

1. This action arises out of the City of Charleston’s \$14.5 million award of Urban Development Action Grant (UDAG) grant funds from the United States Department of Housing and Urban Development in 1983, and its agreement to “make available” \$10 million of those funds to the predecessor of the Defendant Charleston LDC d/b/a LDC (hereinafter referred to as “Defendant LDC” or “LDC”) for the limited purpose of funding the development of an area of Downtown Charleston known as the Belmond Charleston Place under Title I (“Community Development”) of the Housing and Community Development Act of 1974. The action seeks to remedy the Defendant LDC’s unjust and improper retention of \$22.8 million in UDAG funds the Charleston Place developer repaid to the LDC in June of 2016 for its own corporate purposes.

2. The Defendant LDC has refused to comply with the parties’ agreement to use the repaid funds for additional redevelopment projects within the City of Charleston, such as development of workforce and affordable housing. Rather, the Defendant LDC has sought to keep the funds for its own corporate goals. The City seeks a return of the funds so they may be used for their intended purpose or alternatively seeks an order of this Court requiring Defendant LDC to use the funds within the City of Charleston at the direction and approval of City Council for the benefit of the Citizens of the City of Charleston.

3. John Tecklenburg also seeks to hold Defendant LDC accountable for violations of the South Carolina Freedom of Information Act, and its refusal to operate with the transparency required under the statute.

NATURE OF THE MEMBER DERIVATIVE ACTIONS

4. This is a member derivative action brought by Plaintiffs John Tecklenburg and Joe Riley in the name and for the benefit of nominal Defendant Charleston LDC d/b/a LDC formally known as Charleston Citywide Local Development Corporation against the Executive Committee

of the Board of Directors and a former executive, namely Sharon Brennan, Richard K. Yonce, Carol S. Hubbard, Chris Fisher, and Bryan McNeal, Jr. (hereinafter “Executive Committee and Executive Director Defendants”). This action arises from the Executive Committee and Executive Director Defendants’ breach of their fiduciary, common law, and statutory duties to the members causing damage to the corporation and its members.

PLAINTIFFS

5. Plaintiff City of Charleston, South Carolina, is a municipality organized under the laws and constitution of the State of South Carolina.

6. John Tecklenburg is a citizen of Charleston County, South Carolina and has served as Mayor of the City of Charleston since January 11, 2016. Mr. Tecklenburg has served as a member of the LDC and its predecessors since April of 2017.

7. Joseph P. Riley, Jr. is a citizen of Charleston County, South Carolina and served as the Mayor of the City of Charleston from 1975 until January of 2016. Mr. Riley was a founding member of the LDC’s predecessor and has been a continuous member of the LDC and its predecessors since 1979.

DEFENDANTS

8. Defendant LDC is a 26 U.S.C. §501(c)(4) nonprofit, organized under the laws of the State of South Carolina, with its principal place of business located at 2 Race Street, Charleston, South Carolina.

9. In 1979, Defendant LDC was initially formed as a nonprofit “social welfare organization” pursuant to the South Carolina Nonprofit Act and under the name the Downtown Charleston Local Development Corporation. In 1982 the entity changed its name to Charleston Central Local Development Corporation (“Charleston Central LDC”). In 1990, Charleston Central

LDC dissolved and the entity Charleston Citywide Local Development Corporation assumed all assets and liabilities of Charleston Central LDC. (The entities Downtown Charleston Local Development Corporation, Charleston Central Local Development Corporation, and Charleston Citywide Local Development Corporation are herein jointly the “predecessor entities”). Defendant LDC purports to have changed its name again in April of 2018 to “Charleston LDC d/b/a LDC”.

10. To the extent it is determined in this action that LDC did not comply with its bylaws and the laws of the State of South Carolina when it attempted to change its name, and for purposes of the causes of action and/or claims brought against LDC, the Plaintiffs’ relevant claims are also brought against Charleston Citywide Local Development Corporation (“Charleston Citywide LDC”). Where “Defendant LDC” is used within the causes of action stated below in this Complaint, that term also refers to and/or otherwise incorporates the Charleston LDC’s predecessor entities, including but not limited to, Charleston Citywide LDC.

Executive Committee and Executive Director Defendants

11. Defendant Sharon Brennan was, during all relevant times, an executive officer of Charleston LDC.

12. Richard K. Yonce holds the position of President of the LDC’s Board of Directors, and serves on the corporation’s executive committee.

13. Carol S. Hubbard holds the position of Vice President of the LDC’s Board of Directors, and serves on the corporation’s executive committee.

14. Chris Fisher also holds the position of Vice President of the LDC’s Board of Directors, and serves on the corporation’s executive committee.

15. Bryan McNeal, Jr. holds the position of Treasurer of the LDC's Board of Directors, and serves on the corporation's executive committee.

JURISDICTION AND VENUE

16. The Court has jurisdiction of this action because both Plaintiffs and Defendants are located within Charleston County, South Carolina and this litigation arises out of actions that took place in Charleston County, South Carolina.

17. Venue is proper in this Court since all matters giving rise to this litigation occurred in Charleston County, South Carolina.

UDAG AND FOIA ALLEGATIONS

Downtown Charleston LDC and Charleston Central LDC

18. In 1979, Joseph P. Riley, Jr., in his role as Mayor of the City of Charleston, spearheaded the formation of the Downtown Charleston Local Development Corporation ("Downtown Charleston LDC") for the benefit of the residents and citizens of the City of Charleston.

19. The Downtown Charleston LDC's founding documents state its purpose is to "further the economic development in the City of Charleston, to promote and assist the growth and development of business concerns, including small business concerns in the City of Charleston, to promote and assist the development of residential housing in the City of Charleston."

20. The Downtown Charleston LDC published its principal objective as seeking to "benefit the community by fostering increased employment opportunities and expansion of business and industry for the citizens of the City of Charleston, thereby lessening the burdens of government and combating community deterioration."

21. In 1982, the Downtown Charleston LDC changed its name to the Charleston Central Local Development Corporation (“Charleston Central LDC”). The Charleston Central LDC maintained the same stated purpose and principal objective as the Downtown Charleston LDC. The Charleston Central LDC served no region outside the City of Charleston, and conducted no work in any other areas.

22. Based on the stated principal objective of the corporation’s predecessor entities, LDC has received significant financial support for its operations from the City of Charleston. The City also provided in-kind support to the LDC entities, including but not limited to, allowing the LDC entities to use at no cost City office space (valued at over \$70,000.00 per year), City equipment and materials, and City employees.

HUD Awards \$14,500,000.00 Grant to the City of Charleston

23. In 1977 the United States Department of Housing and Urban Development (HUD) began administering the Urban Development Action Grant (UDAG) program. The Federal Register states the purpose of the program is to “assist cities and urban counties which are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery.” In awarding UDAG funds to cities, HUD intended to create new jobs and help retain existing ones, especially for low and moderate income persons, improve the tax base for the city receiving the award, and “begin a process of economic development that will improve the economic and fiscal position of the cities receiving the grants.”

24. A key component of the UDAG program was targeting specific municipalities. Eligible cities are required to compete for action grant awards. HUD encouraged cities to use their Action Grants as loans to developers to accomplish large scale projects with significant economic impact for the selected community receiving the award. The UDAG program intended the recipient

cities to benefit not only from the initial development project but also from developer repayments arising from the project. The UDAG program intended the repayment to provide the recipient City with a future source of funds for further redevelopment efforts.

25. The intent of the UDAG program was for the awarded funds to continue to benefit the targeted municipality in perpetuity. The program was designed so that loan repayments for the initial development will subsequently be provided back to recipient cities for further economic development activities going forward. “Loan repayments provide the city with funds for future economic development projects.”

26. The Mayor of the City of Charleston, Mayor Joseph P. Riley, Jr., worked to obtain funding through the UDAG program for the benefit of the City of Charleston. The expectation of significant repayment funds was an important motivating factor for the City to seek the UDAG award in the first place. Mayor Riley’s efforts were based upon the understanding that any UDAG funds obtained would benefit the City of Charleston through the stated purposes of the program.

