

DEVELOPMENT AGREEMENT FOR THE COTTAGE COURT PROJECT

THIS DEVELOPMENT AGREEMENT FOR THE COTTAGE COURT PROJECT (this “Agreement”) is made and entered into this of the ___ day of November, 2021 (the “Effective Date”), by and between the **DEVELOPMENT AUTHORITY OF THE CITY OF DECATUR, GEORGIA**, a public body corporate and politic of the State of Georgia (the “Authority”), whose address is 509 N. McDonough Street, P.O. Box 220, Decatur, DeKalb County, Georgia 30031, and **ATLANTA NEIGHBORHOOD DEVELOPMENT PARTNERSHIP, INC.**, a domestic nonprofit corporation (“Developer”) whose address is 229 Peachtree Street NE, Suite 705, Atlanta, Fulton County, Georgia 30303 (collectively the “Parties” and individually, a “Party”).

RECITALS

WHEREAS, the Authority was duly created and is validly existing pursuant to the Development Authorities Law of the State of Georgia (O.C.G.A. Section 36-62-1 *et seq.*, as amended) (the “Act”);

WHEREAS, under the Act, the Authority has, among others, the power to acquire, construct, install, modify, renovate, or rehab land, interests in land, buildings, structures, facilities, or other improvements and the power to acquire, construct, install, modify, renovate, or rehab, furnish fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential purpose of development of trade, commerce, industry, and employment opportunities in the City of Decatur, Georgia, as part of any “Project” and to borrow money and use the proceeds thereof for paying the costs of “Projects” (as defined in the Act);

WHEREAS, the City of Decatur, Georgia, a municipal corporation of the State of Georgia, by and through its duly elected City Commissioners, (the “City”) adopted Ordinance No. O-14-Z-26 amending and re-codifying the Zoning Ordinance and adopting certain non-zoning ordinances collectively known as “The Unified Development Ordinance of the City of Decatur” (the “UDO”);

WHEREAS, the UDO, among other things, created a new building type known as a “Cottage Court” designed to accommodate five (5) to nine (9) detached dwelling units organized around a shared internal courtyard as more specifically set forth in Section 2.2.3.C of the UDO;

WHEREAS, there has been no development of trade, commerce, industry, or employment opportunities related to the “Cottage Court” building type since adoption of the UDO and creation of this new building type;

WHEREAS, the Authority and the City entered into an *Intergovernmental Agreement* on December 14, 2015 whereby it was agreed that the Authority would purchase that certain unimproved real property located at and known as 230 Commerce Drive, Decatur, DeKalb County, Georgia 30030 (Tax Parcel Id No. 15 247 07 081) and as more specifically set forth in

the legal description attached hereto and incorporated herein as Exhibit A (the “Property”) to develop a “Cottage Court” project on the Property to expand options to address the housing needs within the City with an opportunity to include workforce housing for the purposes of benefiting the development of trade, commerce, industry, or employment opportunities related to the “Cottage Court” building type in the City consistent with the purposes and provisions of the Act;

WHEREAS, the Authority purchased the Property on December 18, 2015, and is the legal owner of and holds title in fee simple in and to the Property;

WHEREAS, the Authority developed architectural and building plans to construct a “Cottage Court” project on the Property consisting of six (6) detached dwelling units (collectively the “Cottages” and individually a “Cottage”) organized around a shared internal courtyard with certain shared parking, driveways, utilities, and other infrastructure and amenities as set forth in the building plans attached herein and incorporated herein as Exhibit B (the “Building Plans”) (the “Project”);

WHEREAS, Developer desires to partner with the Authority to implement the Project and construct the Cottages as detailed in the presentation to the Authority on September 10, 2021, attached herein and incorporated herein as Exhibit C; and,

WHEREAS, the Authority selects Developer to implement the Project and construct the Cottages as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual and reciprocal promises and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto, the Parties agree as follows:

