**[DRAFTING NOTE: FOR USE IN THE EVENT** **THAT** **THE TITLE POLICY FOR THE MORTGAGED PROPERTY INCLUDES AN ALTA 48 ENDORSEMENT OR BORROWER OR GUARANTOR OTHERWISE DISCLOSES THAT** **BORROWER** **OR GUARANTOR IS A MEMBER OF A TRIBE, OR** **THAT ANY PERSON THAT DIRECTLY OR INDIRECTLY CONTROLS OR OWNS MORE THAN 50% OF THE OWNERSHIP INTERESTS IN** **BORROWER OR GUARANTOR IS A TRIBE OR A MEMBER OF A TRIBE****]**

**Waiver of Sovereign Immunity**

This WAIVER OF SOVEREIGN IMMUNITY (this “**Waiver**”), dated as of \_\_\_\_\_\_\_\_\_, 20\_\_ is entered into by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[[INSERT BORROWER NAME, STATE OF FORMATION AND TYPE OF ENTITY]**, having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”)**]** [and] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[[INSERT GUARANTOR NAME, STATE OF FORMATION AND TYPE OF ENTITY]**, having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Guarantor**”)**]** **[DRAFTING NOTE: INSERT ENTITY THAT IS A TRIBE, MEMBER OF TRIBE THAT IS DIRECTLY OR INDIRECTLY CONTROLLED OR OWNED 50% OR MORE BY A TRIBE** ([Borrower] [and] [Guarantor] also referred to herein [together] as “**Indemnitor**”)**]** for the benefit of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[INSERT LENDER NAME AND TYPE OF ENTITY]** having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”).

**RECITALS:**

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), Lender is making a loan to Borrower in the original principal amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_/100 Dollars ($\_\_\_\_\_\_\_\_\_) (the “**Mortgage Loan**”), as evidenced by that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to the order of Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”).

B. In addition to the Loan Agreement, the MortgageLoan and the Note are also secured by, among other things, a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of the date hereof, which encumbers the mortgaged property described therein (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”; the Loan Agreement, the Note, the Security Instrument, and all other documents evidencing or securing the Mortgage Loan, the “**Loan Documents**”).

C. **[DRAFTING NOTE: INSERT IF GUARANTOR IS A PARTY HERETO** Guarantor has entered into that certain [Guaranty of Non-Recourse Obligations] and has an economic interest in Borrower or will otherwise obtain a material financial benefit from the Mortgage Loan.**]**

D. **[DRAFTING NOTE: INSERT APPLICABLE DESCRIPTION]** **[**[Borrower] [Guarantor] [Indemnitor] is a member of the Native American tribe commonly known as the **[DRAFTING NOTE: INSERT TRIBE NAME AS IDENTIFIED IN THE FEDERAL REGISTER** \_\_\_\_\_\_\_\_\_\_**]** (the “**Tribe**”).**]** **OR** **[**The Native American tribe commonly known as the **[DRAFTING NOTE: INSERT TRIBE NAME AS IDENTIFIED IN THE FEDERAL REGISTER \_\_\_\_\_\_\_\_\_\_\_\_\_\_]** (the “**Tribe**”) directly or indirectly [controls] [and] [owns more than fifty percent (50%) of the ownership interests in] [Borrower] [Guarantor] [Indemnitor].**]**

E. In consideration of the Mortgage Loan, and as a material condition thereof, Indemnitor has agreed to waive sovereign immunity and submit to the jurisdiction of the “State” (as defined in the Security Instrument) and federal courts of the State.

NOW, THEREFORE, Indemnitor [and Borrower each] hereby agrees as follows:

**AGREEMENTS:**

1. **Recitals.**

The recitals set forth above are incorporated herein by reference as if fully set forth in the body of this Waiver.

1. **Defined Terms.**

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.

