

EXHIBIT B

THE DISTRICT AT MILLER HILL DISBURSEMENT AGREEMENT

THIS DISBURSEMENT AGREEMENT ("Agreement"), made and entered into as of the 1st day of March, 2017, by and among MH II APARTMENTS, INC., a Minnesota corporation, with offices located at 306 West Michigan St., Suite 300, Duluth, Minnesota 55802 ("Borrower"); JONES LANG LASALLE MULTIFAMILY, LLC, a Delaware limited liability company, with its offices located at 2177 Youngman Avenue, Suite 100, St. Paul, Minnesota 55116 ("Senior Lender"); CITY OF DULUTH, a Minnesota municipal corporation, with its offices located at 402 City Hall, 411 West First Street, Duluth, Minnesota ("City"); and FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, with offices located at 332 West Superior Street, Suite 100, Duluth, MN 55802 (the "Title Company").

RECITALS:

A. Borrower and Senior Lender have entered into a Building Loan Agreement, dated March 1, 2017 (the "Senior Lender Loan Agreement") for construction financing in the total amount of Eleven Million Four Hundred Thousand and 00/100 Dollars (\$11,400,000.00) ("Senior Lender Loan") for a multifamily housing facility known as The District at Miller Hill located in Duluth, Minnesota (the "Project") on the real property located at Maple Grove Road ("Premises), which Loan is being insured by the Federal Housing Administration (the "FHA") of the United States Department of Housing and Urban Development ("HUD") under Section 221(d)(4) of the National Housing Act of 1934, as amended (the "Act") pursuant to the FHA's Commitment dated January 24, 2017 (FHA Project No. 092-35809), as amended (the "FHA Commitment").

B. As evidence of the Senior Lender Loan, Borrower is executing and delivering to Senior Lender its Note dated of even date herewith in the original principal amount of the Senior Lender Loan (the "Senior Lender Note"), and is executing and delivering to Senior Lender its Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Senior Lender Mortgage") dated of even date herewith, and certain other loan and security documents (collectively the "Senior Lender Loan Documents").

C. The Title Company has issued a Commitment for a 2006 ALTA Mortgagee's title insurance policy insuring the Senior Lender Mortgage in the amount of Eleven Million Four Hundred Thousand and 00/100 Dollars (\$11,400,000.00) which is identified as the Title Company's File No. 1439872.

D. Borrower and Senior Lender have requested the Title Company to supervise the disbursement of Senior Lender Loan funds ("Senior Lender Loan Funds") under the Senior Lender Loan Agreement in accordance with the terms of this Agreement.

E. Borrower and the City executed and delivered that certain Development Agreement dated August 30, 2016 ("Original Contract"), as amended by March 2017 Amendment to Development Agreement dated March __, 2017, as evidenced by that certain

Memorandum of Development Agreement filed September 9, 2016 in the Office of the Registrar of Titles, St. Louis County, Minnesota as Document No. 975729, as amended by Amendment to Memorandum of Development Agreement dated March __, 2017 filed in the Office of the Registrar of Titles, St. Louis County, Minnesota (collectively “Contract”) that provides for funds in the amount of up to One Million and No/100 Dollars (\$1,000,000.00) (“City Funds”) to be made available to reimburse Borrower for costs of constructing the Project. Pursuant to this Agreement, the City will deposit with the Title Company the City Funds from time to time. Borrower and the City have requested the Title Company to supervise the disbursement of the City Funds hereunder.

F. During the course of construction and upon completion of the Project, Borrower will provide funds (collectively “Equity Funds”) to cover additional costs of constructing the Project.

G. The Senior Lender Loan Funds, the City Funds, and the Equity Funds are herein referred to as the “Project Funds”.

H. Due to several sources of Project Funds and the interdependent relationship between the sources of the Project Funds, the Borrower, Senior Lender and the City have determined that it would be mutually beneficial for the Project Funds to be disbursed through the Title Company pursuant to this Agreement and the Title Company has agreed hereunder to facilitate and manage the disbursement of the Project Funds hereunder.

I. Capitalized words not otherwise defined in this Agreement shall have the same meaning as in the Senior Lender Loan Agreement. Senior Lender and the City are collectively herein referred to as the “Lenders” and each singularly as a “Lender”.