27. In November of 1983, the United States Department of Housing and Urban Development awarded the City of Charleston an Urban Development Action Grant (“UDAG”) in the amount of \$14,500,000.00 for the development of an area located in downtown Charleston that is now known as the Belmond Charleston Place (hereafter “Charleston Place”).

Development of Charleston Place in Downtown Charleston

28. As part of the City’s successful agreement with the Department of Housing and Urban Development, (“UDAG Agreement”) the City agreed to “make available” \$10,000,000.00 of the UDAG funds for the limited purpose of allowing Charleston Central LDC to lend the UDAG funds to the developer of the Charleston Place. The Project was also referred to as the “Charleston Center Project”.

29. As part of the UDAG Agreement, the Charleston Central LDC represented to the City of Charleston that it was “desirous of revitalizing depressed areas in the downtown area of the City of Charleston.” At the time of the Agreement, the Charleston Central LDC’s mission and stated purpose was solely focused on the economic development of the City of Charleston and no other areas. The City of Charleston relied upon such representations in making the funds at issue available to Charleston Central LDC.

30. The City chose Charleston Central LDC as the conduit for the UDAG funds because it operated as an arm of the City. Charleston Central LDC was created by the City’s mayor, operated out of City offices, and used City employees as its staff.

31. Given the Charleston Central LDC’s representations that it entered into the UDAG Agreement to serve the City of Charleston, and its stated purpose and mission to serve the City of Charleston, the City had no reason to suspect that the LDC would possibly one day attempt to keep the repaid funds for its own benefit and/or use the funds to serve an area beyond the City of Charleston.

32. The City relied on the Charleston Central LDC’s representations that it solely served the economic development of the City of Charleston when it decided to make the UDAG funds available for it to loan to the Charleston Place developer. If the City had known the entity would attempt to keep the repaid funds for its own benefit and/or use the funds to serve an area beyond the City of Charleston, the City would not have made the UDAG funds available to the Charleston Central LDC.

33. In a 1983 City Council Meeting, Mayor Joe Riley, Jr. presented to Charleston City Council the expected benefit the City hoped to receive from the developer’s loan repayments after the project was completed. The minutes from the City Council meeting state: “The Mayor

estimated to City Council that in some years several hundred thousand dollars would be generated from this project which could be used for community development activities. These would include arts programs, housing rehabilitation, infrastructure improvements, the King Street Façade Improvement Program, public transportation services, park construction and maintenance, parking programs, revitalization projects, small business assistance, and other eligible community development activities. The important fact was that the money would be repaid to the City for the City's benefit.”

34. The UDAG Agreement purposefully used the phrase “make available” rather than terms such as “provide” or “give” to describe the City's obligations towards the UDAG funds. The City had no intent to permanently give up its right to govern the use of those funds to Charleston Central LDC or anyone else. The intention of the parties at the time of the UDAG Agreement was that once the Charleston Central LDC received the loan repayments back from the developer, the LDC would look to the City of Charleston as the true grant recipient for approval over how the repaid funds would be used. The intention of the parties at the time of the UDAG Agreement was that the repaid funds would be used only within the City of Charleston.

35. The parties intended that the City would identify to the LDC the priority for the use of the repaid UDAG funds, and before the LDC could use the repaid funds, “a public hearing” would be held and “final approval by City Council would be required”. The parties intended that the repaid funds would be used at the City's direction for activities within the City of Charleston that were eligible under Title I of the Housing and Community Development Act of 1974, as amended.

36. The City has always been, and remains, the Grant Recipient of the UDAG funds. The Charleston Central LDC was merely a “conduit” for those funds to receive the repayments

and thereafter flow back to the City of Charleston. Once the developer repaid the loan in full, the purpose for the City making those funds available under the UDAG Agreement had been fulfilled, and the repaid money was to be used at the direction of the City of Charleston through the conduit of Charleston Central LDC.

37. Charleston Central LDC knew at the time of the agreement that once the developer repaid the loan, the entity was to look to the City of Charleston as the grant recipient for approval to use the repaid funds. This obligation was passed on to Charleston Central LDC's successors in interest—Citywide LDC and later LDC.

38. The City of Charleston never relinquished its rights to the UDAG funds. The City of Charleston simply made those funds available to the LDC for the limited purpose of loaning the funds to the Charleston Place developer.

39. Absent the right to direct and approve the LDC's use of the repaid UDAG funds, the City would never have made the UDAG funds available to the LDC.

40. In the UDAG Agreement, the LDC acknowledged that “no transfer of grant funds by the City to [the LDC] shall be or be deemed to be an assignment of grant funds,” and that the LDC did not “succeed to any rights, benefits or advantages of the City under the UDAG Grant, or attain any rights, privileges, authorities or interests in or under the UDAG Grant.”

41. The City never relinquished its right to direct and approve the use of the repaid UDAG funds. The City intentionally avoided a transfer of all rights to the UDAG funds, and by merely “mak[ing] available” the UDAG funds to Charleston Central LDC for a limited purpose, the City retained the rights to demand return of the repaid UDAG funds if the LDC failed to comply with the City's direction and approval over how those funds should be spent.

42. In 1984, after receiving the UDAG Grant, the City made available \$10,000,000.00 to Charleston Central LDC, and Charleston Central LDC thereafter loaned the UDAG funds to the Charleston Place developer.

43. The Charleston Place was successfully built and opened in 1986.

Repayment of the Loan by the Charleston Place Developer

44. In October of 1990, the Charleston Central LDC dissolved and became the Charleston Citywide Local Development Corporation (“Charleston Citywide LDC”). The Charleston Citywide LDC assumed all the assets and liabilities of the Charleston Central LDC and became its successor in interest.

45. As of October of 1990, the developer of the Charleston Place Hotel (“Developer”) had made no loan repayments. At that time, the Charleston Citywide LDC asked the City to negotiate repayment with the Developer since the City would ultimately receive the benefit of the funds once they were fully repaid.

46. City officials and employees continued to work to negotiate with the Developer for repayment of the loan. Under the terms of the loan, the Developer was allowed to withhold repayment until certain conditions were satisfied, including the development of becoming cash positive. Otherwise, the loan repayment was not due until 2028.

47. Outside of the Charleston Place loan, the LDC’s assets as of 2016 were approximately \$8.8 million, including approximately \$2.9 million in cash and just under \$1.8 million in loans.

48. In June of 2016, the longstanding efforts of Mayor Riley and other City officials to negotiate repayment resulted in the Developer’s agreement to repay the loan for the Charleston Place development project. Under the deal negotiated by the City, the Developer agreed to pay

back the loan principal of \$10,000,000.00 in original UDAG funds plus interest calculated at an approximate rate of 3.356%, which totaled a repayment of \$22,818,607.00.

49. On June 17, 2016, the Developer paid the Charleston Citywide LDC \$22,818,607.00 to satisfy the loan of the UDAG funds for the Charleston Place development project.

The Executive Director and Executive Committee’s Plan to Retain the UDAG Funds

50. On June 19, 2016, the headline published in the Post and Courier, the local Charleston newspaper, stated “City revitalization gets \$22.8 million boost.” The June 19, 2016 article continued stating “The city of Charleston has about \$22.8 million in new money for affordable housing and economic development efforts now that Belmond Charleston Place has paid back a loan that dates to the construction of the luxury lodging.” The June 19, 2016 article quotes Mayor Riley’s statement that “the City’s loan was well-secured by the luxury property and was accruing interest.” The article also quotes Sharon Brennan, the executive director of the Charleston Citywide LDC, who stated “the \$22.8 million will be used only within the city limits. . . .” The article goes on to quote Ms. Brennan's statement that “The city as a whole will benefit from these funds being deployed for revitalization and redevelopment.”

51. Soon after receiving the UDAG repayment, however, Ms. Brennan and the Charleston Citywide LDC decided to retain the funds and to avoid having to comply with the direction and approval of the City over the use of the repaid UDAG funds. The enormity of the UDAG funds caused the Executive Committee and Executive Director Defendants to recognize the potential to use the \$22.8 million in UDAG funds to transform their entity into a much larger and more powerful corporation. The Executive Committee and Executive Director Defendants developed grand plans to grow the entity “statewide”.

