IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

THE HOUSING AUTHORITY OF THE CITY OF ATLANTA, GEORGIA, Plaintiff, v. INTEGRAL DEVELOPMENT LLC; GRADY REDEVELOPMENT, LLC; CAPITOL GATEWAY, LLC; HARRIS REDEVELOPMENT, LLC; and CARVER REDEVELOPMENT, LLC, Defendants, v. THE HOUSING AUTHORITY OF THE CITY OF ATLANTA, GEORGIA and CATHERINE BUELL, in her official capacity as President and CEO of The Housing Authority of the City of Atlanta, Georgia, Counterclaim Defendants.	CIVIL ACTION FILE NO: 2017CV294880

DEFENDANTS'
AFFIRMATIVE DEFENSES, ANSWER, AND COUNTERCLAIM

Defendants Integral Development, LLC ("Integral"); Grady Redevelopment, LLC ("Grady LLC"); Capitol Gateway, LLC ("Capitol LLC"); Harris Redevelopment, LLC ("Harris LLC"); and Carver Redevelopment, LLC ("Carver LLC") (collectively "Defendants") respond to Plaintiff's Complaint for Declaratory Judgment and Other Relief, respectfully showing to the Court as follows:

I. AFFIRMATIVE DEFENSES

1.

Plaintiff's Complaint is barred by the doctrines of waiver, laches, and estoppel.

2.

Even if Plaintiff could demonstrate that the relevant agreements were executed without legal authority as falsely alleged in the Complaint, Plaintiff's Board of Commissioners has since ratified the agreements on numerous occasions thus confirming their validity and enforceability.

3.

To the extent Defendants have failed to satisfy any condition precedent to bringing this action, such failure being expressly denied, any such failure was due in whole or in part to Plaintiff's interference with Defendants' performance under the relevant agreements.

4.

At all relevant times, Plaintiff's former CEO and President Renee Glover had apparent authority to enter into the agreements at issue in this litigation.

5.

The relief Plaintiff seeks in its Complaint may be preempted by federal law.

6.

Subject matter jurisdiction is lacking insofar as Plaintiff has already repudiated its obligations under the relevant agreements, thus rendering advisory any

declaratory judgment.

7.

Integral has no contractual privity with Plaintiff and is, therefore, not a proper party to this action under O.C.G.A. § 14-11-303(a).

II. ANSWER

Defendants respond to the numbered paragraphs of Plaintiff's Complaint as follows:

INTRODUCTION

1.

Denied.

2.

Admitted.

3.

Defendants admit that Plaintiff is seeking the relief identified in Paragraph 3 but deny that Plaintiff is entitled to any of the relief it seeks. Defendants expressly deny that Plaintiff is faced with any legal uncertainty or insecurity.

PARTIES

4.

Defendants admit that Plaintiff is a public body corporate and politic organized under the Housing Law of the State of Georgia. Defendants neither admit nor deny the remaining allegations of paragraph 4 for lack of knowledge or

information sufficient to form a belief as to their truthfulness.

5.

Defendants admit that Integral is a limited liability company with headquarters as alleged. Defendants deny the remaining allegations of paragraph 5.

6.

Admitted.

7.

Admitted.

8.

Admitted.

9.

Admitted.

JURISDICTION AND VENUE

10.

Defendants admit that this action was brought under the Declaratory Judgment Act, but deny that it was properly brought or that Plaintiff is entitled to any of the relief that it seeks.

11.

Denied.

12.

Admitted.

RESPONSE TO: AHA'S FOCUS ON AFFORDABLE HOUSING

13.

Defendants admit that Plaintiff is a statutorily authorized public authority. Defendants admit that Plaintiff's mission includes affordable housing as described in its charter and bylaws, which are documents that speak for themselves. Defendants deny the allegations of paragraph 13 to the extent they misconstrue or mischaracterize the charter, bylaws or the applicable laws.

14.

Paragraph 14 is a conclusion of law that does not require a response. To the extent a response is required, paragraph 14 is denied.

15.

Paragraph 15 is a conclusion of law that does not require a response. To the extent a response is required, paragraph 15 is denied.

16.

Paragraph 16 is a conclusion of law that does not require a response. To the extent a response is required, paragraph 16 is denied.

RESPONSE TO: THE REVITALIZATION AGREEMENTS AND AMENDMENTS

17.

Defendants deny the allegations of paragraph 17 as they relate to Integral, because Integral has no contractual privity with Plaintiff with regard to any of the transactions at issue in this litigation and is, therefore, not a proper party to this

litigation. The remaining Defendants admit that they entered into contracts with Plaintiff as alleged. Defendants deny the remaining allegations contained in paragraph 17.

