

TOWN OF ADDISON, TEXAS

RESOLUTION NO. R09-016

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A MODIFICATION TO MASTER FACILITIES AGREEMENT BETWEEN THE CITY, UDR, INC., AND OWNERS OF PROPERTY OF THAT AREA GENERALLY KNOWN AS VITRUVIAN PARK, WHICH MODIFICATION PROVIDES FOR THE ADDITION TO THE SAID MASTER FACILITIES AGREEMENT OF A NEW PROPERTY OWNER; APPROVING AN ESTOPPEL CERTIFICATE IN CONNECTION WITH A CONSTRUCTION LOAN FOR THE CONSTRUCTION OF A PORTION OF THE REDEVELOPMENT OF THE VITRUVIAN PARK PROPERTY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "City"), UDR Inc. ("UDR"), and the owners of that certain property generally known as Vitruvian Park and described in the Master Facilities Agreement (the "Property") previously entered into that certain Master Facilities Agreement dated March 11, 2008 (the "Master Facilities Agreement" or "Agreement") regarding the redevelopment of the Property (the "Redevelopment"); and

WHEREAS, the Agreement provides in part that the owners of the Property, to the extent of an owner's interest therein, may, subject to the provisions of the Agreement, sell and assign that interest, and one of the Property owners, DCO Greenhaven LP, has conveyed its interest (the "Conveyance") in a portion of the Property, described in Exhibit A to the Modification to Master Facilities Agreement (as hereinafter defined), to DCO Savoye LLC, a Delaware limited liability company ("DCO Savoye"); and

WHEREAS, the parties to the Agreement desire to modify the Agreement to reflect the addition of DCO Savoye as a party thereto as described in the Modification to Master Facilities Agreement attached hereto as Exhibit 1 (the "Modification to Master Facilities Agreement"); and

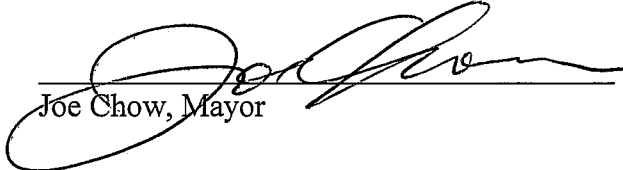
WHEREAS, in connection with the Conveyance and the current construction of a portion of the Redevelopment, Regions Bank, an Alabama banking corporation, which is making a construction loan to DCO Savoye to finance a portion of the costs of the construction of the Redevelopment, has requested that the City provide an estoppel certificate, the form of which is attached hereto as Exhibit 2 (the "Estoppel Certificate").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Modification to Master Facilities Agreement, the form of which is attached hereto as Exhibit 1, and the Estoppel Certificate, the form of which is attached hereto as Exhibit 2, are approved. The City Manager is authorized to execute the same on behalf of the City.

Section 2. This Resolution shall take effect upon its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 25th day of August, 2009.



Joe Chow, Mayor

ATTEST:

By: 

Lea Dunn, City Secretary

APPROVED AS TO FORM:

By: 

John Hill, City Attorney

EXHIBIT 1

MODIFICATION TO MASTER FACILITIES AGREEMENT

THIS MODIFICATION TO MASTER FACILITIES AGREEMENT (the "Modification") is made as of this ____ day of August, 2009, by and among the **TOWN OF ADDISON, TEXAS** (the "City"), **UDR, INC.**, a Maryland corporation ("UDR") and **DCO BROOKS APARTMENTS LP**, a Delaware limited partnership, **DCO GREENBROOK APARTMENTS LP**, a Delaware limited partnership, **DCO TALISKER LP**, a Delaware limited partnership, **DCO GARDEN OAKS LP**, a Delaware limited partnership, **DCO GLENWOOD APARTMENTS LP**, a Delaware limited partnership, **DCO CLIPPER POINTE LP**, a Delaware limited partnership, **DCO SPRINGHAVEN LP**, a Delaware limited partnership, **DCO ADDISON AT BROOKHAVEN LP**, a Delaware limited partnership, **DCO GREENHAVEN LP**, a Delaware limited partnership (collectively, the "Original Property Owners") and **DCO SAVOYE LLC**, a Delaware limited liability company ("DCO Savoye"). This Modification is made with respect to the following facts and circumstances:

WHEREAS, the City, UDR and the Original Property Owners entered into that certain Master Facilities Agreement dated March 11, 2008 ("Master Facilities Agreement"; capitalized terms used and not defined herein are used with the meanings set forth in the Master Facilities Agreement.) in connection with redevelopment of the Property located in the City.

WHEREAS, DCO GREENHAVEN LP has conveyed that portion of the Property described on Exhibit A hereto to DCO Savoye (the "Savoye Property").

WHEREAS, DCO Savoye is an Affiliate of UDR.

The parties hereto desire to modify the Master Facilities Agreement as and to the extent set forth herein.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Addition of DCO Savoye; Representations.** DCO Savoye is added as a Property Owner and Developer to the Master Facilities Agreement and, as such, assumes the benefits and burdens under the Master Facilities Agreement as they relate to the Savoye Property and agrees to observe and perform all of the duties and obligations of UDR and the Property Owners as contained in the Master Facilities Agreement, or as it may be amended or revised, as such duties and obligations pertain to the Savoye Property and be bound by the terms and provisions of the Master Facilities Agreement. DCO Savoye acknowledges that it is assuming the applicable possible reimbursement obligation regarding Funding No. 2, as stated in Section 7.F of the Master Facilities Agreement.

In connection herewith, UDR, the Original Property Owners, and DCO Savoye represent that: (a) the sole member of DCO Savoye is DCO Realty Inc., a Delaware corporation ("DCO Realty"), (b) DCO Realty has and possesses the power and authority to control DCO Savoye, and is an Affiliate of UDR, and that (c) UDR has direct or indirect ownership of and controls each of the Original Property Owners, DCO Realty and DCO Savoye. For purposes hereof, the term "control" has the meaning set forth in the Master Facilities Agreement.

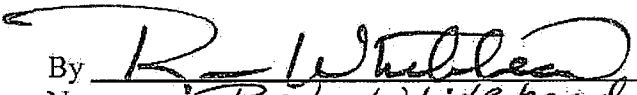
2. **Reaffirmation.** Except as expressly set forth in this Modification, the terms, conditions and covenants of the Master Facilities Agreement shall remain unmodified and in full force and effect. Nothing in this Modification shall relieve UDR or the Original Property Owners of or from their duties or obligations pursuant to the Master Facilities Agreement.

3. **Execution in Counterparts.** This Modification may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.


4. **Binding Effect.** This Modification shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, this Modification is effective as of the date set forth above.

TOWN OF ADDISON, TEXAS

By 
Name RON Whitehead
Title: CITY MANAGER

ATTEST:

By: 
City Secretary

Signatures of UDR and Property Owners Follow

UDR, INC., a Maryland corporation

By: _____
W. Mark Wallis, Senior Executive
Vice President

DCO BROOKS APARTMENTS LP, a
Delaware limited partnership

By: DCO REALTY, INC., a Delaware
corporation, its General Partner

By: _____
W. Mark Wallis, President

DCO GREENBROOK APARTMENTS LP, a
Delaware limited partnership

By: DCO REALTY, INC., a Delaware
corporation, its General Partner

By: _____
W. Mark Wallis, President

DCO TALISKER LP, a Delaware limited
partnership

By: DCO REALTY, INC., a Delaware
corporation, its General Partner

By: _____
W. Mark Wallis, President

DCO GARDEN OAKS LP, a Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation, its General Partner

By: _____
W. Mark Wallis, President

DCO GLENWOOD APARTMENTS LP, a Delaware limited partnership

By: DCO Glenwood Apartments GP LLC, a Delaware limited liability company, its General Partner