52. The \$22.8 million in UDAG funds “opened up many new possibilities for the LDC, including the products and services it could offer and the geography it could cover.” The LDC saw the repaid funds as the resources they needed to become “a \$100 million CDFI (Community Development Financial Institution)”. Expanding the LDC statewide, and growing into a “\$100 Million CDFI” would bring personal bring personal attention and influence to the Executive Committee and Executive Director Defendants, and bolster their personal reputation and careers.

53. Shortly after receiving the \$22.8 million in UDAG funds the LDC worked with outside consultants to develop a strategy to separate from the City of Charleston and retain the \$22.8 million for its own use and benefit and operate state wide. The LDC planned for a “higher volume of lending” outside the City of Charleston and towards that end, planned to “move out of its City of Charleston offices, [and] change its Executive Director from a City employee to an employee of the LDC. . . .”

54. As of December 2018, the LDC has used the UDAG funds to fund numerous business loans for businesses operating outside the City of Charleston.

55. The LDC’s goal over the next three years is to lend over \$23.5 million of the UDAG funds for business loans throughout South Carolina.

The City’s Attempt to have the UDAG Funds Returned

56. Unaware of the LDC’s plans to keep the funds for its own use and benefit, the City sought to work with the LDC to develop the most efficient way to use the funds to benefit the residents and citizens of the City of Charleston. In response to discussions about how to facilitate the return of the repaid UDAG funds, the LDC suggested that the City prepare and submit a formal application for funding.

57. The City never relinquished its rights to the UDAG funds as the grant recipient from HUD. The City satisfied its obligation under the UDAG Agreement to make the funds available to loan to the Charleston Place developer. Since the purpose of making the funds available had been fulfilled, the LDC should have complied with the direction and approval of the City over the use of the repaid UDAG funds rather than require the City to submit an “application” for the funds.

58. As a matter of efficiency and as an attempt to avoid a dispute with the LDC, the City complied with the LDC’s request for a formal application. On February 21, 2017, the City submitted a formal application for the return of an initial \$10,000,000.00 of the UDAG funds, which the City planned to use to create affordable and workforce housing in the City.

59. In March of 2017, the LDC Board of Directors voted to return \$10,000,000.00 of the UDAG funds back to the City for the purpose of affordable and workforce housing. The Board of Directors also imposed a “1%” administrative fee as a condition to the award (\$100,000.00). The LDC planned to require the City pay this “1%” fee as a condition to return the requested \$10,000,000.00 of UDAG funds.

60. The Executive Committee and Executive Director Defendants thereafter purposefully stalled finalizing the transfer of the \$10,000,000.00 to the City as the Board voted and promised, while they worked on their plans to separate from the City.

61. The City was concerned that the LDC imposed a 1% fee as a condition to returning the funds, but in the interest of efficiency and avoiding a dispute with the LDC, the City informed the LDC that it accepted the \$100,000.00 fee (i.e. 1% of \$10,000,000.00) in order to efficiently move forward.

62. In response, the Executive Committee and Executive Director Defendants changed the terms of the fee to interpret “1%” as “1% annually over a 10 year term” and as a basis to demand a \$1,000,000.00 fee from the City. The City requested justification for the LDC to charge the City \$1,000,000.00, given the LDC presents itself as a nonprofit entity and had previously promised only a \$100,000 fee. To date, the LDC has provided no justification.

63. In October of 2018, the LDC’s Board of Directors voted to “rescind” the Board’s previous vote to return \$10,000,000.00 to the City.

DERIVATIVE ACTION ALLEGATIONS

LDC’s Attempts to Eliminate the Rights of its Members

64. Each and every allegation contained within this Complaint is incorporated and realleged as if fully set forth herein verbatim.

65. Since its inception, the LDC and its predecessor entities have operated as a non-profit membership corporation governed by the South Carolina Nonprofit Corporation Act. The LDC receives tax exempt under Internal Revenue Code 501(c)(4).

66. As a membership corporation, the members of the LDC had certain rights such as the power to vote for the board of directors and approve certain actions.

67. As of April of 2018, the LDC had thirty-six (36) members, many of whom were current or former employees of the City of Charleston. As of April of 2018, both former Mayor Joe Riley, Jr. and current Mayor John Tecklenburg were members of the LDC and the membership of the LDC had always been individuals who work and live in and/or around the City of Charleston.

68. Upon information and belief, Executive Committee and Executive Director Defendants during were responsible for providing the required notice to the members in advance of the April 4, 2018 annual member meeting.

69. The Executive Committee and Executive Director Defendants saw the repaid funds as the resources they needed to expand the LDC statewide and become “a \$100 million CDFI (Community Development Financial Institution)”. Upon information and belief, expanding the LDC statewide, and growing into a “\$100 Million CDFI” would bring personal attention and influence to Executive Committee and Executive Director Defendants, and bolster their personal reputations and careers.

70. Upon information and belief, the Executive Committee and Executive Director Defendants feared that many of the members understood the history of the UDAG funds and the City as the intended beneficiary of those funds and would ultimately elect a Board of Directors who would be in favor using the returned UDAG funds consistent with the direction and approval of the City of Charleston, or returning the repaid UDAG funds back to the City of Charleston.

71. If the repaid UDAG funds were used consistent with the direction and approval of the City of Charleston, or returned to the City, the Executive Committee and Executive Director Defendants would be unable to expand the LDC statewide, and could not achieve “\$100 million CDFI” status which they sought to bolster their personal reputations, attention and influence rather than use the funds to benefit the citizens of the City of Charleston as they were intended.

72. Upon information and belief, at some point after receiving the UDAG repayment, the Executive Committee and Executive Director Defendants developed a plan to eliminate the membership of the corporation so the Board of Directors would no longer be accountable to members who sought to use the repaid UDAG funds to benefit the citizens of the City of Charleston as intended.

73. Upon information and belief, as part of the strategy of the Executive Committee and Executive Director Defendants to separate the LDC from the City of Charleston and eliminate

their fiduciary, statutory, and common law duties to be accountable to the corporate membership, the Executive Committee and Executive Director Defendants decided to change the LDC's "nonprofit status from a 501(c)(4) to a 501(c)(3)."

74. Under the Internal Revenue Code, "501(c)(3)" is the tax provision that applies to nonprofit corporations that have no members.

75. Most individuals who do not work in the corporate tax field are unaware of the differences between a "501(c)(4)" and a "501(c)(3)" entity.

76. Under the Bylaws of the LDC, the entity was required to hold an annual meeting of the members each April for election of the Board of Directors and other corporate business.

77. Leading up to the April 4, 2018 annual membership meeting, Executive Committee and Executive Director Defendants planned to achieve their goal of eliminating the membership by encouraging the membership to provide proxies to the Board of Directors or the Executive Director. The Executive Committee and Executive Director Defendants planned to collect proxies from enough members to hold a vote to eliminate the membership rights of all the corporation's members.

78. The Executive Committee and Executive Director Defendants knew that if they fully informed the membership of their plan to eliminate the membership, a majority of the members would vote against their plan. The Executive Committee and Executive Director Defendants circulated misleading proxy forms that omitted important information and asked the members to return them in advance of the annual meeting. Executive Committee and Executive Director Defendants also failed to provide timely notice of the planned vote to eliminate membership rights in order to avoid members protesting the action.

79. The Executive Committee and Executive Director Defendants knew or should have known that they omitted facts and information from their communication with the members leading up to the April 4, 2018 annual membership meeting that a reasonable person would need to rely on to make an informed, reasonable and prudent decision.

80. Upon information and belief, the Executive Committee and Executive Director Defendants knew and/or feared that if the members had proper notice that a vote to eliminate their membership rights was set for the April 4, 2018 meeting, a large number of the membership would have attended and voted against the action.

81. Neither former Mayor of the City of Charleston, Joseph P. Riley, Jr., nor current Mayor John Tecklenburg, members of the LDC, received notice of the planned vote to eliminate membership rights at the April 4, 2018 annual membership meeting.

82. On April 4, 2018 the LDC held the annual membership meeting with no members present other than the Board of Directors. No proxies of the members were counted for a vote to eliminate the membership or change the corporate bylaws, and no vote was held among the membership to eliminate the membership of the corporation or the change the corporate bylaws.