18.

Defendants deny the allegations of paragraph 18 as they relate to Integral. Responding further, Defendants deny the allegations of paragraph 18 to the extent they misconstrue or mischaracterize the terms of the Revitalization Agreements, which are documents that speak for themselves.

19.

Defendants deny the allegations of paragraph 19 to the extent they misconstrue or mischaracterize the terms of the Revitalization Agreements, which are documents that speak for themselves.

20.

Defendants deny the allegations of paragraph 20 as they relate to Integral. The remaining Defendants respond by admitting that they entered into Amendments to the Revitalization Agreements ("Amendments") and Option Agreements. The Option Agreements are attached as **Exhibits 1, 2, 3, & 4**. Defendants deny the allegations of paragraph 20 to the extent they misconstrue or mischaracterize the terms of the Amendments, which speak for themselves.

21.

Denied.

22.

Denied.

RESPONSE TO: PRECONDITIONS HAVE NOT BEEN MET FOR PERFORMANCE

23.

Denied.

24.

Defendants deny the allegations of paragraph 24 as they relate to Integral. The remaining Defendants admit that the joint venture has not yet been formed, but aver that the formation of joint ventures was not a condition precedent to the exercise of the options. Responding further, Defendants deny the allegations of paragraph 24 to the extent they misconstrue or mischaracterize the terms of the Amendments and Option Agreements, which speak for themselves.

25.

Defendants deny the allegations of paragraph 25 as they relate to Integral. The remaining Defendants admit that the purchase price for the Further Leverage Properties has not been established because it is to be calculated based upon an appraisal process that requires Plaintiff's participation and Plaintiff has failed and refused to participate.

26.

Defendants admit only that Plaintiff's board has wrongfully failed and refused to approve the transfer of properties under the Option Agreements. Defendants deny

the allegations of paragraph 26 to the extent they misconstrue or mischaracterize the terms of the Option Agreements, which speak for themselves.

27.

Defendants deny the allegations of paragraph 27 to the extent they misconstrue or mischaracterize the Declarations of Trust or the HUD regulations, which speak for themselves.

28.

Admitted. By way of further response, any encumbrances remaining on the property exist because of Plaintiff's breaches of the terms of the Amendments and Option Agreements.

RESPONSE TO: DEFENDANTS' ATTEMPT TO EXERCISE "OPTIONS"

29.

Defendants admit that they exercised the options on November 3, 2016.

30.

Defendants admit that Plaintiff refused to acknowledge the exercise of the options but deny that such refusal was lawful.

31.

Defendants admit that representatives of all parties attended a meeting on January 13, 2017. Defendants deny paragraph 31 to the extent it mischaracterizes the substance of those discussions.

32.

Defendants admit the authenticity of the letter attached to Plaintiff's Complaint as Exhibit 17. Defendants deny the allegations of paragraph 32 to the extent they misconstrue or mischaracterize the letter, which is a document that speaks for itself.

33.

Defendants admit that Plaintiff's board refused to allow Plaintiff to participate in the appraisal process. Defendants deny the remaining allegations of paragraph 33.

34.

Defendants admit they received the letter attached to Plaintiff's Complaint as Exhibit 3. Defendants deny the allegations of paragraph 34 to the extent they misconstrue or mischaracterize the letter, which is a document that speaks for itself.

35.

Defendants admit the authenticity of the letter attached to Plaintiff's Complaint as Exhibit 18. Responding further, Defendants deny the allegations of paragraph 35 to the extent they misconstrue or mischaracterize the letter, which is a document that speaks for itself.

RESPONSE TO: DEFENDANTS' CLAIM OF DEFAULT

36.

Paragraph 36 is denied as to Integral. Responding further, the remaining Defendants admit to having sent default notices through their counsel on August 11,

2017. Copies of the default notices are attached as **Exhibits 5, 6, 7, & 8**. Defendants deny the remaining allegations in paragraph 36.

37.

Defendants deny the allegations of paragraph 37 to the extent they misconstrue or mischaracterize the default notices, which are documents that speak for themselves.

38.

Defendants deny the allegations of paragraph 38 to the extent they misconstrue or mischaracterize the default notices, which are documents that speak for themselves.

39.

Defendants deny the allegations of paragraph 39 to the extent they misconstrue or mischaracterize the default notices, which are documents that speak for themselves.

RESPONSE TO: DEFENDANTS' INTERPRETATION OF THE CONTRACTS IS UNCONSCIONABLE, AGAINST PUBLIC POLICY, CONTRARY TO REGULATIONS, AND INCONSISTENT WITH THE NEEDS OF AHA'S PUBLIC HOUSING COMMUNITY

40.