AGREEMENT

1. **Sale and Conveyance of the Property to Developer.** Within thirty (30) days of the Effective Date, the Authority shall bargain, sell, remise, release, and forever quitclaim unto Developer all of the Authority’s right, title, and interest that the Authority has in and to the Property for Developer to own and hold title in and to the Property subject to and conditioned upon the terms of this Agreement. Developer has made a personal examination of the Property and accepts it “as-is, where-is” and “with all faults,” without representations, warranties, or covenants, express or implied, of any kind or nature, except as expressly set forth in this Agreement.
2. **Promissory Note and Security Deed in favor of the Authority.** Contemporaneously with the sale and conveyance of the Property to Developer as set forth in Section No. 1, Developer shall execute and tender to the Authority a Promissory Note and Security Deed in the principal amount of One Hundred Eighty Thousand and No/100 Dollars (\$180,000.00) and in such form as reasonably acceptable to the Authority securing to the Authority the performance of Developer of all covenants and agreements owed under this Agreement and

encumbering and secured against the Property to be released by the Authority subject to and conditioned upon the terms of this Agreement (the “Security Interest”).

3. **Appointment of Developer.** The Authority hereby appoints Developer to render services for the Authority, in supervising and overseeing the implementation of the Project and construction of the Cottages as herein contemplated. Developer accepts the relationship of trust and confidence established by this Agreement and covenants with the Authority to exercise Developer’s skill and judgment in furthering the interests of the Authority, to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and to perform the “Work” as defined in Building Plans, in an expeditious and economical manner consistent with the Authority’s interests and expectations. Developer has made a personal examination of the Property and reviewed the Project. Developer accepts this appointment by the Authority and agrees to render services for the Authority, in supervising and overseeing the implementation of the Project construction of the Cottages as herein contemplated. The Authority’s Representative authorized to act on its behalf with respect to the Project is Angela Threadgill, Executive Director, 509 N. McDonough Street, P.O. Box 220, Decatur, DeKalb County, Georgia 30031, Tel: (404) 371-8386, Email: angela.threadgill@decaturga.com. Developer’s Representative authorized to act on its behalf with respect to the Project is Jay Perlmutter, Director of Single Family Development, 229 Peachtree Street NE, Suite 705, Atlanta, Georgia 30303, Tel: (404) 420-1584, Email: jperlmutter@andpi.org.
4. **Authority of Developer.** Developer shall have the authority and the obligation under this Agreement to perform the following services:
 - a. Provide an evaluation of the Project, construction schedule, and budget requirements, each in terms of the other; advise the Authority on proposed site use and improvements, selection of materials and building systems and equipment; provide recommendations to the Authority, consistent with the Project requirements, on design, constructability, availability of materials and labor, time requirements for procurement, installation and construction; and advise the Authority on factors related to cost including but not limited to costs of alternative designs or materials, budgets, life-cycle data and possible cost reductions;
 - b. Prepare and provide a schedule of the Project and for the construction of the Cottages (the “Project Schedule”), which shall coordinate and integrate Developer’s services, the construction contractor’s services, the Authority’s responsibilities, ordering and delivery of products and materials, and the Authority’s completion requirements.
 - c. Prepare and provide monthly schedule updates of the Project to the Authority;
 - d. Prepare and provide monthly estimate updates of the Project to the Authority for the costs necessarily incurred in the proper performance of the construction of the Project (the “Cost of the Work”), which Cost of the Work shall be comprised of the costs set forth in the preliminary construction budget attached hereto and incorporated herein as Exhibit D.

- e. Negotiate all necessary construction contract(s) by and between Developer and Red Brick Homes and Developments, Inc. (d.b.a. Fortas Homes) (“Fortas Homes”) as General Contractor for the construction of the Cottages (the “Construction Contract”) to obtain terms satisfactory to Developer in its sole discretion subject to the terms and conditions of this Agreement.
- f. Act on behalf of the Authority in its relations with any governmental agency or authority with respect to all matters relating to the Project and construction of the Cottages;
- g. Choose the products and materials necessary to equip the Property in a manner which satisfies all requirements of this Agreement;
- h. Monitor disbursement and payment of amounts owed to each of Fortas Homes and the subcontractors pursuant to the terms of the Construction Contract;
- i. Ensure that the Cottages are constructed such that the Property and all improvements thereon are free and clear of all mechanics’ and materialmen’s liens;
- j. In collaboration with Fortas Homes establish and implement procedures for expediting the processing and approval of shop drawings and samples;
- k. Secure and obtain all permits, licenses, building code approvals, and certificates of occupancy for the Cottages;
- l. Cause the construction of the Cottages to be completed in a prompt and expeditious manner, consistent with good workmanship, and in compliance with the following:
 - i. The approved Building Plans and the approved Project Schedule, as they may be amended by the written agreement of the parties hereto;
 - ii. Any and all obligations of the Authority under the terms of any financing obligations;
 - iii. Any and all zoning regulations, county ordinances, including health, fire and safety regulations, and any other requirements of federal, state, and local permits, special use permits licenses, codes, laws, rules, regulations, and ordinances applicable to the design, construction, or use of the Project (“Applicable Laws”); and
 - iv. the Construction Contract;
- m. Administer and supervise the Construction Contract;