83. No notice has been sent to the members to notify them of the alleged action taken at the April 4, 2018 annual member meeting, or to notify them that their membership has been terminated.

84. On May 23, 2018, Defendant Richard K. Yonce, the President of the Board of Directors, submitted Articles of Amendment to the South Carolina Secretary of State stating that twenty-six (27) of thirty-six (36) members voted in favor of the following amendment to the corporate Articles: "The corporation shall have no members. The corporation is a public benefit corporation." The filed Articles of Amendment also stated that zero (0) of thirty-six (36) members

voted against the amendment. Upon information and belief the misrepresentations contained in the submission to the Secretary of State were an effort to achieve the goals of the Executive Committee and Executive Director Defendants.

85. On December 12, 2018, the LDC submitted an application to the IRS seeking approval as a tax exempt entity under Internal Revenue Code 501(c)(3). A entity receives tax exempt status under code provision 501(c)(3) if it is a nonprofit corporation with no members. The LDC's application submitted to the IRS included corporate Bylaws that had not been adopted by the membership or the Board of Directors at that time. The Bylaws submitted to the IRS stated that the LDC had no members. Upon information and belief, the misrepresentations contained in the submission to the IRS were an effort to achieve the goals of the Executive Committee and Executive Director Defendants.

86. The great majority of the LDC's members had no notice of the purported change in corporate status or that their rights as members had purportedly been eliminated. One or more of the members of the Board of Directors have reported to the City that no such vote took place.

Lack of Proper Notice and Materially Misleading and/or Incomplete Proxy

87. In response to a FOIA request seeking copies of notices sent to the membership, the LDC produced a memorandum dated March 8, 2018 purportedly directed to the members that generally references the April 4, 2018 annual meeting and a potential change of the entity's tax status. The memorandum contains no mention of a vote to eliminate membership rights of the members. Many of the members, including but not limited to Plaintiff Tecklenburg, deny ever receiving this memorandum. The March 8, 2018 memorandum does not meet the statutory requirements of the South Carolina Nonprofit Corporation Act. Furthermore, the March 8, 2018 memorandum was not mailed by first class or certified mail.

88. The LDC sent no additional notice to the members within the time required by its Bylaws or under the South Carolina Nonprofit Act. The LDC failed to give the members sufficient advance notice, and failed to give the members the opportunity to respond and oppose their termination as required under South Carolina law.

89. On March 8, 2018, the Executive Committee and Executive Director Defendants purportedly mailed proxy forms to the members. The proxy allegedly distributed to the members fail to provide the members with material information and/or provides them with materially misleading information thereby rendering the members unable to cast an informed vote, by proxy or otherwise, regarding the proposed actions of the defendants.

90. In Response to a FOIA request seeking copies of notices sent to the membership, the LDC produced a memorandum dated March 29, 2018 purportedly directed to the members, which included a copy of the alleged resolution the change the entity to a non-member non-profit corporation. Many of the members, including but not limited to Plaintiffs Riley and Tecklenburg, deny ever receiving this notice. The March 29, 2018 memorandum does not meet the statutory time requirements of the South Carolina Nonprofit Corporation Act, or the time requirements under the corporation's Bylaws. Even if the March 29, 2018 memorandum was received by members, by virtue of the date listed on the memorandum it was necessarily received after any proxies were signed. Accordingly, no member had notice of the planned action prior to signing any proxy purportedly used at the April 4, 2018 Annual Member meeting. The March 29, 2018 memorandum does not provide sufficient advance notice of the contents of the alleged Resolution so that members could review and understand the proposed changes, including the elimination of the membership.

91. The Executive Committee and Executive Director Defendants also failed to follow the procedures in the LDC's bylaws and the procedures required under the S.C. Nonprofit Corporation Act to terminate the corporation's membership, including the termination of the members Plaintiffs Riley and Tecklenburg.

92. The Executive Committee and Executive Director Defendants also failed to follow the procedures required under the S.C. Nonprofit Corporation Act to amend the articles of the corporation.

Demand Allegations

93. The present LDC Board of Directors consists of Richard K. Yonce, President, Carol Hubbard, Vice President, Chris Fisher, Vice President, Bryan McNeal, Jr., Treasurer, Yvonne D. Evans, Assistant Secretary, Richard T. Jerue, Director, Grant M. McAnulty, Director, Otha Meadows, Director, Clay Middleton, Director, Casdell E. Singleton, Director. On March 13, 2019, Plaintiffs Tecklenburg and Riley served a demand letter on the present Board of Directors. The March 13, 2019 demand letter sets forth the relevant allegations contained in this Complaint and submits a demand pursuant to S.C. Code § 33-31-630 and Rule 23(b)(1) of the *South Carolina Rules of Civil Procedure*. The March 13, 2019 letter demands that the Board of Directors initiate litigation against the Executive Director and Executive Committee for breach of their fiduciary duties to the members, and to invalidate the vote held at the April 4, 2018 Annual Membership Meeting that resulted in the termination of the membership. As of the date of this filing the Board of Directors has refused to comply with the demand.

94. The demand was also a futile, wasteful, and useless act. The Executive Committee of the Board of Directors participated in, approved and/or permitted the wrongs alleged herein to occur, participated in efforts to conceal or disguise the wrongs from LDC members, or recklessly,

knowingly, and/or negligently disregarded the wrongs complained of herein and therefore are not disinterested parties.

95. As the Executive Committee of the Board of Directors, the individuals had specific duties he or she owed to LDC and its members, including, but not limited to Plaintiffs Tecklenburg and Riley. In breach of these specific duties, Executive Committee of the Board of Directors, as more fully detailed herein, participated in, approved, and/or permitted the wrongs alleged herein to occur, participated in efforts to conceal or disguise those wrongs from LDC's members, or recklessly, knowingly, and/or negligently disregarded the wrongs complained of herein.

96. In order to bring this suit, the Executive Committee of the Board of Directors would be forced to sue themselves, which they will not do, thereby rendering the demand on the directors futile.

97. Plaintiffs Riley and Tecklenburg, and upon information and belief other members of LDC, have vigorously disputed and opposed the complained-of actions of the Executive Committee and Executive Director Defendants with no success in changing these conditions.

FOR A FIRST CAUSE OF ACTION

**(Violation of the S.C. Freedom of Information Act (FOIA), S.C. Code §§ 30-4-10 *et seq.* –
and Injunctive Relief)**

(Against Defendant LDC by Plaintiff John Tecklenburg)

98. Plaintiff Tecklenburg incorporates and realleges each and every allegation contained within this Complaint as if fully set forth herein verbatim.

99. Defendant LDC is a “public body” as defined at S.C. Code §30-4-20(a). Defendant LDC has received and, upon information and belief, continues to receive federal, state and local funds pursuant to grants and other means. Defendant LDC and its predecessors have also received

“in-kind” support from the City of Charleston through use of City office space, equipment and personnel. Based on the foregoing, Defendant LDC is a public body subject to FOIA.

100. On October 31, 2018, counsel for Plaintiff Tecklenburg sent Defendant LDC a FOIA request seeking review and/or production of several documents, including, but not limited to, documents and/or materials related to the formation of Defendant LDC, its current and past bylaws, its Board’s meeting minutes and agendas, correspondence and other documents or materials received from the City of Charleston as it relates to the UDAG grant and funds at issue, as well as the City’s request for those funds to be returned.

101. On December 21, 2018, counsel for Plaintiff Tecklenburg sent a second FOIA request to Defendant LDC, which sought inspection and/or production of additional public records, including, but not limited to, the following: LDC member meeting minutes for certain periods of time; audio and/or video recordings of LDC Board of Directors meetings and member meetings for certain time periods; minutes from any LDC committee meetings; documents related to the Defendant LDC’s adoption of its current bylaws; notices provided to LDC members in advance of certain meetings; and certain IRS documents and/or forms concerning the LDC.

102. Defendant LDC provided an incomplete response including no production in response to many of Plaintiff Tecklenburg’s requests.

103. Plaintiff Tecklenburg sought the requested public information, records and documents in order to fully understand the purported basis for Defendant LDC’s actions related to its refusal to return the UDAG program funds.

