

STACY R. SCHIFFMAN, <i>et al</i> ,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff</i> ,	§	
	§	
v.	§	
	§	
NELSON PARTNERS, LLC, NELSON	§	TRAVIS COUNTY, TEXAS
BROTHERS PROPERTY	§	
MANAGEMENT INC. D/B/A NELSON	§	
PARTNERS PROPERTY	§	
MANAGEMENT, INC., NP EQUITY,	§	
LLC, AND PATRICK NELSON,	§	
	§	
<i>Defendants.</i>	§	98th JUDICIAL DISTRICT

**AGREED ORDER APPOINTING  
CHIEF STRATEGY OFFICER AND ARBITRATOR**

On February 24, 2023, the Court entered the Agreed Order Concerning Plan Administrator’s Motion for Contempt and Sanctions, Application for Temporary Injunction and Nelson Parties’ Objections to Plan Administrator’s Legal Fees and Expenses (“Agreed Order”) ordering by agreement of the parties the appointment of a Chief Strategy Officer for Nelson Partners, LLC and Nelson Partners Property Management, Inc. (together, the “CSO Entities”) and an arbitrator to resolve any conflicts between the Chief Strategy Officer and Patrick Nelson.

Pursuant to paragraph 1 of the Agreed Order, the undersigned parties submit this supplemental agreed order for the appointment of (i) Bradley D. Sharp of Development Specialists, Inc. as the Chief Strategy Officer of the CSO Entities and (ii) Mark L. Hawkins of Armbrust & Brown, PLLC as the arbitrator (the “Appointment Order”).

Based on the undersigned parties’ agreement and the prior Agreed Order, the Court ORDERS as follows:

1. Bradley D. Sharp (the “CSO”) of Development Specialists, Inc. (“DSI”) is hereby approved and appointed as the Chief Strategy Officer for the CSO Entities pursuant to (i) the Agreed Order, (ii) the terms of this Appointment Order, and (iii) the Engagement Agreement attached as **Exhibit A** (the “CSO Agreement”).<sup>1</sup>

2. The CSO shall have the roles and authority provided in (i) Agreed Order paragraph 2, and (ii) the CSO Agreement.

3. The CSO shall conduct a weekly conference with the Plan Administrator, Gregory S. Milligan (the “Plan Administrator”) at a mutually agreeable time, which Patrick Nelson will be invited to attend, to provide non-privileged reports on the CSO’s findings and progress, including development of a proposed amended plan of liquidation that funds the existing obligations under the Stipulation and Plan of Liquidation, dated April 19, 2022 (which the Court approved on a final basis on July 21, 2022, the “Plan”). The CSO’s obligation to conduct such weekly conferences shall expire once the Nelson Parties propose an amended Plan as contemplated in the prior sentence, though the Plan Administrator may request conferences after such time on an as-needed basis.

4. Pursuant to the Agreed Order paragraph 2(d), Mr. Sharp’s first ninety-day term as CSO begins on March 10, 2023 and will automatically renew on June 8, 2023 for an additional ninety-day term if no party files an objection with the Court prior to June 8, 2023. Mr. Sharp’s term as CSO will continue to automatically renew for additional ninety-day periods without further

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<sup>1</sup> The CSO Agreement inadvertently indicated that it became effective at the time the “Agreed Order” was entered. Neither the Nelson Parties nor the CSO intended that the CSO Agreement to be retroactively effective. Consequently, they have agreed that the CSO Agreement becomes effective on entry of this Appointment Order or March 10, 2023, whichever is earlier. Nothing in this Appointment Order is intended to make the CSO Agreement effective prior to such time.

order of the Court unless a party files an objection to a renewal within 14 calendar days prior to the applicable ninety-day deadline.

5. The CSO Agreement is approved, subject to the terms of this Appointment Order. The CSO is authorized to use additional DSI personnel and professionals pursuant to the CSO Agreement, subject to Patrick Nelson's joint approval of expenses as set forth in paragraph 2.a.1 of the Agreed Order. In addition, in an attempt to ensure that DSI fees and expenses are reasonable, the CSO will provide a weekly report to the Nelson Parties regarding the reasonable fees and expenses incurred the previous week by DSI (the "Billing Report") and a projected budget for the next week (the "Budget").