NOW, THEREFORE, in consideration of the purchase of the title insurance, of Senior Lender’s agreement to advance funds under the Senior Lender Loan Agreement, and of the mutual covenants and agreements hereinafter set forth, it is agreed by and between the parties hereto as follows:

- 1) Prior to the initial disbursement of Project Funds, Borrower shall submit to Senior Lender, the City, and the Title Company:
 - a) A Contractor’s and Mortgagor’s Cost Breakdown sworn to by Borrower and the Contractor for the Project (“Project Cost Statement”) itemizing all costs to be incurred in constructing the Project (“Project Costs”).
 - b) If requested by Senior Lender, the City, or the Title Company, the Construction Contract dated as of March __, 2017 (“Construction Contract”) with Johnson-Wilson Constructors Inc., a Minnesota corporation (the “Contractor”) and a copy of any contract with any sub-contractors in excess of \$10,000.00.
 - c) All items required by the Senior Lender Loan Agreement.
- 2) Borrower will keep the Title Company and Senior Lender advised at all times of (i) the names of all contractors, (ii) the type of work or material and the amount covered by each

of their respective contracts with Borrower, and (iii) any changes in the Project Costs and shall furnish any amendments to the above statements necessary to the above occasioned by changes in the improvements or Project Costs approved pursuant to the Senior Lender Loan Agreement. It is understood that only contractors whose names and contract descriptions have been furnished to the Title Company shall be entitled to receive Project Funds under this Agreement.

- 3) Borrower shall provide such evidence and/or documents to the Title Company as shall be sufficient to secure from the Title Company priority insurance over all possible mechanic's lien claims.
- 4) Senior Lender shall disburse all Project Funds held by it through the Title Company as provided in this Agreement.
- 5) Notwithstanding anything in the loan documents for any of the sources of funds described herein to the contrary, all such Project Funds shall be disbursed in accordance with applications for payment made on the FHA Form 2403 (the "Application for Payment") as approved by Senior Lender and/or the Federal Housing Commissioner (the "Commissioner"). All such sources of Project Funds, including but not limited to the Initial Draw, shall be disbursed by the Title Company upon Borrower making monthly Applications for Payment. Notwithstanding anything in the loan documents for any of the sources of funds described herein to the contrary, except as hereinafter provided for with regard to the City Funds, the only condition to disbursement of all sources of Project Funds shall be Senior Lender's and/or the Commissioner's approval of Borrower's Applications for Payment. Once such approval is obtained, the Title Company shall disburse the Project Funds in accordance with this Agreement and the Senior Lender Loan Agreement.

5.5) Nothing to the contrary herein withstanding, the Contract and the Grant Agreement as defined therein are hereby incorporated by reference into this Agreement and as it pertains to the used and disbursement of the City Funds only, said Contract and Grant Agreement shall be deemed to be controlling over any contrary language contained herein. Further, with regard to the City Funds Borrower and Title company shall be bound by the terms and conditions of those agreements, including but not limited to the terms and conditions for use and disbursement of the City Funds as set forth in Articles V and VI of the Contract.

- 6) The following sources of funds shall be made available and used to construct the Project:

	<u>SOURCES OF FUNDS</u>	<u>AMOUNT</u>
(a)	Senior Lender Loan Funds	\$11,400,000.00
(b)	City Funds	\$1,000,000.00
(c)	Borrower Equity	\$178,692.00

- 7) Funds for the Initial Draw in the total amount of \$2,683,429.15 shall be provided as follows:

	<u>SOURCES OF FUNDS</u>	<u>AMOUNT</u>
(a)	Senior Lender Loan Funds	\$576,449.15
(b)	City Funds	\$232,214.00
(c)	Land Contribution	\$780,000.00
(d)	Letters of Credit	\$798,000.00
(e)	SPRA	\$118,074.00
(f)	Borrower Equity	\$178,692.00
8)	<p>After the Initial Draw, and at such time as each Application for Payment has been approved as provided in Section 5 above, Project Funds shall be disbursed from those sources of Project Funds as determined by Senior Lender and based upon those sources of Project Funds available as of the date of each Application for Payment. City Funds shall be disbursed on at least a pro rata basis with the Senior Loan Funds, subject to the requirements of the Contract. The estimated disbursement schedule is attached here to as <u>Exhibit A</u>. Upon each monthly Disbursement (as defined in Section 10), and at such time each Application for Payment has been approved provided in Section 5 above, Senior Lender will provide directions to the Title Company, instructing the Title Company the amounts to disburse from each source of Project Funds that month, subject to the provisions of Section 5.5. below.. Notwithstanding anything to the contrary set forth herein, all Borrower Equity shall be disbursed before any Senior Lender Loan Funds are disbursed.</p>	
9)	<p>Borrower represents and warrants to Lenders that there are no defaults or events which with the passage of time, would constitute a default under the Senior Lender Note, or any documents executed and delivered in connection therewith, and that all conditions precedent to the disbursement of the Senior Lender Loan Funds under the Senior Lender Loan Agreement, which are required to be satisfied on or prior to the date hereof, have been satisfied. Notwithstanding the schedule for disbursement of Project Funds as provided in Section 8, the parties agree that if funds from one funding source are unavailable due to requirements of that Lender's guidelines, funds from the Borrower's Equity will be made available for disbursement and, if there are insufficient funds to complete the Project, Borrower shall immediately upon request from Senior Lender contribute and deposit with Title Company, such sums as are required to complete the Project.</p>	
10)	<p>Whenever Borrower desires to obtain a monthly advance of Project Funds (a "Disbursement"), Borrower shall submit to the Title Company and Senior Lender (and to the City with respect to any disbursement to be requested to be reimbursed to Borrower by the City Funds), with respect to all Project Funds, a signed Application for Payment at least fifteen (15) days prior to the date on which the Disbursement is requested (the "Disbursement Date") and the following:</p>	

- a) Acknowledgments of payment and waivers of Mechanic's Liens and Materialman's Liens executed by all contractors, sub-contractors and workmen and materialmen for all work done and all materials furnished to the Premises and included in the previous Application for Payment, and concurrently with the final Application for Payment. Such acknowledgments and releases shall be in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the Project.
- b) Such other supporting evidence, including invoices and receipts as may be requested by Senior Lender, the City, the Commissioner, or the Title Company to substantiate all payments which are to be made pursuant to the Application for Payment or to substantiate all payments then made in respect to the Project.
- c) Certifications from Borrower, in form approved by the Commissioner, that all laborers and mechanics employed in the construction of the Project whose work is covered by that or any Application for Payment and who have been paid in whole or in part on account of said employment, have been paid at rates not less than the said prevailing wage rate.
- d) An updated Project Cost Statement listing all of the hard and soft costs relating to the Project to be paid with Borrower's Project Funds.
- e) An updated sworn construction statement disclosing the name of each person, corporation or other entity which has an executed contract or subcontract under which payment may be required for any work done, material supplied or services furnished in connection with acquiring, constructing, financing, equipping and/or developing the Project, including project managers, architects, engineers and surveyors, and the amount of such contract.
- f) Proof that (1) the contractors, sub-contractors and suppliers of labor and materials have provided such materials and labor to the construction of the Project as shown in the approved plans and specifications and (2) such materials and labor have not previously been paid for under prior disbursements hereunder.
- g) With respect to City Funds, Borrower and Title Company must comply with Articles V and VI of the Original Contract.
- h) Such other documents as may be required by the Title Company, Senior Lender, or the City.
- i) With the final Application for Payment, certifications from Borrower, in form satisfactory to the Commissioner, that the Project has been fully constructed in accordance with the provisions of the Senior Lender Loan Agreement and that all laborers and mechanics employed in the construction of the completed Project have been paid not less than the said prevailing wage rates. The Commissioner's prevailing wage determination shall be construed to include every amendment to or modification of the determination which may be made prior to the beginning of construction.