Defendants admit there is a shortage of affordable housing in Atlanta that is due, in large part, to Plaintiff's mismanagement of its own assets.

41.

Denied. Plaintiff has hundreds of acres of property that have sat undeveloped

for years with no investment or focus from Plaintiff. Additionally, Defendants' development sites across the City of Atlanta have greater and deeper levels of affordability than what is being contemplated in master planned developments that Plaintiff is currently pursuing with other developers.

42.

Denied.

43.

Denied.

44.

Paragraph 44 states legal conclusions to which no response is required. To the extent a response is required, the allegations are denied as stated.

45.

Paragraph 45 states legal conclusions to which no response is required. To the extent a response is required, the allegations are denied as stated.

46.

Paragraph 46 is denied as to Integral. The remaining Defendants admit only that they and Plaintiff negotiated and agreed upon a pricing formula that was incorporated into the Amendments and Option Agreements. Defendants deny the remaining allegations contained in paragraph 46.

47.

Denied.

48.

Paragraph 48 is denied as to Integral. The remaining Defendants deny the allegations of paragraph 48 to the extent they misconstrue or mischaracterize the Amendments, which are documents that speak for themselves.

49.

Admitted.

COUNT I: DECLARATORY JUDGMENT
(Declaration That Conditions Precedent Have Been Satisfied And AHA Is In Breach)

50.

Defendants repeat and incorporate the foregoing as if fully set forth therein.

51.

Denied.

52.

Denied.

53.

Denied.

54.

Denied.

55.

Denied.

56.

Denied.

57.

Responding to paragraph 57, Defendants deny that Plaintiff is entitled to any of the relief it seeks.

COUNT II: DECLARATORY JUDGMENT
(Declaration That the Recommendation Requirement In The Purchase Option And The Declaration Is Unconstitutional)

58.

Defendants repeat and incorporate the foregoing as if fully set forth therein.

59.

Admitted.

60.

Admitted with the caveat that Plaintiff's board has delegated important functions to officers.

61.

Admitted.

62.

Admitted.

63.

The allegations of paragraph 63 are denied to the extent they misquote the Georgia Constitution.

64.

Admitted.

65.

Admitted.

66.

Denied.

67.

Denied.

68.

Denied.

69.

Denied.

70.

Defendants admit that the parties, with the exception of Integral, have an actual controversy but deny the remaining allegations of paragraph 70.

71.

Responding to paragraph 71, Defendants deny that Plaintiff is entitled to any of the relief it seeks.

COUNT III: DECLARATORY JUDGMENT
(Declaration That the Option To Purchase And The Revitalization Agreement Violate O.C.G.A. § 36-30-3(a))

72.

Defendants repeat and incorporate the foregoing as if fully set forth therein.

73.

Admitted.

74.

Defendants neither admit nor deny the allegations of paragraph 74 for lack of knowledge or information sufficient to form a belief as to their truthfulness.

75.

Defendants deny the allegations of paragraph 75 to the extent they misconstrue or mischaracterize the Bylaws, which are documents that speak for themselves.

76.

Paragraph 76 is denied as to Integral, but is admitted as to the remaining Defendants.

77.

Defendants deny the allegations of paragraph 77 to the extent they misconstrue or mischaracterize the Option Agreements, which are documents that speak for themselves.

78.

Paragraph 78 states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

79.

Paragraph 79 states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

80.

Paragraph 80 states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

81.

Paragraph 81 states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

82.

Paragraph 82 states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

83.

Denied.

84.

Denied.

85.

Admitted.

86.

The allegations of paragraph 86 are denied to the extent they misconstrue or mischaracterize the terms of the Amendments and Option Agreements which are documents that speak for themselves.

87.

Denied.

88.

Denied.

89.

Defendants admit that the parties, with the exception of Integral, have an actual controversy but deny the remaining allegations of paragraph 89.

90.

Responding to paragraph 90, Defendants deny that Plaintiff is entitled to any of the relief it seeks.

COUNT IV: DECLARATORY JUDGMENT
(Declaration That Contractual Provisions Are Unenforceable)

91.

Defendants repeat and incorporate the foregoing as if fully set forth therein.

92.

Denied.

93.

Denied.

94.

Denied.

95.

Denied.

96.

Denied.

97.

Denied.

98.

Denied.

99.

Defendants admit that the parties, with the exception of Integral, have an actual controversy but deny the remaining allegations of paragraph 99.

100.

Responding to paragraph 100, Defendants deny that Plaintiff is entitled to any of the relief it seeks.

