

RESOLUTION NO. 6218

**RESOLUTION APPROVING RETENTION OF SPECIAL COUNSEL FOR THE  
TULSA DEVELOPMENT AUTHORITY – WILKINS MATTERS**

**WHEREAS**, the **TULSA DEVELOPMENT AUTHORITY** (“Authority”), in carrying out its authorized programs, has previously entered into a Contract for Sale of Land for Private Redevelopment dated April 16, 2013 (“Contract”) with WILLIAM (WILL) WILKINS, CECILIA WILKINS, NOVUS HOMES, LLC, AND W3 DEVELOPMENT, LLC, (collectively “Redeveloper”) for redevelopment of the real estate described on Schedule “A” attached hereto for a project to be constructed by Redeveloper composed of an urban hotel, office, and commercial mixed use project (“the Project”) with off-street parking in accordance with the provisions of said Contract, the 2010 Tulsa Comprehensive Plan (“PlaniTulsa”), the Downtown Area Master Plan, the Urban Renewal Plan for the area in which said real estate is situated and applicable codes of the City of Tulsa; and,

**WHEREAS**, the TDA and Redeveloper have previously agreed to a First Amendment of said Contract, effective as of August 8, 2013; a Second Amendment of said Contract, effective as of January 9, 2014; a Third Amendment of said Contract, effective as of October 9, 2014; a Fourth Amendment of said Contract, effective as of April 9, 2015; and a Fifth Amendment of said Contract, effective as of August 13, 2015; and,

**WHEREAS**, the Authority did, on the 3rd day of December, 2015, deny a request by the Redeveloper for an additional Amendment of said Contract to amend Section 5(c) (Construction Financial Documentation Phase) to further extend the deadline for the submission of Construction Financial Documentation, as set forth in the Contract, as previously amended, for ninety (90) days from November 13, 2015; and,

**WHEREAS**, the Authority did, on the 4<sup>th</sup> day of December, 2015, pursuant to Section 14(a)(1) of the Contract, issue its Notice of Default to the Redeveloper as the result of the default by the Redeveloper in satisfaction of its obligations under the said Contract by failing (by the contract deadline of November 13, 2015, as extended by previous amendments) to submit Construction Financial Documentation demonstrating financial ability of the Purchaser to pay for and complete construction of the Project Improvements in accordance with the Construction Documents previously approved by the Authority’s Board of Commissioners pursuant to Section 5(c) of the said Contract; and,

**WHEREAS**, the Authority did, on the 3rd day of March, 2016, deny a request by the Redeveloper for the Authority to reconsider its December 3<sup>rd</sup>, 2015, denial of the requested Amendment to further extend the deadline for the submission of Construction Financial Documentation, as set forth in the Contract, as previously amended, for ninety (90) days from November 13, 2015, and denied the request of the Redeveloper to allow additional time to cure the default of the Redeveloper and additional time to negotiate participation by Parkes Development Group, LLC, for the redevelopment of the Property; and,

**WHEREAS**, at its April 7, 2016 meeting, the Board of Commissioners of the Tulsa Development Authority determined that it was **not** in the best interest of it, the City of Tulsa and the general public to approve any additional extension or other amendment of said Contract with Redeveloper and further determined that it was in the best interest of the Authority, the City of Tulsa and the general public to instead proceed with termination of the said Contract; and,

**WHEREAS**, at its April 7, 2016 meeting, the Board of Commissioners of the Tulsa Development Authority unanimously approved TDA Resolution No. 6202 terminating the said Contract with Redevelopers; and,

**WHEREAS**, the Redeveloper has, through its counsel, submitted a written request for arbitration of the objections of Redeveloper to the termination of said Contract by TDA; and,

**WHEREAS**, TDA's General Counsel has recommended that the TDA Board of Commissioners employ and retain James E. Weger of the Jones Gotcher law firm as Special Counsel to assist TDA's General Counsel in the representation of TDA as to all matters pertaining to the Redeveloper, the Contract (including without limitation the Redevelopers' request for arbitration), that certain Settlement Agreement between TDA and Redevelopers dated November 9, 2012 and the suspended litigation in Case No. CJ-2008-5713 in the Tulsa County District Court; and,

**WHEREAS**, James E. Weger of the Jones Gotcher law firm has agreed to represent TDA as its Special Counsel for the matters listed above according to the terms of engagement set forth in the letter dated May 4, 2016 attached hereto, and provide such Special Counsel legal services upon consultation with, and subject to direction of, TDA's General Counsel.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TULSA DEVELOPMENT AUTHORITY that:**

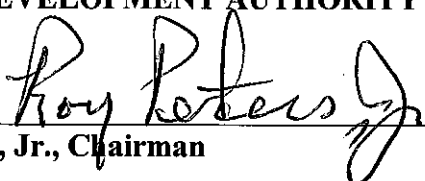
**Section 1.** The Board of Commissioners of the Tulsa Development Authority hereby employ and retain James E. Weger of the Jones Gotcher law firm as Special Counsel to assist TDA's General Counsel in the representation of TDA as to all matters pertaining to the Redeveloper, the Contract (including without limitation the Redevelopers' request for arbitration), that certain Settlement Agreement between TDA and Redevelopers dated November 9, 2012 and the suspended litigation in Case No. CJ-2008-5713 in the Tulsa County District Court.