104. Defendant LDC failed to provide requested documents and, therefore, has violated FOIA.

105. As a result, Plaintiff Tecklenburg has been deprived of the ability to review the publicly available documents, records and recordings requested, and has been prejudiced and delayed in his investigation into the events and/or actions of Defendant LDC by same.

106. Additionally, upon information and belief, on several occasions during the time period of March 2018 through March 2019, and previously, Defendant LDC also failed to provide adequate written public notice of the entity's monthly meetings (and to make them open to the public) and failed to meet the agenda posting requirements for regularly scheduled and/or special meetings required under Section 30-4-80 of FOIA. As a result, Defendant LDC has therefore further violated FOIA.

107. A violation of FOIA is an irreparable injury for which no adequate remedy at law exists, and Defendant LDC's violation establishes the appropriate threshold for injunctive relief pursuant to S.C. Code § 30-4-100.

108. Under S.C. Code § 30-4-100 (FOIA) and S.C. Code §§ 15-53-10 *et seq.* (the Uniform Declaratory Judgments Act), Plaintiff Tecklenburg has been irreparably harmed as a matter of law by these actions of Defendant LDC and Plaintiff Tecklenburg is entitled to an order from this Court declaring the Defendant LDC in violation of FOIA, requiring Defendant LDC to comply with FOIA, and also for the Plaintiff Tecklenburg to recover his costs and reasonable attorneys' fees in seeking the requested documents and recordings, and enforcing Defendant LDC's compliance with FOIA.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit)
(Against Defendant LDC by Plaintiff City of Charleston)

109. Plaintiff City of Charleston incorporates and realleges each and every allegation contained within this Complaint as if fully set forth herein verbatim.

110. Based on the foregoing allegations, Plaintiff City of Charleston conferred a non-gratuitous benefit on the Defendant LDC by “making available” to Defendant LDC UDAG funds awarded to the City of Charleston for the sole purpose of funding a loan to the developer of the Charleston Place within the City of Charleston. Repayments were to provide the City with funds to future economic development projects within the City of Charleston.

111. Defendant LDC has realized the benefit of these funds in the form of the UDAG loan repayments of approximately \$22.8 million dollars.

112. Defendant LDC has retained these funds to serve its own interests, including to expand statewide, grow the LDC to a “\$100 million CDFI” and to fund projects outside of the City of Charleston, which is inequitable and unjust.

113. Defendant LDC has retained that benefit under inequitable circumstances, as the benefit in justice and in equity belongs to Plaintiff City of Charleston. Defendant LDC has taken undue advantage of its limited role as conduit to the UDAG funds. Defendant LDC’s retention of the \$22.8 million in UDAG funds is unjust because the City retains its rights as the grant recipient of those funds, and should in equity receive the benefit of the UDAG repayments.

114. Defendant LDC has been unjustly enriched by retaining these UDAG initial grant funds and UDAG loan repayments and refusing the direction and approval rights of the Plaintiff City of Charleston and/or refusing to limit their use only for eligible projects within the City of Charleston, and these actions are at the expense of Plaintiff City of Charleston, as well as its residents and citizens.

115. Consequently and as a direct and proximate result of this unjust enrichment, Plaintiff City of Charleston has suffered damages in the amount of approximately \$22.8 million, plus pre-judgment interest, and other amounts to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)
(Against Defendant LDC by Plaintiff City of Charleston)

116. Plaintiff City of Charleston incorporates and realleges each and every allegation contained within this Complaint as if fully set forth herein verbatim.

117 Defendant LDC made representations to the City of Charleston that it solely served the economic development of the City of Charleston, and that its purpose for receiving the UDAG funds made available by the City was to serve the City of Charleston. The City reasonably relied on Defendant LDC's representations when it decided to make the UDAG funds available for the Defendant LDC to loan to the Charleston Place developer. If the City had known Defendant LDC would attempt to keep the repaid funds for its own benefit and/or use the repaid UDAG funds to expand its service area statewide and for projects beyond the City of Charleston, the City would not have made the UDAG funds available to the Defendant LDC.

118. Plaintiff City of Charleston's reasonable reliance on the truth of Defendant LDC's unambiguous assurances was expected and foreseeable by Defendant LDC. Defendant LDC knew the Plaintiff City of Charleston relied on its representations when it made the UDAG funds available to Charleston Central LDC.

119. Plaintiff City of Charleston relied on Defendant LDC's representations to its detriment. When Plaintiff City of Charleston selected the Defendant LDC as the conduit for the Charleston Place transaction, the City expected the repayments from the developer to be used within the City at the City's direction. Instead, Defendant LDC refuses to return the funds to the Plaintiff City of Charleston, refuses to limit the use of the funds use for projects within the City of Charleston, and refuses the reasonable direction and approval of the Plaintiff City of Charleston over the use of the repaid UDAG funds. Defendant LDC has used the UDAG funds for its own

benefit and to grow statewide. As such, Plaintiff City of Charleston will not have the repaid UDAG funds available for Title I projects within the City of Charleston.

120. Refusal to enforce the Defendant LDC's representations to the City would result in significant injustice.

121. As a result of Plaintiff City of Charleston's reasonable reliance on the promises and assurances made by Defendant LDC, and as a direct and proximate result of Defendant LDC's refusal to return the funds to the City, and refusal to limit the use of the funds to Title I projects within the City of Charleston, the City has suffered significant damages of approximately \$22.8 million dollars, and in other such amounts to be proven at trial.

FOR A FOURTH CAUSE OF ACTION
(Money Had and Received)
(Against Defendant LDC by Plaintiff City of Charleston)

122. Plaintiff City of Charleston incorporates and realleges each and every allegation contained within this Complaint as if fully set forth herein verbatim.

123. Defendant LDC has in hand \$22.8 million repaid by the developer of the Charleston Place in June of 2016.

124. Defendant LDC has taken undue advantage of its limited role as conduit of the UDAG funds for the transaction with Plaintiff City of Charleston and the developer of Charleston Place by attempting to retain the \$22.8 million and use it for its own purposes.

125. The \$22.8 million belongs, in equity and good conscience, to Plaintiff City of Charleston as the grant recipient of the UDAG funds and should not, in equity and good conscience, be retained by the Defendant LDC.

126. The \$22.8 million the LDC has in hand should be returned to Plaintiff City of Charleston, with interest accrued since June of 2016.

FOR A FIFTH CAUSE OF ACTION
(Conversion)
(Against Defendant LDC by Plaintiff City of Charleston)

127. Plaintiff City of Charleston incorporates and realleges each and every allegation contained within this Complaint as if fully set forth herein verbatim.

128. The City retained its rights and interest in the repaid UDAG funds as the grant recipient of the UDAG funds. The \$22.8 million repaid by the developer to Defendant LDC is capable of being identified. The City did not give Defendant LDC permission to retain the repaid UDAG funds and use them for its own purposes.

129. As a direct and proximate result of Defendant LDC's refusal to comply with the Plaintiff City of Charleston's direction and approval over how the repaid UDAG funds should be used, and as a direct and proximate result of Defendant LDC's refusal to subsequently return the UDAG initial grant funds and UDAG loan repayment funds to the Plaintiff City of Charleston, Defendant LDC is wrongfully withholding Plaintiff City of Charleston's funds from its possession with the intent to permanently deprive Plaintiff City of Charleston of the use and benefit of the funds. In wrongfully withholding Plaintiff City of Charleston's property, Defendant LDC has converted these funds for its own use without Plaintiff City of Charleston's permission.

130. As a direct and proximate result of Defendant LDC's aforesaid actions and bad faith refusal to return wrongfully retained funds to Plaintiff City of Charleston or otherwise make available the UDAG loan repayments for Title I projects within the City of Charleston, Plaintiff City of Charleston has incurred and is entitled to damages and costs in the amount of approximately \$22.8 million dollars, plus pre-judgment interest, punitive damages, and other amounts as to be determined by the trier of fact.

131. At all relevant times alleged herein, Defendant LDC acted willfully, wantonly, and with conscious disregard for the rights and obligations of Plaintiff City of Charleston, such that Plaintiff City of Charleston requests the trier of fact award Plaintiff City of Charleston additional damages in an amount sufficient to punish Defendant LDC for its conduct.