By: DCO Realty, Inc., a Delaware corporation, its Sole Member

By: _____
W. Mark Wallis, President

DCO CLIPPER POINTE LP, a Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation, its General Partner

By: _____
W. Mark Wallis, President

DCO SPRINGHAVEN LP, a Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation, its General Partner

By: _____
W. Mark Wallis, President

DCO ADDISON AT BROOKHAVEN LP, a Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation, its General Partner

By: _____
W. Mark Wallis, President

DCO GREENHAVEN LP, a Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation, its General Partner

By: _____
W. Mark Wallis, President

DCO SAVOYE LLC, a Delaware limited liability company

By: DCO REALTY, INC., a Delaware corporation, its Sole Member

By: _____
W. Mark Wallis, President

EXHIBIT A

SAVOYE PROPERTY

Lot 1, Block A, Vitruvian Park Addition, Town of Addison, Dallas County, State of
Texas

EXHIBIT 2

ESTOPPEL CERTIFICATE

THIS ESTOPPEL AGREEMENT (the "Certificate") is made as of this _____ day of August, 2009, by the **TOWN OF ADDISON, TEXAS** (the "City") in favor of **DCO SAVOYE LLC**, a Delaware limited liability company ("DCO Savoye") and **REGIONS BANK**, an Alabama banking corporation whose offices are located at 1900 Fifth Avenue North, Birmingham, Alabama 35203, Attention: Commercial Real Estate Loan Department (the "Lender").

WITNESSETH:

WHEREAS, the City, UDR, Inc., DCO Brooks Apartments LP, DCO Greenbrook Apartments LP, DCO Talisker LP, DCO Garden Oaks LP, DCO Glenwood Apartments LP, DCO Clipper Pointe LP, DCO Springhaven LP, DCO Addison at Brookhaven LP and DCO Greenhaven LP entered into that certain Master Facilities Agreement dated March 11, 2008 ("Master Facilities Agreement") in connection with redevelopment of Property located in Dallas County, Texas. Capitalized terms used and not defined herein are used with the meanings set forth in the Master Facilities Agreement.

WHEREAS, DCO Savoye has succeeded to the rights and interests of DCO Greenhaven LP, as one of the Property Owners, and the Developer under the Master Facilities Agreement in respect of that portion of the Property described on Exhibit A hereto.

WHEREAS, DCO Savoye is currently constructing "Phase I" of the private development of the Property and has requested the Lender make a construction loan to it to finance a portion of the costs of construction of "Phase I".

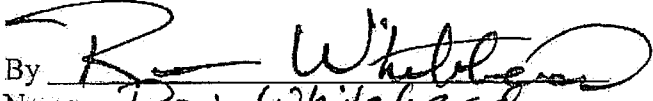
WHEREAS, Lender has agreed to make such loan provided that the City provide an estoppel certificate pursuant to Section 26 of the Master Facilities Agreement.

NOW THEREFORE, the City hereby confirms that (i) the Master Facilities Agreement has not been modified, amended or terminated and is in full force and effect in accordance with its terms, provisions and conditions and (ii) to the best of City's actual knowledge, (a) the Developer (as defined in the Master Facilities Agreement) has not breached the Master Facilities Agreement, and (b) there is not an event which with the passage of time would constitute an event of default under the Master Facilities Agreement. For purposes hereof, the City's actual knowledge means the actual knowledge of Carmen Moran, the City's Director of Development Services.

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IN WITNESS WHEREOF, this Certificate is effective as of the date set forth above.

TOWN OF ADDISON, TEXAS

By 
Name Ron Whitehead
Title: City Manager

ATTEST:

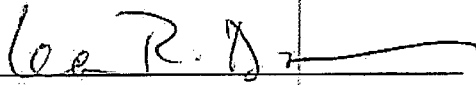

City Secretary

EXHIBIT A
DCO SAVOYE PARCEL

Lot 1, Block A, Vitruvian Park Addition, Town of Addison, Dallas County, State of
Texas