- 11) With each delivery of an Owner's Sworn Statement or an Application for Payment, Borrower represents and warrants to Lenders that there are no defaults or events which with the passage of time, would constitute a default under the Senior Lender Loan Documents, the Contract, or any documents executed and delivered in connection with any source of Project Funds, and that all conditions precedent to the disbursement of the Senior Loan, City Funds, or other source of Project Funds, which are required to be satisfied on or prior to the date hereof, have been satisfied. Borrower acknowledges and agrees that it must comply with all terms of the Contract in order to obtain the City Funds, and that the Contract incorporates the terms of the agreement between the State of Minnesota Department of Employment and Economic Development to the extent such terms can be performed by Borrower.
- 12) The use of Senior Lender Loan Funds in connection with the construction of the Project shall be governed by the Senior Lender Loan Agreement and all other Senior Lender Loan Documents. The use of all other sources of Project Funds in connection with the Project shall be governed by the agreements and certificates entered into or delivered in connection with the same, including without limitation, the Contract.
- 13) City shall not have any right to make an Application for Payment of Senior Lender Loan Funds and no party other than the Borrower shall have any rights under the Senior Lender Loan Documents.
- 14) With respect to any proposed draw of City Funds, prior to submitting the Application for Payment to Senior Lender, Borrower shall submit to the City the requested amount of City Funds for its next disbursement on such draw forms as may be required by the City. If the City has not approved of such amount or provided comments to Borrower and Senior Lender within ten (10) days of Borrower's request, the request shall be deemed denied. The parties acknowledge that the City Funds may only be drawn for eligible expenses set forth in the Contract, as determined by the City.
- 15) Borrower may obtain a Disbursement of Project Funds only for Project Costs approved by Senior Lender and/or the Commissioner (a) incorporated in the Project, and (b) if approved by Senior Lender and/or the Commissioner, the purchase price of all uninstalled materials to be incorporated in the construction of the Project and stored on the Premises or elsewhere, with the written consent of Senior Lender and in a manner acceptable to Senior Lender and/or the Commissioner and for which title rests in Borrower free and clear of liens and claims. Applications for Payment with respect to construction items shall be for amounts equal to (i) the total value or classes of the work acceptably completed, plus (ii) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site, less (iii) ten percent (10%) holdback and less prior advances. The "values" of both (i) and (ii) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgagor's Cost Breakdown".
- 16) Borrower agrees that should any Disbursement of Senior Lender Loan Funds hereunder be ineligible for insurance under the National Housing Act by reason of (i) the nonpayment of the said prevailing wage rates, or (ii) violation of any of the applicable

labor standards provisions of the regulations of the United States Secretary of Labor, Senior Lender may withhold from Borrower all payments or Disbursements payable to Borrower hereunder until Borrower establishes to the satisfaction of the Commissioner that all laborers and mechanics or other persons employed in the construction of the Project have been paid said prevailing wage rates and that such violation of said labor standards provisions no longer exists. The written statement of any officer of FHA or authorized agent of the Commissioner declining to insure any advance of funds under Senior Lender Loan Agreement by reason of such nonpayment or violation shall be deemed conclusive proof that such advances are ineligible for mortgage insurance.

- 17) If all of the terms and conditions of the Senior Lender Loan Agreement and this Agreement have been complied with and the Application for Payment has been approved by Senior Lender and/or the Commissioner, and the Title Company, Title Company will advise (i) Senior Lender of the amount of Senior Lender Loan Funds that Senior Lender shall deposit with the Title Company and (ii) if applicable, will advise any other source of Project Funds, if such source's funds are not otherwise on deposit with the Title Company, the amount of Project Funds such source is obligated under the terms of this Agreement to deposit with the Title Company for payment of Application for Payment. If applicable, Title Company shall inform any other source of Project Funds of the amount of its funds on deposit with the Title Company which will be applied toward the payment of the approved Application for Payment.
- 18) The Title Company, shall within four (4) business days after all of the conditions of this Agreement have been complied with in a manner satisfactory to it, disburse the Project Funds and proceeds so received, if any, by delivering to the contractors and other payees named in the Application for Payment its checks for the amounts set forth in such Application for Payment. If Borrower directly pays certain Project Costs, and if Senior Lender, the Commissioner and the Title Company approve, the Title Company may disburse Project Funds, deposited for payment of such Project Costs, directly to Borrower as a reimbursement for such payment; provided that all of the other requirements of this Agreement, including but not limited to the presentation of waivers of lien with respect thereto (other than soft costs not requiring lien waivers), are fulfilled.
- 19) Senior Lender and Borrower agree that the Senior Lender Loan Funds shall be reduced by any amount required by the Agreement and Certification between Borrower and Senior Lender and the Commissioner.
- 20) Senior Lender shall be a third party beneficiary of all rights of Borrower under the Contract and all other sources of Project Funds, and the documents governing the same, and shall have the rights to enforce Borrower's rights thereunder. As collateral for the Senior Lender Loan, Borrower grants to Senior Lender security interests in all of its rights, title and interest in and under the Contract and all documents governing the other sources of Project Funds and hereby appoints Senior Lender as its attorney-in-fact, coupled with an interest to enforce all such rights, title and interest therein. However, Senior Lender does not guaranty performance of any obligations under the Contract or the documents governing any other source of Project Funds and shall not have any

obligations thereunder and shall not be responsible for payments thereunder or performance of the provisions thereof.