COUNT V: DECLARATORY JUDGMENT
(Declaration That The Defendants Have Breached Contractual Provisions)

101.

Defendants repeat and incorporate the foregoing as if fully set forth therein.

102.

Denied.

103.

Defendants admit that the contracts contain implied covenants of good faith and fair dealing but deny the remaining allegations in paragraph 103.

104.

Denied.

105.

Defendants admit that the parties, with the exception of Integral, have an actual controversy but deny the remaining allegations of paragraph 105.

106.

Responding to paragraph 106, Defendants deny that Plaintiff is entitled to any of the relief it seeks.

COUNT VI: DECLARATORY JUDGMENT
(Declaration That The Defendants Would Be Unjustly Enriched If The Contracts Were Enforced as Defendants Demand)

107.

Defendants repeat and incorporate the foregoing as if fully set forth therein.

108.

Denied.

109.

Denied.

110.

Defendants admit that the parties, with the exception of Integral, have an

actual controversy but deny the remaining allegations of paragraph 110.

111.

Responding to paragraph 111, Defendants deny that Plaintiff is entitled to any of the relief it seeks.

COUNT VII: DECLARATORY JUDGMENT
(Declaration That Specific Performance Is Not An Available Remedy For Defendants)

112.

Defendants repeat and incorporate the foregoing as if fully set forth therein.

113.

Paragraph 113 is denied as to Integral. The remaining Defendants admit that they are seeking specific performance under the relevant agreements. Defendants deny the remaining allegations of paragraph 113.

114.

Denied.

115.

Denied.

116.

Denied. The parties agreed upon all material terms for the formation and operation of the Owner Entities and, in fact, attached operating agreements to the Amendments. Thus, the "formation" of the joint ventures required only the selection of a name for the Owner Entity and the signatures of the parties on the operating

agreements. *See* Compl., Exs. 8, 9, 10, & 11.

117.

Denied.

118.

Denied.

119.

Defendants admit that the parties, with the exception of Integral, have an actual controversy but deny the remaining allegations of paragraph 119.

120.

Responding to paragraph 120, Defendants deny that Plaintiff is entitled to any of the relief it seeks.

RESPONSE TO: PRAYER FOR RELIEF

Defendants deny that Plaintiff is entitled to the relief it seeks. All other claims, contentions, allegations of prayers for relief not specifically admitted or denied are hereby expressly denied.

III. COUNTERCLAIM OF GRADY LLC, CAPITOL LLC, HARRIS LLC, AND CARVER LLC

1.

Plaintiff/Counterclaim Defendant The Housing Authority of the City of Atlanta, Georgia ("AHA") filed this action to avoid its obligations under Option Agreements it entered into with Defendants/Counterclaim Plaintiffs Grady LLC, Capitol LLC, Harris LLC, and Carver LLC (collectively the "Developer Entities").

The Developer Entities bring this counterclaim in order to enforce their rights under the Option Agreements.

2.

AHA is subject to the jurisdiction and venue of this Court by virtue of filing its Complaint in this Court.

FACTS COMMON TO ALL COUNTS

3.

Each of the Developer Entities executed Revitalization Agreements with AHA in the late 1990s or early 2000s, the purpose of which was to transform the communities in and around distressed and crime-ridden public housing developments, and to transform the lives of those who live in those communities. These purposes would be effectuated by the Developer Entities replacing outdated public housing projects with mixed-income multi-family and single family housing units and retail development, and by providing human services to certain residents in need.

4.

AHA selected the Developer Entities as its development partners following an open and competitive procurement process administered by AHA that yielded a number of qualified respondents. AHA determined that the Developer Entities were the most qualified to assume such a complex and long-range undertaking. AHA awarded additional evaluation points to the Developer Entities for incorporating

mixed income and market rate development into their master development plans in recognition of the stabilizing and beneficial influences these components have on low-income communities. These are the same mixed income and market rate developments that AHA now falsely claims are contrary to its affordable housing mission.

5.

For almost twenty years, the Developer Entities have worked diligently to perform their obligations under the Revitalization Agreements. Through their decades of hard work, the Developer Entities have transformed decayed urban sites into healthy environments for families, created thousands of units of housing reserved for public housing families and other low-income persons, and generated over $75 million thus far for AHA through subsidization of the cost of producing public housing replacement units, ground lease payments, development fees, proceeds from land sales, interest payments, and other fees.

6.

By all accounts, the revitalization projects have been a tremendous success. They are referred to as the "Atlanta Model," and have been replicated across the nation.

7.