**Section 2.** That such Special Counsel is employed and retained to represent TDA as its Special Counsel for those matters listed above according to the terms of engagement set forth in the letter from James E. Weger dated May 4, 2016 attached hereto, provided that such Special Counsel legal services shall be undertaken upon consultation with, and subject to direction of, TDA's General Counsel.

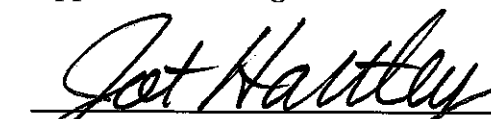
**Section 3.** This Resolution shall take effect immediately.

**PASSED and ADOPTED** this 5th day of May, 2016.

**TULSA DEVELOPMENT AUTHORITY**

By:   
Roy Peters, Jr., Chairman

**Approved as to legal form and adequacy:**

  
Jot Hartley, General Counsel  
The Hartley Law Firm, PLLC

**Schedule "A"**

**Lots 1, 2, and 3, Block 44, Original Town, now City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.**

**Project Name: Wilkins/Novus Homes, LLC/W3 Development, LLC**

**Parcel #\_**

**A/K/A ADDRESS:**

**TDA Disposition #**

# JONES GOTCHER

*Attorneys and Counselors*

May 4, 2016

James E. Weger  
Direct Dial (918) 581.8256  
jweger@jonesgotcher.com

Tulsa Development Authority  
c/o Jot Hartley

Re: Engagement Letter

Dear Jot:

Thank you for selecting Jones, Gotcher & Bogan, P.C. ("Firm") to act as your attorneys. The purpose of this letter is to confirm and set out clearly our mutual understanding of the terms of our and your participation and responsibilities in our representation of you in this matter and all subsequent matters. Please sign and return this letter, together with your retainer to our offices.

Jones, Gotcher & Bogan, P.C. agrees to represent you pursuant to the terms set forth in this letter.

We promise to provide you with reasonable and necessary legal services to the best of our ability; however, the Firm makes no representation, promises or guarantees as to the outcome of your matter. Our services will consist of some or all of the following: court appearances, telephone conferences, travel, investigative work, depositions, legal research, negotiations, review of material received from all sources, drafting of contracts, pleadings and briefs, correspondence and other documents, participation in settlement conferences, mediation, and/or arbitration, and other necessary for your matter.

We will keep you advised on how your matter progresses, based on information we receive from the court, from the other side and from you. We will forward you copies of all significant correspondence, pleadings and other documents. Should you have a question about your matter, please feel free to contact me or my legal assistant. We will do our best to return telephone calls as promptly as possible.

Since this matter involves or may involve a proceeding in which an adversary may have the right to discover information relevant to the dispute, it is important that you take immediate steps to preserve all documents, things, and electronically stored information that may relate to the matter. Electronically stored information includes, among other things, emails, electronic files, information contained on servers, databases, thumb drives and other portable storage devices, telephone logs, contact information, internet files, personal digital assistants and similar devices, and network access information. Preserving this information may necessitate action to suspend automatic or regular purging or deletion of data to avoid erasing potentially-relevant emails, voice

JONES, GOTCHER & BOGAN  
*A Professional Corporation*

3800 First Place Tower 15 East Fifth Street Tulsa, Oklahoma 74103-4309  
Telephone 918.581.8200 Facsimile 918.583.1189  
www.jonesgotcher.com

messages, backup tapes, etc. Procedures designed to preserve the relevant information described above should remain in effect until further notice.

If litigation is involved, rules of procedure may require prompt disclosure of relevant electronically stored information early in litigation. You should begin to identify all potential sources of electronically stored information relevant to this matter immediately. Doing so now will facilitate the discovery process and will help preserve claims of privilege, avoid inadvertent disclosure of privileged data, and identify sources of information which would be too costly or burdensome to disclose. Significant delay in assessing the sources of electronically stored information, and any failure to preserve relevant evidence, will expose you to potential sanctions under the rules of procedure, which could include preclusion of helpful evidence, default, and monetary penalties.

We will send you itemized statements each month describing the services rendered on your behalf in 1/6 hour increments and expenses incurred such as court costs, travel expenses, long-distance telephone calls, postage, investigation services, telecopier transmissions, document reproduction, and so forth. We strongly encourage you to raise promptly with us any questions or comments you may have regarding any statement. You also agree that should any invoice show a balance due, to pay that amount, within 30 days after receipt of the invoice, unless other arrangements are made with Jones, Gotcher & Bogan, P.C. in advance. If your account is not kept current, we must reserve the right to terminate our representation in accordance with applicable ethical rules and withdraw as your attorney.