6. The CSO Entities are directed to pay the retainer provided for in the CSO Agreement. DSI shall issue invoices to the CSO Entities on a monthly basis ("Monthly Invoices"), which invoices shall set forth time detail for all services rendered during the prior month. Within seven (7) days of the receipt of a Monthly Invoice, CSO Entities may assert an objection (a "CSO Objection") to the reasonableness of the fees and/or expenses set forth therein by sending an e-mail (stating in detail those fees and or expenses being objected to on reasonableness grounds) to DSI, with a copy to the Plan Administrator's counsel. All fees and expenses not subject to a timely-asserted CSO Objection shall be promptly paid to DSI. DSI and the CSO Entities shall cooperate in good faith to resolve any CSO Objections within ten (10) calendar days of the assertion of the CSO Objection. If the CSO Objection cannot be resolved by informal means, the dispute shall be placed before the Arbitrator for determination. As provided by paragraph 2(c) of the Agreed Order, should the CSO Entities fail to pay the CSO's and DSI's reasonable and

necessary invoices, such professional fees and expenses shall be taxed as costs of court against the Nelson Parties.<sup>2</sup>

7. The Nelson Parties shall indemnify the DSI Parties (as defined in the CSO Engagement Agreement) pursuant to the CSO Engagement Agreement and as “Indemnified Parties” under paragraph 7 of the Agreed Order on Administrator’s Powers, Authority, and Implementation Procedures Pursuant to Plan of Liquidation Section 5 entered by the Court on July 21, 2022 (the “Administrator Powers Order”). Notwithstanding the use of the terms Indemnified Parties and Indemnified Party, reference to the Administrator Powers Order, or any other provision in the CSO Engagement Agreement or this Appointment Order, the DSI Parties shall not be entitled to any advances or payments from the Plan Administrator or the Administrator Account.

8. Mark L. Hawkins of Armbrust & Brown, PLLC is hereby designated as the arbitrator (the “Arbitrator”) to arbitrate disputes between the CSO and Patrick Nelson. The CSO, the DSI Parties and the Nelson Parties consent to the Arbitrator’s exercise of arbitration over the subject matter of any dispute among them arising from or out of or in respect of decision making, authority, powers or actions under the Agreed Order, this Appointment Order or the CSO Engagement Agreement, which disagreement is not settled within five business days after it arises. Issues presented to the Arbitrator will be contemporaneously noticed in writing to the Plan Administrator. The Arbitrator’s decisions shall be final and may be entered as orders by this Court. The Arbitrator has no authority to modify or vary the terms of the Agreed Order, this Appointment Order, the Engagement Agreement, or any other Order of this Court.

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<sup>2</sup> “Nelson Parties” means collectively, Nelson Partners, LLC, Nelson Brothers Property Management, Inc. d/b/a Nelson Partners Property Management, Inc., NP Skyloft Equity, LLC, and Patrick Nelson.

9. It is anticipated that the Arbitrator will charge his normal hourly rates for providing his services under this Appointment Order. The CSO Entities are directed to pay the Arbitrator's reasonable fees and expenses, subject to the following objection procedure: within seven (7) days of the receipt of an invoice from the Arbitrator, CSO Entities may assert an objection (an "Arbitrator Objection") to the reasonableness of the fees and/or expenses set forth therein by sending an e-mail (stating in detail those fees and or expenses being objected to on reasonableness grounds) to the Arbitrator, with a copy to the Plan Administrator's counsel. All fees and expenses not subject to a timely-asserted Arbitrator Objection shall be promptly paid to Arbitrator. The Arbitrator and the CSO Entities shall cooperate in good faith to resolve any Arbitrator Objections within ten (10) calendar days of the assertion of the Arbitrator Objection. If the Arbitrator Objection cannot be resolved by informal means, either the CSO Entities or the Arbitrator may file a motion with the Court, seeking the Court's adjudication of the Arbitrator Objection.

10. Pursuant to paragraph 6 of the Agreed Order, the Parties reaffirmed and extended the December 19, 2022 Rule 11 agreement (the "Rule 11 Agreement") with certain changes. The Parties hereby further agree that Section 2 of the Rule 11 Agreement, which provides for the Nelson Parties to provide certain information to the Plan Administrator's forensic accountant, is abated so long as the CSO remains engaged by the Nelson Parties. The Nelson Parties shall resume their monthly reporting requirements to the Court pursuant to the Plan, with the next status report due on April 10, 2023.