Each Revitalization Agreement contains a Revitalization Plan that segregates the development work into various phases. The earlier phases are focused on

satisfying HUD's public housing requirements ("HUD Required Components"), and providing additional affordable units to include workforce housing units. Later phases contemplate market-driven development on certain identified tracts in and around the redeveloped communities (referred to as "Further Leverage Properties") that would be consistent with the overall revitalization plan but on which market rate development is permissible. The Further Leverage Properties may or may not incorporate affordable housing units at the Developer Entities' sole discretion after weighing the risk to the overall development and the ability to generate targeted returns on investors' capital. The Developer Entities, AHA, and HUD struck this delicate balance between low income and market rate development in order to avoid the hopelessness and economic decline that follows an over-concentration of low-income housing as demonstrated by Atlanta's failed experiment with public housing projects.

8.

The Developer Entities and AHA divide the revenue generated through rents, property management and development fees throughout all phases and aspects of the projects, including the Further Leverage Properties, as provided in the Revitalization Agreements.

9.

In the Revitalization Agreements, AHA and the Developer Entities acknowledged that "the financial viability of earlier development phases depends

substantially on the successful completion of the entire [] Revitalization Plan, and that Developer will incur various liabilities with respect to earlier development phases whose risk of default may increase substantially in the event AHA terminates this Agreement for convenience." Compl., Ex. 4 at p. 17, Ex. 5 at p. 13, Ex. 6 at p. 16, and Ex. 7 at p. 14. Accordingly, while AHA had the right to terminate the Revitalization Agreements for convenience, it was required to reimburse the Developer Entities for all development costs and a percentage of the development fees for each of the phases that had not yet closed as of the time of termination.

10.

On September 16, 2011, AHA and each of the Developer Entities executed an Amendment to their respective Revitalization Agreements (the "Amendments"). The Amendments acknowledge that the Developer Entities had completed all of the HUD Required Components under each Revitalization Agreement, they supersede any terms in the Revitalization Agreements relative to market rate development, and they establish AHA's and the Developer Entities' rights and responsibilities with respect to the Further Leverage Properties.

11.

The Amendments grant each of the Developer Entities an option to purchase Further Leverage Properties through one or more "Owner Entities," that are comprised of the Developer Entity and AHA, who will share equally in all profits and losses, and with the Developer Entities being responsible for all development

and financing risk. The purchase price for the Further Leverage Properties is based upon an appraisal process specified in the Amendments and intended to allow the purchaser (the Developer Entities ***and*** AHA) to benefit from any appreciation in the value of the Further Leverage Properties caused by the Developer Entities' development efforts in the immediate area. Even if the purchase price represented a windfall as falsely alleged by AHA, AHA would share equally in any such windfall because it would be a fifty percent owner of the purchasing entity.

12.

The Amendments contain the following terms related to the transfer of the properties subject to an Exercise Notice:

> The parties acknowledge that each transfer and conveyance of a parcel of [Further Leverage Properties] to an [] Owner (1) must be approved by the AHA's Board of Commissioners and (2) may be subject to such HUD imposed deed restrictions, if any, as may be applicable to such parcel. The parties further acknowledge that the [parcel] is presently subject to a HUD-required declaration of trust (the "Pending HUD Restrictions"). AHA shall submit the contemplated conveyance of a parcel [] to its Board of Commissioners (together with a recommendation by AHA staff to consummate such conveyance) within two months following exercise by Developer of its purchase rights under the Option Agreement. In the event of AHA's failure or refusal to consummate a conveyance pursuant to the terms of the Option Agreement, Developer shall be entitled to seek the remedy of specific performance. AHA shall use its best, reasonable efforts acting in good faith to obtain any required HUD approvals and releases of the Pending HUD restrictions as expeditiously as possible following the Grant Close-out Date; ….

Amendments, § 2(c)(i)(B) and (c)(ii)(B).

13.

In accordance with the Amendments, AHA entered into an Option Agreement with each of the Developer Entities. *See* Exs. 1, 2, 3, and 4.

14.

On September 23, 2011, the Development Entities recorded the Option Agreement by filing corresponding Memoranda of Option in the property records of the Fulton County Superior Courts. True and correct copies of the Memoranda of Options are attached as **Exhibits 9**, **10**, **11**, **& 12**.

15.

AHA's then-CEO and President, Renee Glover, executed the Revitalization Agreements, Amendments, and Option Agreements pursuant to authority generally conferred upon her by AHA's Bylaws and expressly conferred upon her with respect to these particular agreements by AHA's board. *See* **Exhibit 13** at pp. 9–12 (Carver LLC) and 12–15 (Harris LLC); **Exhibit 14** at pp. 11–13 (Capitol LLC) and 13–16 (Grady LLC).