1. **Waiver of Sovereign Immunity.**

**[DRAFTING NOTE: COMPLETE AS APPLICABLE] [INSERT IF INDEMNITOR IS AN ENTITY:** [Indemnitor is a **[INSERT STATE OF INDEMNITOR FORMATION**\_\_\_\_\_\_\_\_\_\_**]** **[INSERT INDEMNITOR ENTITY TYPE** [limited liability company] [limited partnership], etc. \_\_\_\_\_\_\_\_\_\_\_**]]** and hereby affirms that although it is [a member of] [directly or indirectly [controlled by] [\_\_\_\_\_\_\_ (\_\_\_%) owned by] [a member of]]] the Tribe, Indemnitor was formed under [**INSERT STATE OF INDEMNITOR FORMATION**\_\_\_\_\_\_\_\_\_\_] law as an ordinary, [for][non]-profit enterprise, **[INSERT IF INDEMNITOR IS AN INDIVIDUAL:**  Indemnitor is an individual resident of the **[INSERT STATE OF INDEMNITOR RESIDENCE** State/Commonwealth of\_\_\_\_\_\_\_\_\_\_]**]** and hereby affirms that although it is a member of the Tribe, that its business, control, and assets are separate and apart from the Tribe, and that the Tribe did not and does not intend that Indemnitor enjoy the sovereign immunity of the Tribe. Therefore to the extent Indemnitor benefits from sovereign immunity, [each] Indemnitor hereby expressly, unequivocally, and irrevocably:

1. waives any sovereign immunity from suit (and any defenses based thereon) for the purposes of claims or litigation brought in connection with the Mortgage Loan and the Loan Documents;
2. waives any right or claim of right to require exhaustion of (or any defense due to a failure to exhaust) tribal administrative or judicial remedies before any adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created, in favor of the jurisdictions and courts; and
3. waives jurisdiction or venue of any tribal court for any suits or enforcement of judgements or settlements related to this Waiver or the Loan Documents.
4. **Survival; Successors and Assigns; Due Authorization.**

Indemnitor further agrees that:

1. this Waiver shall survive the termination, expiration, maturity, repayment or foreclosure of the Mortgage Loan and remains effective until any applicable statute of limitations has run;
2. this Waiver shall inure to the benefit of Lender, its successors and assigns; and
3. the party executing this Waiver and the execution and delivery of this Waiver have been duly authorized by all necessary action and proceedings by or on behalf of Indemnitor, and no further approvals or filings of any kind, including any approval of or filing with any Governmental Authority, are required by or on behalf of Indemnitor as a condition to the valid execution, delivery, and performance by Indemnitor of this Waiver.
4. **Severability; Entire Agreement; Amendments.**

The invalidity or unenforceability of any provision of this Waiver shall not affect the validity or enforceability of any other provision of this Waiver, all of which shall remain in full force and effect. This Waiver and all of the other Loan Documents contain the complete and entire agreement among the parties as to the matters covered, rights granted, and the obligations assumed in this Waiver and the other Loan Documents. This Waiver may not be amended or modified except by written agreement signed by the parties hereto.

1. **Governing Law.**

The validity, enforceability, interpretation, and performance of this Waiver shall be governed by State (as defined in the Security Instrument) law without giving effect to any conflict of law or choice of law rules that would result in the application of the laws of another jurisdiction.

1. **Consent to Jurisdiction and Venue.**

In the administration or litigation of a controversy arising under or in relation to this Waiver or the Loan Documents, Indemnitor consents to the exercise of personal jurisdiction by State (as defined in the Security Instrument) court or federal court in such State. Indemnitor agrees that the State courts have subject matter jurisdiction over such controversies. If Lender elects to sue in State court, Indemnitor waives any right to remove to federal court or to contest the State court’s jurisdiction. Indemnitor waives any objection to venue in any State court or federal court in such State, and covenants and agrees not to assert any objection to venue, whether based on inconvenience, domicile, habitual residence, or other ground.

1. **WAIVER OF JURY TRIAL.**

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW,** **INDEMNITOR** **(A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS WAIVER OR ANY LOAN DOCUMENT THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY [EACH] INDEMNITOR, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, each party has signed and delivered this Waiver under seal (where applicable) or has caused this Waiver to be signed and delivered under seal (where applicable), by its duly authorized representative. Where applicable law so provides, Indemnitor intends that this Waiver shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER[/INDEMNITOR]**:

By: (SEAL)

Name:

Title:

**[INSERT IF APPLICABLE]**:

**[GUARANTOR/INDEMNITOR]**:

By: (SEAL)

Name:

Title:

AGREED AND CONSENTED TO:

**[TRIBE]**:

By: (SEAL)

Name:

Title: