadlines set forth herein are superseded by applicable Federal regulation or by an order issued by a court of competent jurisdiction. Notice of the Board of Trustees' action to prevent a transfer of trust lands pursuant to this Code, the amount of fair market value paid and a legal description of the subject parcel shall be published in the New Town News, or other Tribal newspaper of general circulation as soon as practicable.
5. **Appeal of Fair Market Value Determination.** Any interested party may protest the fair market value determination of the Secretary pursuant to paragraph 4 of this section by filing a demand for a hearing in accordance

with the procedures set forth in Title 43 of the Code of Federal Regulations, which is hereby incorporated into this Code.

6. Protection of Decedent's Spouse or Indian Lineal Descendant.

- a. **Ineligible Devisees.** Any ineligible Devisee who is a spouse or an Indian lineal descendant of such decedent, may retain at his/her option, a life estate without regard to waste in such interest as set forth in paragraph 2 of this subsection. In the event a life estate without regard to waste is retained as provided therein, the fair market value paid by the Tribes or its Designee shall be reduced by the value of the life estate.

B. Tribal Member Right to Purchase.

1. **Eligibility Requirements.** Any member of the Three Affiliated Tribes owning an interest in a land parcel where the Three Affiliated tribes has filed a Notice of Purchase pursuant to Sections 4.00 (C)(2), (3) and/or (5) of this Code may purchase such lands in the place of the Three Affiliated Tribes if:

- a. The member of the Three Affiliated Tribes owns an interest in the subject trust parcel on the date of death of the decedent;
- b. The eligible member of the Three Affiliated Tribes files his/her notice of intent to purchase the interest in the subject trust parcel with the Tribe or Tribe's Designee within 30 days after publication of the purchase by the Three Affiliated Tribes in the Tribal newspaper; and
- c. The eligible member of the Three Affiliated Tribes' right to purchase under this subsection shall be subject to the requirement that the fair market value of the interest in trust lands as determined by the Secretary must be paid as set forth in Section 4.00(C)(4) of this Code, and shall be subject to the rights of the surviving spouse and Indian lineal descendant set forth in Section 4.00(C)(2), (3) and (7).

- d. The eligible member of the Three Affiliated tribes deposits payment in the amount equal to the fair market value of the subject trust parcel, 0 interest therein, with the BIA Fort Berthold Agency Superintendent which payment shall be accompanied by the identification of the decedent, the probate case number and the trust land parcel in question. The eligible member must make the full payment for the subject trust parcel, or interest therein, within 60 days of filing its notice of intent to purchase. In such an event, the eligible member shall be authorized to acquire the interest in the subject trust parcel in the place of the Three Affiliated Tribes.
2. **Resolution of Multiple Claims.** In the event that more than one eligible Tribal member files claims to acquire the interest of the Three Affiliated Tribes pursuant to this subsection, the competing claims shall be resolved as follows:
- a). The eligible Tribal member who is the closest relative to the decedent shall have the first right to acquire the interest in the subject parcel. For purposes of this subsection, the priority of relation to the decedent shall be determined in accord with the applicable law of intestacy governing tracts representing five percent (5%) or more (i.e., spouse, offspring, parents, siblings, etc.).
 - b). In the event that the competing claims pursuant to this subsection are filed by eligible Tribal members possessing the same degree of relationship to the decedent, the Board of Trustees shall provide the competing claimants 30 days to resolve their competing claims as the claimants deem appropriate. In the event that claimants are unable to mutually agree on a resolution, the decision on the competing claims will be rendered by the Board of Trustees in its own discretion.

SECTION 4.01. Right to Renounce. Any Ineligible Devisee or Ineligible Heir shall have the right to renounce his or her devise or descent of trust land within the Fort Berthold Indian Reservation in favor of a person or persons who are enrolled members of the Three Affiliated Tribes, provided that, in the case of a devise or

descent of an undivided interest in a trust parcel with multiple owners, the right to renounce may only be in favor of members of the Three Affiliated Tribes who were co-owners of the subject trust parcel with the decedent.

SECTION 4.02. Escheat to the Tribe. a) Decedent with no heirs. If a member of the Three Affiliated Tribes dies intestate, and said person has no heirs, the real and personal property of the decedent located within the Fort Berthold Indian Reservation shall escheat to the Three Affiliated Tribes.

b) Owner of Trust Lands within Fort Berthold Indian Reservation. Any person who owns trust lands, or an interest therein, within the exterior boundaries of the Fort Berthold Indian Reservation who dies intestate, and said person has no heirs, the trust lands, or interest therein, of the decedent located within the boundaries of the Fort Berthold Indian Reservation shall escheat to the Three Affiliated Tribes.

c) For purposes of this section, a person has no heirs if the decedent does not have a surviving parent, grandparent, great-grandparent, child, grandchild, great-grandchild, brother or sister.

SECTION 4.03. Coordination with other law. Pursuant to the authority granted in the Indian Land Consolidation Act, 25 U.S.C. § 2205, this Code shall be applied in probates involving trust or restricted land located within the exterior boundaries of the Fort Berthold Indian Reservation.

SECTION 4.04 Other Interests. Interests in trust or restricted land or trust personalty not covered by this Code shall be probated in accordance with 25 U.S.C. § 2206, as amended.

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