11. This Appointment Order is without prejudice to the parties to this Appointment Order petitioning the Court to approve further CSO or Arbitrator authority or procedures with notice to all other parties to this Appointment Order. It is expressly understood that the Nelson Parties have not agreed to any such expansion of powers. To the fullest extent permitted by law,

the Court hereby retains exclusive jurisdiction over the CSO and Arbitrator regarding their appointment under this Appointment Order, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, any action against the CSO.

SO ORDERED.  
Dated: \_\_\_\_\_

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The Honorable Karin Crump  
Travis County District Court Presiding

**AGREED IN SUBSTANCE AND FORM BY:**

**WICK PHILLIPS GOULD & MARTIN, LLP**

/s/ Jason M. Rudd

Jason M. Rudd, Tex. Bar No. 24028786  
Rusty J. O’Kane, Tex. Bar No. 24088149  
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**COUNSEL FOR GREGORY S. MILLIGAN,  
ADMINISTRATOR UNDER THE PLAN OF LIQUIDATION**

**MILLER LLOYD P.C.**

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TRUSTEE OF THE PARZIALE FAMILY TRUST,  
derivatively on behalf of NP SKYLOFT DST**

**GEORGE BROTHERS KINCAID & HORTON, L.L.P.**

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**AND**

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**ATTORNEYS FOR DEFENDANTS**



# **EXHIBIT A**

March 6, 2023

Mr. Pat Nelson  
Chief Executive Officer  
Nelson Partners Student Housing  
180 Avenida La Pata, 2<sup>nd</sup> Floor  
San Clemente, CA 92673

Re: Development Specialists, Inc. (“DSI”)  
Engagement Agreement

Dear Mr. Nelson:

Please accept this letter as DSI’s formal written agreement (the “Agreement”) to provide services to Nelson Partners, LLC, Nelson Brothers Property Management, Inc. dba Nelson Partners Property Management, Inc., NP Skyloft Equity, LLC, and Patrick Nelson (collectively the “Nelson Parties”) in connection with that certain Stipulation and Plan of Liquidation dated April 19, 2022, by and between the Intervenor and the Nelson Parties in the Derivative Action (“Plan”). Capitalized terms not defined herein shall have the meaning ascribed to them in that certain Agreed Order Concerning Plan Administrator’s Motion for Contempt and Sanctions, Application for Temporary Injunction, and Nelson Parties’ Objections to Plan Administrator’s Legal Fees and Expenses (“Agreed Order”). This Agreement will become effective on the date of the presiding court’s entry of the Agreed Order.

Section 1: Scope of Work (“Services”)

DSI’s Bradley D. Sharp will be appointed as Chief Strategy Officer (“CSO”) as an officer of Nelson Partners, LLC and Nelson Brothers Property Management, Inc. d/b/a Nelson Partners Property Management, LLC (the “CSO Entities”). The CSO will have:

1. Joint collective authority with Patrick Nelson over all the Nelson Parties’ cash and distributions, except Patrick Nelson, individually;
2. Authority to create a proposed amended plan of liquidation in cooperation and coordination with Patrick Nelson to propose to the Plan Administrator and Intervenor that funds the existing obligations under the Plan;
3. Full access to the Nelson Parties’ business books and records, including all employees’ records, and transparency regarding ongoing transaction negotiations; and
4. As an officer of the CSO Entities, full access to privileged information from the Nelson Partners’ inside and outside counsel, but not as to Pat Nelson’s separate, individual personal counsel.

LOS ANGELES

5. Support from DSI professional and administrative staff (“Additional Personnel”).

DSI’s ability to adequately perform the Services is dependent upon the Nelson Parties timely providing reliable, accurate and complete necessary information. The Nelson Parties acknowledge that we are not responsible for independently verifying the veracity, completeness or accuracy of any information supplied to us by or on behalf of the Nelson Parties.

Although DSI does not predict or warrant the outcome of this or any other particular matter or issue, and our fees are not dependent upon such outcomes, we will perform the Services with reasonable care and in a diligent and competent manner.

Section 2: Rates, Invoicing and Retainer

The parties agree that the CSO shall be paid at his normal hourly rate until such time that this Agreement is amended by a writing signed by the parties to provide a flat monthly fee for the CSO’s Services.

A number of DSI’s personnel have experience in the above matters and may be engaged in this representation. Although others of our staff may also be involved, we have listed below certain of the DSI personnel (along with their corresponding billing rates) who would likely constitute the Additional Personnel for this matter.