16.

AHA and its board have since ratified the Amendments and the Option Agreements on several occasions in public documents and in private transactions. As just one example, AHA acknowledged Grady LLC's rights to purchase and develop Further Leverage Property when the City of Atlanta wished to build a natatorium on a parcel of Further Leverage Property referred to as the Antoine Graves Annex site

(the "Annex site"). AHA agreed to credit Grady LLC over $1,000,000 against the purchase price of the remaining Further Leverage Property as compensation for Grady LLC's loss of development rights on the Annex site. The June 29, 2016 Agreement Regarding Release of Rights to Antoine Graves Annex Site ("Annex Release Agreement") between AHA and Grady Developer provides in relevant part:

> The Authority and Grady Developer acknowledge and agree that **the compensation to Grady Developer must be calculated in a manner that takes into account the loss in development density to the remaining Further Leverage Properties by reason of the removal of the Annex from those properties….**
>
> The Authority and Grady Developer agree that **the sum of $1,016,000.00 (the "Annex Release Price") is a fair and reasonable amount to compensate Grady Developer for such losses and for the full release of any and all claims** relating in any way to the loss of the Annex site.

Annex Release Agreement, p. 2, ¶ G (emphasis added). A true and correct copy of the Annex Release Agreement is attached as **Exhibit 15**.

17.

If, as AHA now contends, Grady LLC had no rights to the Further Leverage Property, AHA would not have agreed to compensate Grady LLC over $1,000,000 for the loss of those rights. The Annex Release Agreement was executed by Ms. Glover's successor, Joy W. Fitzgerald, AHA's then President and CEO and approved by AHA's board, which constitutes a ratification of any alleged *ultra vires* agreements made by Ms. Glover that relate to the Further Leverage Properties. *See* **Exhibit 16** at pp. 4–6.

18.

The Annex Release Agreement was the solution agreed upon by AHA and Grady LLC to accommodate the natatorium on the Annex site. The agreement followed months of negotiations between Grady LLC and AHA, during which Mayor M. Kasim Reed made an overt threat to Defendants. Specifically, on or about May 21, 2014, City of Atlanta Chief Operating Officer Michael Geisler and City of Atlanta Commissioner of Parks and Recreation Amy Phuong requested a meeting with Integral's CEO to inform him that they had been directed to "to deliver one message to you and one message only." Ms. Fitzgerald of AHA and Eric Pinckney of Integral were also present for the meeting. Mr. Geisler delivered the message: "You will relinquish your rights to [the Annex site to accommodate the natatorium], otherwise we will make it difficult, if not impossible, for you to do business in the City of Atlanta." Mr. Geisler then repeated the message verbatim, and Ms. Phuong confirmed that he had accurately relayed the message.

19.

On November 3, 2016, each of the Developer Entities properly exercised their options to purchase the Further Leverage Properties ("Exercise Notices"). As required by the Option Agreements, each Exercise Notices designates the portion of the Further Leverage Properties that are subject to the notice, and each Exercise Notice "set[s] forth the calculation of the Purchase Price" by citing to Section 4 of the Option Agreements, which incorporates the appraisal price determination

process.

20.

AHA claimed in a November 18, 2016 letter that the Exercise Notices were defective because they did not contain "a precise determination of the proposed purchase price." A true and correct copy of the November 18, 2016 letter is attached as **Exhibit 17**. The process for determining the price requires an appraisal by a panel of three appraisers, one of whom is appointed by the Developer Entity, one by AHA, and the third is selected by the two appointed appraisers. Because the Developer Entity cannot unilaterally determine the purchase price, it fulfilled its obligation of "set[ting] forth the calculation of the purchase price" by referring to the relevant provision in the Option Agreement.

21.

On February 1, 2017, AHA's board voted against moving forward with the appraisal process under the Option Agreements.

22.

After additional negotiations failed to resolve the dispute, the Developer Entities each sent a Notice of Default to AHA on August 11, 2017. *See* Exhibits 5–8.

23.

On August 18, 2017, AHA responded by unequivocally denying that it was in default. A true and correct copy of AHA's August 18 letter is attached as **Exhibit 18**.

24.

AHA's board exercised bad faith by refusing to engage in the appraisal process, thus frustrating the Developer Entities' ability to exercise their option rights.

25.

AHA has also argued that HUD approval is required before AHA can transfer the Further Leverage Properties to the Developer Entities and that HUD will not approve the transfers without first knowing the purchase price. To the extent HUD approval is required, it is AHA's bad faith and misconduct that is preventing HUD from approving the transactions.

26.

