

TOWN OF ADDISON, TEXAS

RESOLUTION NO. R10-019

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A SECOND 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 2 LLC, a Delaware limited liability company ("DCO Savoye 2"); and

WHEREAS, the parties to the Agreement desire to modify the Agreement to reflect the addition of DCO Savoye 2 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, Union Bank, N.A., a _____ banking corporation, which is making a construction loan to DCO Savoye 2 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 10th day of August, 2010.




Don R. Daseke, Mayor Pro Tempore

ATTEST:

By: 
Lea Dunn, City Secretary

APPROVED AS TO FORM:

By: 
John Hill, City Attorney
Jason Mathis, Assistant
City Attorney

SECOND MODIFICATION TO MASTER FACILITIES AGREEMENT

THIS SECOND MODIFICATION TO MASTER FACILITIES AGREEMENT (the "Modification") is made as of this ___ day of August, 2010, 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"), DCO SAVOYE LLC, a Delaware limited liability company ("DCO Savoye"), and DCO SAVOYE 2 LLC, a Delaware limited liability company ("DCO Savoye 2").

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, as amended by that certain Modification to Master Facilities Agreement dated August 28, 2009 and as further amended by that certain First Amendment to Master Facilities Agreement entered into and made effective February 10, 2010 ("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 Savoye was added as a Property Owner and Developer to the Master Facilities Agreement pursuant to that certain Modification to Master Facilities Agreement dated as of August 28, 2009.

WHEREAS, DCO Greenhaven LP has conveyed that portion of the Property described on Exhibit A hereto to DCO Savoye 2 (the "Savoye 2 Property").

WHEREAS, DCO Savoye 2 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 2; Representations.** DCO Savoye 2 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 2 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 2 Property and be bound by the terms and provisions of the Master Facilities Agreement. DCO Savoye 2 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, DCO Savoye, and DCO Savoye 2 represent that: (a) the sole member of DCO Savoye 2 is DCO Realty Inc., a Delaware corporation (“DCO Realty”), (b) DCO Realty has and possesses the power and authority to control DCO Savoye 2, 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, DCO Savoye 2. 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. **Mortgage Protection.** Notwithstanding anything to the contrary set forth in this Modification or in the Master Facilities Agreement, in the event that the holder of a deed of trust encumbering the Savoye 2 Property shall ever acquire title thereto in the exercise of its remedies under such deed of trust following the occurrence of an event of default thereunder, whether such acquisition occurs through foreclosure of such deed of trust or the acceptance of a deed to the Savoye 2 Property in lieu of foreclosure, or otherwise, then such holder and its successors and assigns shall be obligated to perform the obligations of a Property Owner under the Master Facilities Agreement, including without limitation the reimbursement obligation as stated in Section 7.4 of the Master Facilities Agreement, solely as such obligations pertain to the Savoye 2 Property.

4. **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.

5. **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 Lea Dunn
Name LEA DUNN
Title: Deputy City Manager

ATTEST:

By: CMORAN
Asst. City Secretary

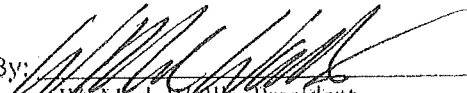
Signatures of UDR and Property Owners Follow

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

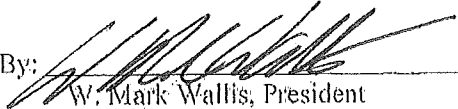
DCO TALISKER LP, a Delaware limited
partnership

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

By: 
W. Mark Wallis, President

DCO GARDEN OAKS LP, a Delaware limited partnership

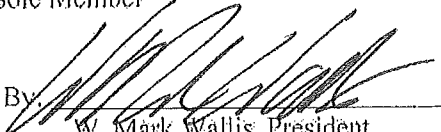
By: DCO REALTY, INC., a Delaware corporation, its General Partner

By: 
W. Mark Wallis, President

DCO GLENWOOD APARTMENTS LP, a Delaware limited partnership

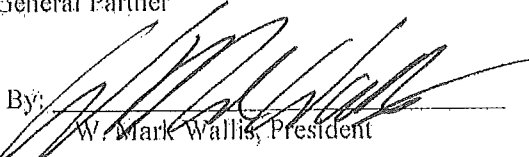
By: DCO Glenwood Apartments GP LLC, a Delaware limited liability company, its General Partner

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

By: 
W. Mark Wallis, President

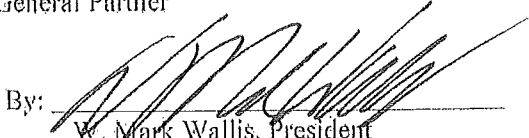
DCO CLIPPER POINTE LP, a Delaware limited partnership

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

By: 
W. Mark Wallis, President

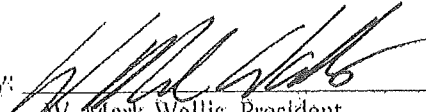
DCO SPRINGHAVEN LP, a Delaware limited partnership

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

DCO SAVOYE 2 LLC a Delaware limited liability
company

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

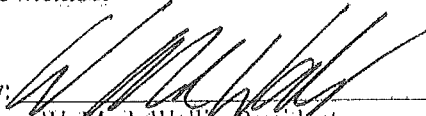
By: 
W. Mark Wallis, President

EXHIBIT A

SAVOYE 2 PROPERTY

Lot 1, in Block B, of Vitruvian Park Addition, an addition to the City of Addison, Dallas County, Texas, according to the Map or Plat thereof recorded in Clerks File No. 2010-123804, Plat Records, Dallas County, Texas