Bradley D. Sharp	\$780.00/hr.
Nicholas R. Troszak	\$600.00/hr.
Matthew P. Sorenson	\$575.00/hr.
Daniel Ungheanu	\$415.00/hr.
William G. Brandt	\$380.00/hr.

DSI will charge its regular hourly rates for the Additional Personnel and one-half the regular hourly rate for non-working travel time. Local travel time from personnel’s hotel or home to and from the office will not be billed, and DSI will strive to staff as efficiently as is reasonable. Rates are adjusted on a firm-wide basis as of January 1 of each year to reflect advancing experience, capabilities and seniority of our professionals as well as general economic factors.

DSI will submit monthly invoices to the Nelson Parties which shall be due within fifteen (15) days. The Nelson Parties agree to communicate to DSI in writing any dispute they might have with respect to a DSI invoice within fifteen (15) days of the invoice date and that any dispute not timely communicated shall be waived.

DSI also will be entitled to reimbursement for the CSO and the Additional Personnel’s reasonable costs and expenses. Such costs and expenses may include, among others, charges for messenger services, overnight deliveries, photocopying, travel expenses, postage and other charges customarily invoiced by consulting firms. Airfare for domestic flights will be charged at economy/coach fares.

We require receipt of a retainer in the amount of \$100,000.00 before commencing any Services. The purpose of the retainer is to secure a portion of our fees and expenses and to retain our status as a non-creditor should such be required for DSI to remain on this engagement. Should a need arise to increase this retainer due to the level of services DSI is providing or projected to provide, DSI will request from the Nelson Parties the necessary increase, which request shall not be unreasonably refused. DSI may suspend the Services if requests for increases in the retainer are not timely responded to or are refused, irrespective of the reasonableness of such refusal.

The retainer will be applied to the final balance due. If the retainer exceeds the amount of the final balance, we will refund the difference to you at that time. In the event that monthly invoices are not timely paid, we will apply the retainer to the amounts owing and any related late charges, and we will cease the Services until the retainer is replenished to the full amount required. If the retainer is not replenished within ten (10) days after the application of the retainer to unpaid balances, we reserve the right to terminate this Agreement in accordance with the provisions of this Agreement.

### Section 3: Termination

DSI may terminate this Agreement for any reason upon five (5) days' written notice to the Nelson Parties. DSI shall be entitled to payment of all fees and reimbursement of all expenses accrued as of the effective date of termination, subject to the Nelson Parties' dispute rights set forth in Section 2 above.

### Section 4: Relationship of the Parties, Confidentiality

The parties intend that an independent contractor relationship will be created by this Agreement. Employees of DSI are not to be considered employees of, or entitled to any of the employee benefits provided by, the Plan Administrator, his firm, the Nelson Parties, or the CSO Entities, unless written modification is made to this Agreement.

The Nelson Parties acknowledges that all advice (written or oral) given by DSI in connection with this Agreement is intended solely for the benefit of and use by the CSO Entities and their counsel in considering the subject matter to which it relates, and that no third party is entitled to rely on any such advice or communication. DSI will in no way be deemed to be providing services to the Plan Administrator or any other person not an express party to this Agreement.

DSI agrees that all information not publicly available that is received by DSI in connection with this Agreement, or that is developed in the performance of the Services, will be treated as confidential and will not be disclosed by DSI except as required by court order or other legal process, or as may be authorized by the Nelson Parties. DSI shall not be required to defend against any action to obtain an order requiring disclosure of such information, but shall instead give prompt notice of any such action to the Nelson Parties so that he may seek appropriate remedies, including a protective order. The Nelson Parties shall reimburse DSI for all costs and fees (including

reasonable attorney's fees and internal time devoted by DSI employees) incurred by DSI, whether during the pendency of this Agreement or thereafter, relating to responding to (whether by objecting to or complying with) any subpoenas or requests for production of information or documents.

#### Section 5: Indemnity, Limitation of Liability

The parties agree that the DSI Parties, which term includes DSI, each of its personnel who provides or provided Services pursuant to this Agreement, and its officers, directors, and agents, shall be considered an Indemnified Party as that term is defined at paragraph 7 of that certain Agreed Order on Administrator's Powers, Authority, and Implementation Procedures Pursuant to Plan of Liquidation Section 5 ordered July 21, 2022 ("Section 5 Order").