AHA also contends that AHA's board must approve the proposed conveyances when it is clear from the Amendments and Option Agreements that AHA's board is contractually obligated to approve the conveyances, thus rendering board approval a ministerial function.

27.

AHA's current CEO's refusal to recommend that AHA's board approve the conveyances and the board's refusal to approve the conveyances constitute breaches of their respective obligations under the Amendments and the Option Agreements, and breaches of the duty of good faith and fair dealing.

28.

The real reason for AHA's obstructionist tactics is that, in response to public

and media criticism about Atlanta's gentrification and the displacement of low-income residents, AHA recently adopted what it calls a "New Paradigm" that purports to require its development partners to create more affordable housing units. The only problem is that AHA is not applying the New Paradigm strictly on a going-forward basis. Rather, it is attempting to use the New Paradigm as a justification for reneging on terms agreed upon years ago with the Developer Entities, and upon which the Developer Entities have relied to their detriment.

29.

As alleged herein, AHA has acted in bad faith, has been stubbornly litigious, or has caused the Developer Entities unnecessary trouble and expense.

COUNT I – BREACH OF CONTRACT

30.

The Developer Entities incorporate by reference all proceeding paragraphs of their Counterclaim as though set forth fully herein.

31.

AHA and the Developer Entities entered into the Revitalization Agreements, the Amendments, and the Option Agreements.

32.

The Revitalization Agreements, the Amendments, and the Option Agreements are binding and enforceable against all parties thereto.

33.

AHA has breached the Amendments and Option Agreements by failing and refusing to accept the Developer Entities' Exercise Notices and by repudiating AHA's obligations under the Amendments and Option Agreements.

34.

The Developer Entities have suffered and will continue to suffer substantial damages because of AHA's breaches of the Amendments and Option Agreements including, without limitation, loss of valuable business opportunities, loss of favorable interest rates, and higher costs of construction.

35.

Accordingly, the Developer Entities are entitled to recover all actual and compensatory damages from AHA in amounts to be shown at trial.

COUNT II – REQUEST FOR WRIT OF MANDAMUS (CATHERINE BUELL)

36.

The Developer Entities incorporate by reference all proceeding paragraphs of their Counterclaim as though set forth fully herein.

37.

Counterclaim Defendant Catherine Buell ("Buell") is a public official by virtue of her serving as the current President and CEO of AHA.

38.

Under the Amendments, "AHA shall submit the contemplated conveyance of

a parcel of [] Land to its Board of Commissioners (together with a recommendation by AHA staff to consummate such conveyance) within two months following exercise by Developer of its purchase rights under the Option Agreement." Compl., Exs. 8, 9, 10, and 11 at p. 7.

39.

The Developer Entities properly exercised their purchase rights under the Option Agreements and Amendments on November 3, 2016.

40.

Buell failed and refused to cause AHA to submit the contemplated conveyances to AHA's board as required by the Amendments.

41.

AHA wrongfully claimed that the Exercise Notices are invalid because they do not contain the purchase price when it is clear from the Amendments and Option Agreements that the purchase price may only be derived through an appraisal process that requires participation by AHA.

42.

AHA has failed and refused to participate in that appraisal process in breach of its obligations under the Amendments and Option Agreements.

43.

Buell failed and refused to faithfully perform her clear legal duties to: (i) submit the contemplated conveyance to AHA's board; (ii) recommend that the board

accept the contemplated conveyances; and (iii) participate in the appraisal process set forth in the Amendments and Option Agreements.

44.

Alternatively, Buell has committed a gross abuse of discretion in failing and refusing to: (i) submit the contemplated conveyances to AHA's board; (ii) recommend that the board accept the contemplated conveyances; and (iii) participate in the appraisal process set forth in the Amendments and Option Agreements.

45.

Because the Further Leverage Properties that are subject to the Option Agreements are unique, the Developer Entities are without an adequate remedy at law.

46.

Accordingly, the Developer Entities are entitled to a writ of mandamus that compels Buell to: (i) immediately submit the contemplated conveyances to AHA's board; (ii) recommend that the board accept the contemplated conveyances; and (iii) participate in the appraisal process set forth in the Amendments and Option Agreements.

COUNT III – SPECIFIC PERFORMANCE (AHA)

47.

The Developer Entities incorporate by reference all proceeding paragraphs of their Counterclaim as though set forth fully herein.

48.

The Amendments and Option Agreements obligate AHA to sell the Further Leverage Properties subject to the Option Agreements to the Owner Entities designated by the Developer Entities. Said Owner Entities include AHA as a 50% partner pursuant to the Amendments and Option Agreements.

49.

The Developer Entities properly exercised their option rights on November 3, 2016.