- n. In accordance with generally accepted construction practice, Developer will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the Work and adequacy of the safety measures, in, on, or near the construction site.
- o. Keep, or cause to be kept, accounts, cost records, and systems as to the design and construction of the Cottages satisfactory to the Authority, which records shall be preserved for three (3) years after final payment under this Agreement or for such longer period as may be required by law, and exercise such controls as may be necessary for proper financial management of the Project;
- p. Maintain, or cause to be maintained, at Developer's expense, all office and accounting facilities and equipment necessary to adequately perform the accounting and financial responsibilities under this Agreement;
- q. Make available to the Authority, during normal business hours and upon the Authority's written request, copies of all material contracts, subcontracts, and agreements;
- r. Expedite and coordinate delivery of all materials and equipment intended for and necessary to the Project;
- s. Comply with and provide evidence to the Authority of such compliance with O.C.G.A. § 13-10-91 and Georgia D.O.L. Rule 300-1.02;
- t. Coordinate the work of Fortas Homes to complete construction of the Cottages in accordance with the Authority's objectives as to cost, time, and quality;
- u. Obtain the necessary certificates that construction of the Cottages is substantially complete, and inspection of the same;
- v. Provide regular monitoring of the Project Schedule as design and construction progress, identify potential delays, review the schedule for work not started or incomplete, recommend to the Authority adjustments in the Project Schedule if necessary to address anticipated delays, provide monthly summary reports of such monitoring, and document all delays and changes in the Project Schedule;
- w. Promptly recommend courses of action to the Authority when requirements of subcontracts are not being fulfilled;
- x. Regularly monitor the approved construction budget and develop cash flow reports and forecasts as needed;
- y. Show actual costs for activities in process and estimates for uncompleted tasks, identify variances between actual and approved costs and advise the Authority whenever projected costs exceed approved budgets;

- z. Develop and implement a system for review and processing of change orders as to the construction of the Project;
 - aa. Without additional expense to the Authority, pay all applicable Federal, State and local sales and other taxes associated with the Project, including taxes and assessments on the Property during its ownership of the Property;
 - bb. Develop and implement a procedure for the review and processing of applications by subcontractors for progress and final payments;
 - cc. Deliver to the Authority at the completion of the Project a dimensioned as-built survey of the real property and as-built drawings of the Cottages; and
 - dd. Record the progress of the Project and submit monthly written progress reports to the Authority, including the percentage of completion and the purposes, number, and amounts of change orders.
5. **Completion of the Work.** Developer shall commence the Work as soon as possible, but no later than thirty (30) days after the later of the issuance of the requisite building permit(s) to construct the Cottages or sale and conveyance of the Property from the Authority to Developer. Developer must complete the Work no later than twenty-four (24) months after the Effective Date. Completion of the Work shall be upon the issuance of a Certificate of Occupancy by the City for all of the Cottages and certification of completion by the Authority.
6. **Developer's Default.** Developer shall be in default of this Agreement should any of the following occur:
- a. Developer fails to comply with any provision under this Agreement;
 - b. Developer fails to maintain or loses its 501(c)(3) tax exempt status;
 - c. Developer fails to maintain its operating status with the Georgia Secretary of State's Office; or,
 - d. One or more of the following acts of bankruptcy: (i) the making of an assignment for the benefit of creditors; (ii) the filing of a petition in bankruptcy; (iii) the petitioning or application to any tribunal for any receiver or any trustee of Developer or any substantial part of its property; or, (iv) the commencement of any proceeding relating to Developer under any reorganization, arrangement, readjustments of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if, within sixty (60) days after the filing of a bankruptcy petition or the commencement of any proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, the proceedings have not been

dismissed, or, if, within sixty (60) days after the appointment without the consent or acquiescence of Developer, of any trustee, receiver or liquidator of Developer or of the land owned by Developer, the appointment has not been vacated.