You further agree to advance the Firm for the cost of any experts, accountants, or other professional or expert witnesses or any other reasonable and necessary expenses incurred in the preparation and prosecution of your matter. No expert will be retained by the Firm without first consulting with and receiving your consent. You further understand that unless these costs are paid in advance discovery cannot proceed.

It is the policy of Jones, Gotcher & Bogan, P.C. to delegate work to the most competent person to accomplish the task at the lowest cost to you, so various members of our staff may be working on your matter. The agreed hourly rates for the Firm personnel involved with your matter are as follows:

James E. Weger and partners	\$175.00
Associate	\$160.00
Paralegal	\$100.00
Law Clerk	\$70.00

The minimum billing unit used by Jones, Gotcher & Bogan, P.C. is six (6) minutes increments (1/10<sup>th</sup> of an hour), and time expended on your matter will be computed in that manner. Depending on the length of our representation of you, these rates may increase. You agree to pay the standard hourly rate for the attorney working for you.

You also understand that it may be necessary from time to time for another attorney in the Firm to provide services to your matter, including but not limited to, court appearances, deposition, legal research, review of material received from all sources, drafting of pleadings and briefs, telephone conferences with you, opposing counsel or other relevant persons, or otherwise perform services on your behalf. All services performed shall be billed at the hourly rate of the attorney rendering services. The Firm will attempt, to the extent possible, to ensure that most, if not all, of the services are performed by the primary attorney retained by you. Further, if an additional attorney, law clerk or paralegal is employed by Jones, Gotcher & Bogan, P.C., you will be charged his or her hourly rate as set by the Firm.

Although we are sensitive to your concerns about the costs and expenses related to this matter, you understand that it is impossible to predict accurately all that will be required to represent your legal interests in this matter, both present and future. You agree to pay the Firm legal fees based upon the hourly rates of the attorneys and legal assistants who have rendered legal services, which may include but is not limited to, telephone conferences, legal research, drafting and preparation of documents, in person conferences, court appearances, investigative work and travel. Each matter is different. Thus, you should be cautioned at the outset, that sometimes complexities arise in areas not expected by the client, and the matter may become time-consuming and require extensive time and effort from the Firm. The Firm has made no express or implied representations or guarantees concerning the outcome of your matter or how long your matter will take to complete, or how much it will cost.

By your signature, Jones, Gotcher & Bogan, P.C. is granted power of attorney and is appointed as your lawful attorney-in-fact with power and authority to represent you, including the power to negotiate and to act on your behalf. However, the ultimate decision regarding the disposition of your matter is always for you.

We will do everything possible to provide you with the highest quality legal representation and try to achieve your desired result and the appropriate disposition of your matter consistent with the time limitations imposed by law and to protect of your present and future legal interests.

We will maintain files (Paper or Electronic) related to this engagement that we, in our sole professional judgment, determine are necessary for the conduct of this engagement. After the engagement ends, meaning the date of our last bill for services in this matter, we will maintain or destroy these files in accordance with our then existing records retention policy. During the period in which we maintain the files you may request to examine the files and copy documents in the files. If you request return or destruction of the files, we reserve the right to retain (at the Firm's expense) a copy of any part of the files for any reason, such as to comply with legal or ethical obligations.

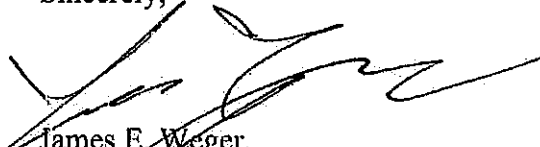
You understand and agree that interest will be charged at a rate of 1.5% per month, 18% per annum, on all sums due and unpaid for 60 days from the date of each billing statement. The Firm shall have the right to exercise a lien against any recovery in accordance with 5 Okla. Stat. Ann. Section 6. Any conflicts between you and the Firm shall be resolved according to the provisions of 5 Okla. Stat. Ann. Section 6-10, and jurisdiction and venue for any dispute, cause of

action, lawsuit, arbitration and/or mediation arising from this agreement shall rest exclusively in the District Court in and for Tulsa County, State of Oklahoma.

This agreement shall be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto.

Jones, Gotcher & Bogan, P.C. is privileged to have this opportunity to be of service to you. We appreciate your trust and confidence, as well as your business. If you agree with the terms of this Engagement Letter, please date and sign the original where indicated and return it to our office. We will provide you with a copy to retain for your records.

Sincerely,



James E. Weger,  
President

The above engagement letter correctly sets forth our agreement.

Date: \_\_\_\_\_

Tulsa Development Authority

By: \_\_\_\_\_

Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Email \_\_\_\_\_