- 21) Prior to the Initial Draw of Project Funds, the Title Company shall issue to Senior Lender at Borrower's expense the Title Company's ALTA Loan Policy in form and substance satisfactory to Senior Lender and the Commissioner including an ALTA 9.3 Comprehensive Endorsement and an ALTA 8.1 Environmental Endorsement insuring that Borrower is the owner in fee simple of the Premises and insuring Senior Lender and Secretary of Housing and Urban Development, as the insured Mortgagee of the Premises in the amount of \$11,400,000.00 free and clear of standard printed title exceptions, including encroachments, overlaps, boundary line disputes and other matters that would be disclosed by an accurate survey, state of facts that exist after the date of the commitment for title insurance as furnished to Senior Lender, easements or claims of easements not disclosed by the public records, rights or claims of parties in possession not shown by the public records, any lien or right to a lien for services, labor or material heretofore or hereafter furnished, whether shown by the public records or otherwise and taxes and special assessments not shown as existing liens by the public records, and subject only to the Permitted Exceptions as set forth in the pro forma issued by the Title Company and approved by Senior Lender at closing and attached hereto as Exhibit B. The title policy shall be extended so as to cover each and every advance of the Senior Lender Loan at the time of payment thereof and shall show no mechanic's or materialmen's liens against the Premises. NO EXCEPTION MAY EXIST FOR MECHANICS OR MATERIALMEN'S LIENS OCCURRING OUT OF THE CONSTRUCTION OF THE PROJECT - TITLE COMPANY UNDERSTANDS AND ACKNOWLEDGES THAT WORK MAY HAVE OR HAS COMMENCED ON THE PREMISES PRIOR TO THE RECORDING OF THE MORTGAGE AND AS BETWEEN SENIOR LENDER AND TITLE COMPANY IT ASSUMES ALL RISKS OF PRIORITY OF THE LIEN OF THE MORTGAGE AS TO WORK COMMENCED ON THE PREMISES PRIOR TO THE RECORDING OF THE MORTGAGE. In the event the Title Company shall disburse Senior Lender Funds pursuant to this Agreement, and shall not deliver to Senior Lender the policy, as set forth above, Senior Lender shall nevertheless be entitled to rely on the title policy as in fact having been so issued in accordance with this Agreement and with affirmative guaranty against construction lien claims to the extent of the full amount of the Senior Lender Loan.
- 22) At the time of the final Disbursement of Project Funds, and at Borrower's expense, the Title Company will issue to Senior Lender and Secretary of Housing and Urban Development, as the insured Mortgagee of the Premises, a "down dated" endorsement or a replacement ALTA loan policy insuring the loan amount of \$11,400,000.00 and the title to the Premises as of the date of the final Disbursement. Such endorsement or replacement title policy will comply with all other requirements as set forth in Paragraph 16 above.
- 23) The parties hereto agree that all Project Funds shall be deposited by the parties hereto with the Title Company and disbursed by the Title Company in accordance with this Agreement.