FOR A SIXTH CAUSE OF ACTION
(Constructive Trust)
(Against Defendant LDC by Plaintiff City of Charleston)

132. Plaintiff City of Charleston incorporates and realleges each and every allegation contained within this Complaint as if fully set forth herein verbatim.

133. By merely “making available” the UDAG funds to the LDC for a limited purpose, the City retained the right to demand return of the repaid UDAG funds if the LDC failed to comply with the City’s direction and approval over how the repaid UDAG funds should be spent.

134. As a direct and proximate result of Defendant LDC’s refusal to comply with the Plaintiff City of Charleston’s direction and approval over how the repaid UDAG funds should be used, and as a direct and proximate result of Defendant LDC’s refusal to subsequently return the UDAG initial grant funds and UDAG loan repayment funds to the Plaintiff City of Charleston, Defendant LDC is wrongfully withholding Plaintiff City of Charleston’s funds from its possession with the intent to permanently deprive Plaintiff City of Charleston of the use and benefit of the funds.

135. Defendant LDC retains the UDAG initial grant funds and UDAG loan repayments currently due and owing the Plaintiff City of Charleston.

136. Based on the foregoing, the City’s UDAG program funds, including the UDAG loan repayments, have been and still are in the possession and control of Defendant LDC. Defendant LDC has and intends to take these UDAG program funds for its own use and benefit,

and for the use and benefit of others besides Plaintiff City of Charleston, thereby depriving the City of the use and benefit thereof.

137. The City has always been, and remains, the Grant Recipient of the UDAG funds. The Charleston Central LDC was merely a “conduit” for those funds to receive the repayments and thereafter flow back to the City of Charleston. Once the Charleston Place project developer repaid the loan in full, the purpose for the City making those funds available under the UDAG Agreement had been fulfilled, and the funds should have been returned to the City.

138. By virtue of its actions, Defendant LDC holds these funds as constructive trustee for the benefit of the City. Plaintiff City of Charleston requests that Defendant LDC be directed to immediately return possession of the UDAG program funds, including UDAG loan repayments, to Plaintiff City of Charleston.

139. As a direct and proximate cause of Defendant LDC’s conduct, Plaintiff City of Charleston has suffered and will continue to suffer damages in an amount to be determined at trial.

FOR A SEVENTH CAUSE OF ACTION
(Declaratory Judgment (S.C. Code §§ 15-53-10, *et seq.*))
(Against Defendant LDC by Plaintiff City of Charleston)

140. Plaintiff City of Charleston incorporates and realleges each and every allegation contained within this Complaint as if fully set forth herein verbatim.

141. This is an action for a declaratory judgment pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in § 15-53-10 *et seq.*, of the South Carolina Code of Laws, 1976, as amended, for the purpose of determining the rights, status or other legal relations between the parties arising under the agreements, representations, statute(s), instrument, contract, ordinance, and/or any other governmental authority, guidance or requirements, in actual controversy in this action.

142. A justiciable controversy exists between the parties regarding their rights, status, and other legal relations concerning the UDAG program grant funds awarded to and received by the City of Charleston from U.S. HUD, as the described above.

143. Plaintiff City of Charleston is informed and believes it is entitled to a decree from the Court ordering the following relief:

- a. For an Order of the Court declaring that UDAG funds received by the Defendant LDC pursuant to loan repayments from the developer of the Charleston Place, which arose from funds awarded to and received by the City of Charleston in 1983 and the City “made available” to Defendant LDC for the sole purpose to fund a loan to the developer of the Charleston Place, should be returned to the City of Charleston, as the City, not LDC, is the UDAG grant recipient and rightful owner of these funds;
- b. In the alternative, for an Order of the Court declaring that UDAG funds received by the LDC pursuant to loan repayments from the developer of the Charleston Place, which arose from funds awarded to and received by the City of Charleston in 1983 and the City “made available” to Defendant LDC for the sole purpose to fund a loan to the developer of the Charleston Place, must be used by Defendant LDC at the direction and approval of the City of Charleston to fund Title I projects within the City of Charleston within a minimally reasonable time period following the City’s request for funds for a specific Title I project; and
- c. For an Order of the Court awarding costs in this action, as is equitable and just, pursuant to S.C. Code § 15-53-100.

FOR AN EIGHTH CAUSE OF ACTION
(Breach of Contract as to UDAG Agreement)

(Against Defendant LDC by Plaintiff City of Charleston)

144. Plaintiff City of Charleston incorporates and realleges each and every allegation contained within this Complaint as if fully set forth herein verbatim.

145. Additionally and/or alternatively, Plaintiff City of Charleston asserts a cause of action for breach of contract against Defendant LDC based on the UDAG Agreement.

146. This claim arises out of the City of Charleston's Agreement and understanding with Defendant LDC related to its limited role as conduit for the UDAG grant funds made available by the City of Charleston for a limited purpose. In the UDAG Agreement, the LDC acknowledged that "no transfer of grant funds by the City to [the LDC] shall be or be deemed to be an assignment of grant funds," and that the LDC did not "succeed to any rights, benefits or advantages of the City under the UDAG Grant, or attain any rights, privileges, authorities or interests in or under the UDAG Grant."

147. As part of the UDAG Agreement, the Defendant LDC represented to the City of Charleston that it was "desirous of revitalizing depressed areas in the downtown area of the City of Charleston." At the time of the Agreement, the Defendant LDC's mission and stated purpose was solely focused on the economic development of the City of Charleston and no other areas.

148. The City relied on the Defendant LDC's representations that it solely served the economic development of the City of Charleston when it decided to make the UDAG funds available for the LDC to loan to the Charleston Place developer. If the City had known the entity would attempt to keep the repaid funds for its own benefit and/or use the funds to serve an area beyond the City of Charleston, the City would not have made the UDAG funds available to Defendant LDC.

149. Under the terms of the Agreement, the City of Charleston agreed to “make available” \$10 million in UDAG funds the City had received from HUD for the limited purpose of allowing Charleston Central LDC to lend the UDAG funds to the developer of the Charleston Place.

150. That Defendant LDC, expressly and/or impliedly, agreed to return the UDAG grant funds received by the City back to the City upon repayment of the loan by Developer to LDC; or, in the alternative, to use such UDAG grant funds and loan repayment funds only for Title I projects within the City of Charleston and at the direction of City Council.

151. The parties use of the term/phrase “make available” rather than “give” or “provide” indicates and/or necessarily implies that the parties intended the \$10 million in UDAG funds that the Plaintiff City of Charleston made available to Defendant LDC would be returned to Plaintiff City of Charleston upon full repayment of the loan by the developer. At the point the fund had been repaid, the purpose for Plaintiff City of Charleston making the funds available had ended and Plaintiff City of Charleston retained the right to have the funds returned under the agreement.

152. Indeed, the intention of the parties at the time of the UDAG Agreement was that once the Charleston Central LDC received the loan repayments back from the developer, the LDC would look to the City of Charleston as the true grant recipient for approval over how the repaid funds would be used. The intention of the parties at the time of the UDAG agreement was that the repaid funds would be used only within the City of Charleston. The parties intended that the City would identify to the LDC the priority for the use of the repaid UDAG funds, and before the LDC could use the repaid funds, “a public hearing” would be held and “final approval by City Council would be required”. The parties intended that the repaid funds would be used at the City’s direction

for activities within the City of Charleston that were eligible under Title I of the Housing and Community Development Act of 1974, as amended.

153. The parties intended for the full \$22.8 million in repayment funds from the Developer to be used for Title I projects within the City of Charleston and/or for such projects approved by the City of Charleston. The City had no intent to permanently transfer ultimate rights to govern the use of those funds to Charleston Central LDC or anyone else.

154. That there also exists implied covenant of good faith and fair dealing in the Agreement.

155. City of Charleston has complied with the Agreement in all respects.

156. That upon repayment of the loan funds by Developer to LDC and upon the terms in the Agreement between LDC and the City to “make available” funds for LDC’s use in loan to Developer for Charleston Place project, and despite request/demand by City of Charleston, LDC has refused/failed to return the repaid UDAG funds to recipient City of Charleston, thereby breaching the terms of the Agreement, whether express or implied.