In the event the Section 5 Order is insufficient to fully indemnify the DSI Parties and to the fullest extent permitted under applicable law, the Nelson Parties shall indemnify, hold harmless and defend the DSI Parties from and against any and all claims, liability, loss, cost, damage or expense (including reasonable attorney's fees) asserted against or incurred by any of the DSI Parties, including addressing or responding to a subpoena or court order arising out of or in connection with this Agreement, or performance under this Agreement, except where it is determined in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such claim, liability, loss, cost, damage or expense is the direct result of the willful misconduct, dishonesty, fraudulent act or omission, or gross negligence of DSI. Such indemnity shall survive the expiration or termination by either party of this Agreement.

The DSI Parties shall not be liable to the Nelson Parties or any party asserting claims on their behalf, except for direct damages found in a final determination by a court of competent jurisdiction (not subject to further appeal) to be the direct result of the bad faith, self-dealing or intentional misconduct of DSI Parties. The DSI Parties' aggregate liability, whether in tort, contract or otherwise, is limited to the amount of fees paid to DSI for the Services (the "Liability Cap"). The Liability Cap is the total limit of the DSI Parties' aggregate liability for any and all claims or demands by anyone pursuant to this Agreement, including liability to the Nelson Parties, to any other parties hereto, and to any others making claims relating to the work performed by DSI pursuant to this Agreement.

The CSO shall be entitled to all indemnification and applicable insurance coverage available to any officer, director, member or similar person of any CSO Entity and the Nelson Parties shall promptly take all reasonable steps to implement the intent of this provision.

#### Section 6: Conflicts

By executing this Agreement, the Nelson Parties waives any objection, or standing to object, to the retention, in matters unrelated to the CSO Entities of DSI by banks or other institutional lenders or debt holders who are or whose affiliates are lenders to the CSO Entities, or bank groups which include banks who are or whose affiliates are lenders to the CSO Entities.

Section 7: No Audit

The Nelson Parties acknowledge that DSI is being engaged to provide financial advisory consulting services to and for the benefit of the Nelson Parties. DSI's performance of the Services shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of AICPA or other such state and national professional bodies. It is beyond the scope of our services to identify deficiencies in record keeping practices or procedures, or errors or irregularities in financial statements or the Company's books and records.

Section 8: Retention of Client Documents

Regarding all documents and other materials provided to DSI pursuant to this Agreement, including all copies thereof (the "Documents"), upon termination or expiration of this Agreement, DSI shall, at its election, 1) return such documents to the Company, 2) destroy such documents upon three (3) days' written notice to the Company or 3) treat such documents and other materials in accordance with DSI's then-existing document retention policy. Should DSI elect either alternative 1 or 2 above, DSI may retain copies of those Documents that it deems necessary to address potential post-termination issues, subject to complying with any confidentiality provisions in effect at the time of termination of the Agreement.

Section 9: Miscellaneous Provisions

- a. Survival. The provisions of this Agreement relating to indemnification, limitation of liability, the non-solicitation or hiring of DSI employees and all other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.
- b. Severability. If any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative and only in such jurisdictions in which the part or provision is, by ruling or controlling precedent, invalid or unenforceable.
- c. Non-Solicitation. The Company agrees not to solicit, recruit or hire any employees or agents of DSI for a period of two (2) years subsequent to the completion and/or termination of this Agreement.
- d. No Waiver. The provisions of this Agreement may be waived only by a written instrument signed by the party waiving compliance. No waiver of any breach of any provision contained in this Agreement, whether by conduct or otherwise, will be deemed to be, or construed as, a waiver of any other breach of this Agreement.

Patrick Nelson  
March 6, 2023  
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- e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- f. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic format shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10: Entire Agreement, Amendment

This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement and supersedes and is intended to nullify any other agreements, understandings or representations relating to the subject of this Agreement. This Agreement may not be amended or modified except in a writing signed by the parties.

If you are in agreement with the foregoing terms and conditions, please sign and return an original copy of this Agreement to me.

Very truly yours,



Bradley D. Sharp  
President

[SIGNATURES ON THE FOLLOWING PAGE]

**AGREED AND ACKNOWLEDGED:**

**Nelson Partners, LLC**

Signature: PNL

Date: 3/6/23

**Nelson Brothers Property Management, Inc. d/b/a  
Nelson Partners Property Management, Inc**

Signature: PNL

Date: 3/6/23

**NP Skyloft Equity, LLC**

Signature: PNL

Date: 3/6/22

**Patrick Nelson**

Signature: PNL

Date: 3/6/23