- 24) The Title Company shall keep records showing the names of all payees to whom payments are made by the Title Company, the date of each payment, and the amount of each payment, which records may be inspected by Borrower and Senior Lender and any other source of Project Funds.
- 25) In the event that the Title Company shall determine that proper documentation to support a given Disbursement, as required by this Agreement, has not been furnished, the Title Company shall withhold payment of all or such portion of such Disbursement as shall not be so supported by proper documentation, and shall promptly notify Borrower and Senior Lender of the discrepancy or omission of such documentation. Until such time as such discrepancy or omission is corrected to the satisfaction of the Title Company, it shall continue to withhold such amount. In the event that such discrepancy or omission is not corrected within five (5) business days, the Title Company shall, upon demand of Senior Lender or Borrower or the party providing the source funds, return such withheld funds to the source of funds.
- 26) Borrower shall be responsible for making inspections of the Project during the course of construction, and shall determine to its own satisfaction that the work done or material supplied by the payees to whom payment is to be made out of each Disbursement has been properly done or supplied in accordance with applicable contracts with such payees. The Title Company and the Lenders shall not be required to conduct any inspections of the Project and any inspections of Title Company and the Lenders are intended to be for the sole benefit of Title Company and the Lenders and neither Borrower nor any third party shall be entitled to rely on such inspections.
- 27) It is expressly understood and agreed that neither the Title Company or Senior Lender, nor any other Lender, assumes any liability or responsibility for the satisfactory completion of the Project, for the payment of the Project Costs, for the adequacy of funds deposited with or advanced pursuant hereto to complete the Project, for inspections during construction, nor for any other acts on the part of Borrower or the Contractor to be performed in the construction of the Project.
- 28) The functions and duties assumed by the Title Company include only those described in the Agreement, and the Title Company is not obligated to act except in accordance with the terms and conditions of this Agreement. Title does not insure that the Improvements will be completed, nor does it insure that the Improvements when completed will be in accordance with the Plans and Specifications, nor that sufficient funds will be available for the completion, nor does it make the certification of the Inspecting Architect its own, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement. Title Company has no liability for loss caused by an error in the certification furnished it hereunder as to work in place. Title Company shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds which are deposited in the United States mail shall not be construed as being in the custody of Title.
- 29) The Borrower agrees to indemnify Title Company against all losses, claims, damages, liability, and expenses, including, without limitation, costs of investigation and legal

counsel fees which may be imposed on the Title Company or incurred by the Title Company in connection with the performance of its duties under this Agreement, including, without limitation, any litigation arising from this Agreement or involving the subject matter of this Agreement, except to the extent caused by any act or omission of the Title Company.

- 30) All conditions of the obligations of the Lenders, including the obligation to make disbursements are imposed solely and exclusively for the benefit of Borrower, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Lenders hereunder will refuse to make Disbursements in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by a Lender at any time if in its sole discretion it deems it desirable to do so. In particular, the Lenders hereto make no representations and assume no duties or obligations as to third parties concerning the quality of the construction of the Project or the absence thereof of defects. In this connection, Borrower agrees to and shall indemnify the Lenders hereunder from any liability, claims or losses resulting from the disbursement of the Project Funds, except such liability, claims or losses as are solely the result of a Lender's gross negligence or willful misconduct. This provision shall survive the repayment of the above described loans and shall continue in full force and effect so long as the possibility of any such liability, claims or losses exists.
- 31) The parties agree that the approximate Project Costs and corresponding payment with certain Project Funds as set forth on the estimated disbursement schedule attached hereto as Exhibit A are acceptable and will not create, cause or result in any default or event of default occurring under any of the parties' Loan Documents or Funding Agreements. Prior to the final Application for Payment, Senior Lender shall forward to each Lender for review and approval a statement of Project Costs and identification of the source of Project Funds paid for said Project Costs. Upon approval by each Lender that said Lender's funds were allocated appropriately, Senior Lender shall process the final Application for Payment. If any Lender does not approve of the allocation of Project Funds for Project Costs, Senior Lender will be authorized to correct its statement of allocation to revise the allocations of Project Funds to comply with any Lender's requirements for Project Funds via the disbursement of the final Application for Payment.
- 32) The Borrower shall pay all title insurance (including any endorsement premium per disbursement, if requested) and disbursing charges as they are determined, including title search update fees. Borrower shall pay to the Title Company an administrative fee of \$200.00 (or more in the event of a non-routine draw, which may be considered non-routine because of unresolved liens, insufficient project or lien waiver documentation, disputes between parties, etc.) per disbursement, which along with any title search update and endorsement fees, are due and payable at the time of funds disbursement from the construction loan funds, or as may be billed at the time of the disbursement.