157. Failure of the LDC to use the repaid funds at the City’s direction for eligible activities within the City of Charleston and/or return the repaid funds to the City is in breach of the covenant of good faith and done for an improper purpose and is contrary to the parties’ Agreement.

158. Due to the breach of the Agreement by LDC, City of Charleston has suffered irreparable harm and monetary losses, in an amount to be determined by the trier of fact. Plaintiff City of Charleston has suffered and continues to suffer damages; loss of use of funds, as well as pre-judgment interest at the legal rate.

159. By entering into the Agreement with the City and receiving the City's UDAG funds awarded to it by HUD, and other in-kind support from the City, the LDC and its predecessors assumed obligations of trust, confidence, and utmost good faith to Plaintiff City of Charleston. By virtue of having assumed these obligations, Defendant LDC owed the City of Charleston a duty of good faith and fair dealing, obligating LDC to place the City's interests equal with or ahead of its own respective interest and to do nothing to deprive the City of Charleston the use and/or benefit of the repaid UDAG funds.

160. Upon information and belief, the Defendant LDC and its Board of Directors sought to protect LDC's own interests and breached its obligations to act fairly and in good faith towards Plaintiff City of Charleston.

161. Upon information and belief, by engaging in the foregoing conduct, LDC purposely deprived the City of the rights and benefits under the parties' agreement.

162. Upon information and belief, LDC's conscious and deliberate conduct is consistent with the egregious and unfair practice by LDC in refusing to effectuate its obligation/duty under the agreement.

163. Failure to remit said funds or otherwise restrict use of the sums at issue to activities directed by City Council for Title I projects within the City of Charleston constitutes a breach of contract and has damaged the Plaintiff City of Charleston in an amount to be proven at trial.

164. Upon information and belief, the LDC, by and through its officers, directors and/or managing agents, authorized or ratified the wrongful acts of LDC as herein described.

165. As a direct and proximate result of the breaches by Defendant LDC, Plaintiff City of Charleston has been injured and has suffered, and continues to suffer, damages in an amount to be proven at trial.

FOR A NINTH CAUSE OF ACTION

(Promissory Estoppel as to Defendant LDC's 2017 Promise to return \$10million to City of Charleston)

(Against Defendant LDC by Plaintiff City of Charleston)

166. Plaintiff City of Charleston incorporates and realleges each and every allegation contained within this Complaint as if fully set forth herein verbatim.

167. Plaintiff City of Charleston asserts a cause of action for promissory estoppel against Defendant LDC based on the promise formed when the LDC Board approved the City's receipt of \$10million less a 1% administrative fee (\$100,000.00).

168. In March of 2017, the LDC Board of Directors voted to return \$10,000,000.00 of the UDAG funds to the City for the purpose of affordable and workforce housing with a 1% administrative fee (\$100,000.00). The vote of LDC's Board in March of 2017 was a promise to the City unambiguous in its terms as no other terms, conditions or qualifications were added.

169. Plaintiff City of Charleston reasonably relied on the LDC's representations based on LDC's March 2017 vote to return to Plaintiff City of Charleston \$10,000,000.00 of UDAG funds with a 1% administrative fee (\$100,000.00), for use in Title I projects within the City of Charleston.

170. Plaintiff City of Charleston relied on Defendant LDC's promise to its detriment. In reliance on the vote of Defendant LDC's Board of Directors in March of 2017 to Plaintiff City of Charleston \$10,000,000.00 of UDAG funds with a 1% administrative fee (\$100,000.00), the City expended valuable resources planning projects that it would fund with the promised \$10 million. Plaintiff City of Charleston further relied on the LDC's promise to its detriment by forgoing other opportunities to obtain the necessary funding for affordable housing projects and those opportunities are now closed to Plaintiff City of Charleston.

171. In October 2018, however, the LDC Board of Directors voted to “rescind” the Board’s previous vote to return \$10,000,000.00 of UDAG funds to Plaintiff City of Charleston (less the 1% (i.e. \$100,000.00) administrative fee), thereby breaking the promise to the City. As such, Plaintiff City of Charleston will not have these UDAG program funds available for Title I projects within the City of Charleston as initially promised and assured by LDC.

172. Plaintiff City of Charleston’s reasonable reliance on the truth of the unambiguous assurances made by Defendant LDC in or around March 2017 was expected and foreseeable by Defendant LDC. The Board of Directors for Defendant LDC had the ultimate authority to take action to return the \$10,000,000.00 in UDAG funds back to Plaintiff City of Charleston, and their vote was final approval for the action. Thus, Defendant LDC knew Plaintiff’s reliance was expected and foreseeable.

173. Refusal to enforce the Defendant LDC’s promise to Plaintiff City of Charleston would result in significant injustice.

174. As a result of Plaintiff City of Charleston’s reasonable reliance on the promises and assurances made by Defendant LDC, and as a direct and proximate result of Defendant LDC’s refusal to provide the \$10,000,000.00 in UDAG fund repayments (less the 1% administrative fee, i.e. \$100,000.00) to the City, Plaintiff City of Charleston has suffered and continues to suffer significant damages in such amounts to be proven at trial.

DERIVATIVE CAUSES OF ACTION BY AND ON BEHALF OF THE LDC MEMBERS

FOR A TENTH CAUSE OF ACTION
(Breach of Fiduciary, Statutory, and Common Law Duties)
(Against the Executive Committee of the Board of Directors and Executive Director
Defendants by Plaintiffs Tecklenburg and Riley)

175. Plaintiffs Tecklenburg and Riley incorporate by reference and reallege each and every allegation contained within this Complaint as if fully set forth herein.

176. As directors and/or officers of the Corporation, Executive Committee and Executive Director Defendants owe fiduciary, statutory and common law duties of care and loyalty to the Corporation's members, including Plaintiffs Tecklenburg and Riley, as well as to the Corporation. The fiduciary, statutory and common law duties of the Executive Committee and Executive Director Defendants include obligations to exercise good business judgment, to act prudently in the operation of the Corporation's affairs, to discharge their actions in good faith, to act in the best interest of the Corporation and to put the interests of the Corporation and the members before their own.

177. The Executive Committee and Executive Director Defendants breached their fiduciary, statutory and common law duties by, among other things, failing to comply with the terms of the Corporation's governing corporate documents and applicable law.

178. The Executive Committee and Executive Director Defendants breached their duties by, among other things, negligently, recklessly and intentionally violating the Corporation's governing corporate documents and applicable law in an attempt to disenfranchise the members of the Corporation and entrench themselves as directors of the Corporation's board at the expense of the members and at the expense of the Corporation's charitable mission, purpose and intent. Such actions are in contravention to those reasonably believed to be in the best interest of the Plaintiffs and the Corporation. Furthermore, such failures are outside the scope of care with which an ordinarily prudent person would exercise in a like position in similar circumstances.

179. Executive Committee and Executive Director Defendants further breached their fiduciary, statutory, and common law duties by making misleading statements and omitting material facts and information in required communications with the Plaintiffs Tecklenburg and Riley, and other members of the corporation with such acts being grossly negligent and willfully

perpetuated with malice, bad motives or reckless indifference to the best interests of the Plaintiffs Tecklenburg and Riley and other Corporation members, as well as the Corporation. Such actions are in contravention to those reasonably believed to be in the best interest of the Plaintiffs Tecklenburg and Riley and the Corporation. Furthermore, such failures are outside the scope of care with which an ordinarily prudent person would exercise in a like position in similar circumstances.

180. Executive Committee and Executive Director Defendants further breached their fiduciary, statutory, and common law duties by submitting to the South Carolina Secretary of State and the Internal Revenue Service *ultra vires* Articles of Incorporation and Bylaws, by operating the corporation *ultra vires* as a non-member corporation, and by failing to hold a vote of the membership for Board of Directors in April of 2018.

181. Plaintiffs Tecklenburg and Riley and other Corporation members have been damaged by the breach of the fiduciary, statutory and common law duties of the Executive Committee and Executive Director Defendants, with such breach resulting in the actual and proximate cause of harm to Plaintiffs, the exact amount to be proven at trial.