50.

AHA has wrongfully claimed that the Exercise Notices are invalid because they do not contain the purchase price when it is clear from the Amendments and Option Agreements that the purchase price may only be derived through an appraisal process that requires participation by AHA.

51.

AHA has failed and refused to participate in that appraisal process in breach of its obligations under the Amendments and Option Agreements.

52.

AHA has breached the terms of the Amendments and Option Agreements by failing and refusing to sell the Further Leverage Properties subject to the Option Agreements to the Owner Entities designated by the Developer Entities.

53.

Because the properties are unique, the Developer Entities are without an adequate remedy at law.

54.

Accordingly, the Developer Entities are entitled to a decree of specific performance compelling AHA take all steps necessary to sell the Further Leverage Properties to the Owner Entities designated by the Developer Entities.

COUNT IV – PROMISSORY ESTOPPEL

55.

The Developer Entities incorporate by reference all proceeding paragraphs of their Counterclaim as though set forth fully herein.

56.

AHA has claimed that the Amendments and Option Agreements are unenforceable.

57.

While the Developer Entities vigorously disagree with that claim, in the unlikely event that AHA prevails on that claim, AHA would nevertheless be estopped from repudiating the Option Agreements.

58.

AHA and the Developer Entities entered into the Revitalization Agreements with the express understanding that the early phases of the developments would be

heavily weighted towards affordable housing, while the latter phases – which contemplated more market rate development – would be the Developer Entities' primary financial remuneration for taking on such long term, complicated, and risky projects.

59.

To that end, AHA and the Developer Entities acknowledged in the Revitalization Agreements that "the financial viability of earlier development phases depends substantially on the successful completion of the entire [] Revitalization Plan, and that Developer will incur various liabilities with respect to earlier development phases whose risk of default may increase substantially in the event AHA terminates this Agreement for convenience." Compl., Ex. 4 at p. 17, Ex. 5 at p. 13, Ex. 6 at p. 16, and Ex. 7 at p. 14.

60.

AHA promised the Developer Entities that they would have options to purchase the Further Leverage Properties, which could be exercised once the Developer Entities completed their HUD Required Components and other affordable housing obligations contemplated for the earlier phases of the developments.

61.

AHA should have expected that the Developer Entities would rely on the promise that they would be permitted to purchase the Further Leverage Properties at

the negotiated prices and that they would be permitted to develop market rate housing and retail on those properties.

62.

The Developer Entities relied to their detriment upon these promises.

63.

The Developer Entities fully performed their affordable housing obligations under the earlier phases of the developments as confirmed in the Amendments.

64.

Injustice can only be avoided by enforcement of the promises made by AHA.

65.

Accordingly, the Developer Entities are entitled to enforce the promises made to them by AHA and upon which they relied to their detriment, thereby entitling the Developer Entities to all actual and compensatory damages and an award of specific performance.

COUNT V – ATTORNEYS' FEES AND EXPENSES

66.

The Developer Entities incorporate by reference all proceeding paragraphs of their Counterclaim as though set forth fully herein.

67.

In breaching its obligations under the Amendments and Option Agreements, AHA has acted in bad faith, has been stubbornly litigious, or has caused the

Developer Entities unnecessary trouble and expense.

68.

Accordingly, the Developer Entities are entitled to an award of reasonable attorneys' fees and expenses in amounts to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Counterclaim Plaintiffs Grady Redevelopment, LLC, Capitol Gateway, LLC, Harris Redevelopment, LLC, and Carver Redevelopment, LLC, pray for the following relief:

1. An award of actual and compensatory damages for AHA's breaches of the Amendments and Option Agreements, plus prejudgment interest;

2. A writ of mandamus compelling Buell to: (i) immediately submit the contemplated conveyances to AHA's board, (ii) recommend that the board accept the contemplated conveyances, and (iii) participate in the appraisal process set forth in the Amendments and Option Agreements;

3. A decree of specific performance compelling AHA to transfer the Further Leverage Properties in accordance with the terms and conditions of the Amendments and Option Agreements;

4. An award of all actual and compensatory damages and a decree of specific performance against AHA based upon Count IV (Promissory Estoppel), plus prejudgment interest;

5. An award of reasonable attorneys' fees and expenses under O.C.G.A. § 13-6-11; and

6. Such other and further relief as the Court deems just and proper.

Respectfully submitted, this 4th day of November, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2017, I electronically filed the foregoing **DEFENDANTS' AFFIRMATIVE DEFENSES, ANSWER, AND COUNTERCLAIM** via Odyssey e-File GA, which will email and electronically serve the following attorneys of record:

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