- 33) The parties acknowledge that the Title Company shall not be responsible for creating, furnishing or reporting any IRS 1099 notices or filings for any payments it disburses under this Agreement for the parties.
- 34) Any condition of this Agreement which requires the submission of evidence of the existence or non-existence of a specified fact or facts implies as a condition the existence or non-existence, as the case may be, of such fact or facts, and Senior Lender shall, at all times, be free independently to establish to its satisfaction and in its absolute discretion such existence or non-existence.
- 35) Borrower may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the Lenders.
- 36) Whenever in this Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Agreement by or on behalf of Borrower or by or on behalf of each Lender shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not.
- 37) The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, and are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.
- 38) If fulfillment of any provision hereof, or any transaction related thereto at the time performance of any such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and such clause or provision shall be deemed invalid as though not herein contained, and the remainder of this Agreement shall remain operative in full force and effect.
- 39) Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.
- 40) Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.
- 41) Any notice which any party hereto may desire or may be required to give to any of the parties shall be in writing and the mailing thereof by certified mail - return receipt requested, or equivalent, to the respective parties' addresses set forth hereinabove or to such other place such party may by notice in writing designate as its address shall constitute service of notice hereunder.
- 42) Whenever any provisions hereof and of the Senior Lender Loan Agreement and the Act and all regulations thereunder conflict with or are contrary to each other, the provisions of the Senior Lender Loan Agreement and the Act and all regulations thereunder shall govern.

- 43) The undersigned, individually and collectively, agree and acknowledge that this Agreement supercedes any and all other funding or disbursement agreements executed by Borrower and the undersigned with regard to the funding and disbursement of Project Funds. The undersigned further agree and acknowledge that such other funding and disbursement agreements shall be subordinate to this Agreement and to extent the provisions of such other funding and disbursement agreements conflict with or in contrary to each other and this Agreement, the provisions of this Agreement shall govern.
- 44) This Agreement is made and executed in the State of Minnesota and shall be governed by the laws of said State.
- 45) This Agreement may be executed in any number of counterparts with same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in the making proof hereof it shall only be necessary to produce one counterpart.
- 46) The City agrees that its rights under each of (i) the Payment Bond (HUD-92452A-M) (“Payment Bond”) and (ii) the Performance Bond (HUD-92452A) (“Performance Bond”) with respect to the Project are subordinate to the rights of Senior Lender, HUD and GNMA, and their respective successors and assigns, and notwithstanding anything contained in either the Payment Bond, the Performance Bond or any other documents, Senior Lender, HUD and GNMA shall have the first priority right to call on either the Payment Bond or the Performance Bond.

IN FURTHERANCE WHEREOF, the parties hereto have caused this Disbursement Agreement to be executed as of the date and year first above written.

[Signature pages follow]

Signature Page to Master Disbursement Agreement

BORROWER:

MH II APARTMENTS, INC., a Minnesota corporation

By: _____

Name: Ryan Boman

Its: President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of March, 2017, by Ryan Boman, the President of MH II APARTMENTS, INC., a Minnesota corporation, on behalf of said corporation.

Notary Public

Signature Page to Master Disbursement Agreement

SENIOR LENDER:

Jones Lang LaSalle Multifamily, LLC, a Delaware
limited liability company

By: _____

Name: Rhonda Peare

Its: Closing Coordinator

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of March, 2017,
by Rhonda Peare, as Closing Coordinator of Jones Lang LaSalle Multifamily, LLC, a
Delaware limited liability company, on behalf of the limited liability company.

Notary Public

Signature Page to Master Disbursement Agreement

CITY:

CITY OF DULUTH, a Minnesota municipal corporation

By: _____
Its Mayor

By: _____
Its City Clerk

Countersigned:

Its Auditor

Approved:

Its City Attorney

[illegible]

The foregoing instrument was acknowledged before me this ____ day of March, 2017, by _____ and _____, the Mayor and City Clerk respectively, and was countersigned by _____, the Auditor, and was approved by _____, the City Attorney, of the City of Duluth, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

Signature Page to Master Disbursement Agreement

TITLE:

FIRST AMERICAN TITLE INSURANCE
COMPANY, a California corporation

By: _____

Name: _____

Its: _____

STATE OF MINNESOTA)
)ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of March, 2017,
by _____, the _____ of Frist
American Title Insurance Company, a California corporation, for and on behalf of said
corporation.

Notary Public

EXHIBIT A

ESTIMATED DISBURSEMENT SCHEDULE

See Attached

EXHIBIT B

PROFORMA TITLE POLICY

See Attached