FOR AN ELEVENTH CAUSE OF ACTION

**(Declaratory Judgment that the alleged April 4, 2018 vote was invalid and unenforceable)
(Against the Executive Committee of the Board of Directors and Executive Director
Defendants and LDC as a Nominal Defendant by Plaintiffs Tecklenburg and Riley)**

182. Plaintiffs Tecklenburg and Riley incorporate by reference and reallege each and every allegation contained within this Complaint as if fully set forth herein.

183. As part of the strategy of the Executive Committee and Executive Director Defendants to separate the LDC from the City of Charleston and eliminate their fiduciary duty to be accountable to the corporate membership, the Executive Committee and Executive Director Defendants decided to change the LDC's "nonprofit status from a 501(c)(4) to a 501(c)(3)."

184. Leading up to the April 4, 2018 annual membership meeting, the Executive Committee and Executive Director Defendants planned to achieve their goal of eliminating the membership by encouraging the membership to provide proxies to the Board of Directors or the executive director. The Executive Committee and Executive Director Defendants planned collect proxies from enough members to hold a vote to eliminate the membership rights of all the corporation's members.

185. The Executive Committee and Executive Director Defendants circulated misleading proxy forms that omitted important information and asked the members to return them in advance of the annual meeting. The Executive Committee and Executive Director Defendants also failed to provide timely notice of the planned vote to eliminate membership rights in order to avoid members protesting the action.

186. The Executive Committee and Executive Director Defendants knew or should have known that they omitted facts and information from their communication with the members leading up to the April 4, 2018 annual membership meeting that a reasonable person would need to rely on to make an informed, reasonable and prudent decision.

187. Plaintiffs John Tecklenburg and Joseph P. Riley, Jr., and upon information and belief, many other LDC members, received no notice of the planned vote to eliminate membership rights at the April 4, 2018 annual membership meeting.

188. Upon information and belief, the LDC members that did receive the misleading notice and proxies, and signed the proxy, would not have signed the proxy if the Executive Committee and Executive Director Defendants had properly notified and informed them of the true nature of the vote intended at the April 4, 2018 annual membership meeting.

189. No notice has been sent to the members to notify them of the alleged action taken at the April 4, 2018 annual member meeting.

190. The Executive Committee and Executive Director Defendants did not possess the authority to eliminate the membership rights and/or to convert the LDC from a 501(c)(4) to a 501(c)(3), amended Articles of Incorporation and amended Bylaws, among other alleged actions at the April 4, 2018 annual membership meeting.

191. Based on the foregoing, the alleged vote to eliminate the membership rights and/or to convert the LDC from a 501(c)(4) to a 501(c)(3), amended Articles of Incorporation and amended Bylaws, among other alleged actions at the April 4, 2018 Annual Membership meeting are invalid and unenforceable.

192. Plaintiffs seek the court's declaration that the alleged vote to eliminate the membership rights and/or to convert the LDC from a 501(c)(4) to a 501(c)(3), amended Articles of Incorporation and amended Bylaws, among other alleged actions at the April 4, 2018 annual membership meeting are invalid and unenforceable.

193. Plaintiffs seek the court's declaration that the LDC remains a membership corporation subject to the corporate bylaws and articles of incorporation that were in place immediately preceding the April 4, 2018 annual membership meeting.

FOR A TWELFTH CAUSE OF ACTION
(Injunction)

(Against the Executive Committee of the Board of Directors and Executive Director Defendants and LDC as a Nominal Defendant by Plaintiffs Tecklenburg and Riley)

194. Plaintiffs Tecklenburg and Riley incorporate by reference and reallege each and every allegation contained within this Complaint as if fully set forth herein.

195. Based on the foregoing allegations, Plaintiffs Tecklenburg and Riley seek the Court's injunction requiring the above named Defendants to operate as a member corporation,

requiring the Defendants to follow the bylaws and articles of incorporation that were in place immediately preceding the April 4, 2018 annual membership meeting.

196. These Plaintiffs further seek dissolution of the present Board of Directors and installation of an interim independent Board of Directors, and/or a vote of the membership for a new Board of Directors.

JURY DEMAND

197. Plaintiffs demand a trial by jury on all claims so triable.

PRAYER FOR RELIEF

REQUEST FOR RELIEF ON BEHALF OF THE CITY OF CHARLESTON AS TO THE CAUSES OF ACTIONS AGAINST LDC

WHEREFORE, Plaintiff City of Charleston prays for the following relief in its favor against Defendant:

- (i) For judgment against Defendant LDC and in favor of Plaintiff City of Charleston on all claims asserted in this Complaint;
- (ii) For an Order of the Court declaring that UDAG funds received by the LDC pursuant to loan repayments from the developer of the Charleston Place, which arose from funds awarded to and received by the City of Charleston in 1983 and the City “made available” to Charleston Central LDC for the sole purpose to fund a loan to the developer of the Charleston Place, should be returned to the City of Charleston, as the City, not LDC, is the UDAG grant fund's recipient and rightful of owner of these funds;
- (iii) In the alternative, for an Order of the Court declaring that UDAG funds received by the LDC pursuant to loan repayments from the developer of the Charleston Place, which arose from funds awarded to and received by the City of Charleston

in 1983 and the City “made available” to Charleston Central LDC for the sole purpose to fund a loan to the developer of the Charleston Place, must be used by LDC at the direction and approval of the City of Charleston to fund Title I- projects within the City of Charleston within a minimally reasonable time period following the City’s request for funds for a specific Title I project.

- (iv) For an Order of the Court awarding costs in this action, as is equitable and just, pursuant to S.C. Code § 15-53-100.
- (v) For all available damages caused to Plaintiff City of Charleston by Defendant LDC;
- (vi) For costs incurred by this action, including attorneys’ fees and expenses;
- (vii) Punitive damages, where available;
- (viii) For prejudgment and post judgment interest to the maximum amount allowed by law; and
- (ix) For such other and further relief as the Court and/or trier of fact may deem just and proper.

REQUEST FOR RELIEF ON BEHALF OF JOHN TECKLEBURG AS TO THE FOIA CAUSES OF ACTIONS AGAINST LDC

WHEREFORE, Plaintiff Tecklenburg demands judgment as follows:

- (i) For judgment against Defendant LDC and in favor of Plaintiff John Tecklenburg on the FOIA claims asserted in this Complaint;
- (ii) For an Order:
 - a. Declaring Defendant LDC is a “public body” under FOIA enjoining Defendant LDC to provide Plaintiff John Tecklenburg a copy of all requested “public records” that remain outstanding and that Defendant LDC has failed to timely produce upon request;

- b. Awarding Plaintiff Tecklenburg his attorneys' fees and costs of litigation of the FOIA claim(s) pursuant to S.C. Code §30-4-100(b); and
- c. For such other and further relief as the Court and/or trier of fact may deem just and proper.

**REQUEST FOR RELIEF ON BEHALF OF PLAINTIFFS TECKLENBURG AND RILEY
AND LDC MEMBERS (DERIVATIVE ACTION)**

WHEREFORE, Plaintiffs Tecklenburg and Riley, individually and derivatively on behalf of LDC and its members, demand judgment as follows:

- (i) For an Order declaring:
 - a. LDC Board Defendants breached their fiduciary duties to Plaintiffs and other LDC members;
 - b. The alleged actions at the April 4, 2018 Annual Membership Meeting were invalid and unenforceable that the LDC remains a membership corporation;
 - c. Requiring that Defendants LDC and Board Defendants take steps to formally rescind or otherwise declare the April 4, 2018 actions at the Annual Membership Meeting invalid and reorganization of the LDC corporation;
- (ii) Dissolution of the present LDC Board and installation of an interim independent Board of Directors and/or a vote of the membership for a new Board of Directors;
- (iii) For all available damages caused to Plaintiffs Tecklenburg and Riley, and LDC members by Executive Committee and Executive Director Defendants;
- (iv) For costs incurred by this action, including attorneys' fees and expenses;
- (v) For such other and further relief as the Court and/or trier of fact may deem just and proper.

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Dated: _____