In the event that Developer shall remain in default of this Agreement after Notice and a thirty (30) day opportunity to cure such default, the Authority may pursue any or all of the following remedies: (i) terminate this Agreement and/or withhold any payments due hereunder; (ii) seek refunding of all or a portion of any payments made; (iii) seek any remedy at law or in equity that may be available as a consequence of Developer's default; (iv) pursue specific performance of this Agreement or injunctive relief; or (v) waive such default. Any uncured default of this Agreement after Notice and a thirty (30) day opportunity to cure such default shall constitute a cross-default by Developer of the Security Instrument entitling the Authority to seek any remedy at law or equity that may be available under the terms of the Security Instrument, including foreclosure. All amounts so withheld by the Authority under this Section shall be promptly released to Developer only after Developer has cured the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the Authority.

7. Accounts and Records.

- a. Developer, on behalf of the Authority, shall keep such books of account and other records as may be required and approved by the Authority, including, but not limited to, records relating to insurance, invoices, material supplies, and soft costs associated with the Project. Developer shall keep vouchers, statements, receipted bills and invoices and all other records, in the form approved by the Authority, covering all collections, if any, disbursements and other data in connection with the Project prior to final completion of construction of the Cottages. All accounts and records relating to the Project, including all correspondence, shall be surrendered to the Authority, upon demand without charge therefore.
- b. All books and records prepared or maintained by Developer shall be kept and maintained at all times at the place or places approved by the Authority, and shall be available for and subject to audit, inspection, and copying by the Authority or any representative or auditor thereof or supervisory or regulatory authority, at the times and in the manner reasonably requested by the Authority.

8. Construction Warranty.

- a. Developer hereby warrants to the Authority that the materials and equipment furnished in accordance with this Agreement will be of good quality, that the Work will be free from defects, and that the Work will conform with the requirements of this Agreement, the Building Plans, and Applicable Laws. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Authority, may be considered defective. If requested by the Authority, Developer shall furnish evidence satisfactory to the Authority as to the kind and quality of materials and equipment used in the construction of the Cottages.

- b. Developer shall correct or cause Fortas Homes to correct any work failing to conform to the requirements of the Construction Contract discovered before Substantial Completion, whether or not fabricated, installed or completed, at Developer's sole cost and expense.
- c. If, within one (1) year after Substantial Completion, any of the work performed to construct the Cottages is found to be defective or not in accordance in all respects with the requirements of this Agreement, Developer shall correct or cause the Fortas Homes to correct such defect(s), at Developer's sole cost and expense, promptly after receipt of written notice from the Authority to do so and shall pursue such correction diligently and expeditiously. With respect to portions of the Work first performed after Substantial Completion, such one (1) year period shall be extended by the period of time between the date of Substantial Completion and the actual performance of the Work. The obligation under this Section No. 8 shall survive acceptance of the Work performed to construct the Cottages. The Authority shall give such notice promptly after discovery of the condition. The Authority shall report to Developer any defective condition discovered more than one (1) year after the date of Substantial Completion, as such period may be extended under this Section.
- d. Any and all warranties extended by Developer and contained in this Section No. 8 shall transfer to each owner(s) of the Property and as appropriate to each homeowner(s) of the Cottages.
- e. Nothing contained in this Section No. 8 shall be construed to establish a period of limitation with respect to other obligations of Developer under this Agreement.

9. Reimbursable Costs and Disbursement. Subject to compliance by Developer with all of the terms and conditions of this Agreement, the Authority shall commit up to Two Hundred Thousand and NO/100 Dollars (\$200,000.00) in funds to be available for disbursement to Developer for expenditures approved by the Authority in connection with the Project, and more specifically for site work activities related to public right-of-way improvements, utility infrastructure, and grading at such times and in such amounts as determined (each a "Disbursement") in accordance with the following procedures:

- a. Not less than ten (10) business days prior to the date on which Developer desires a Disbursement, Developer will submit a written request for Disbursement, which shall include the following: (i) paid invoices, bills, or statements; (ii) the Project Budget and the itemized schedule of values prepared by the General Contractor or Developer of the total of reimbursable costs; (iii) evidence in form and content reasonably satisfactory to the Authority showing that there are no liens outstanding against the Project except for inchoate liens for property taxes not yet due and payable, liens being contested in accordance with the terms and conditions set forth in applicable law, and loans for the construction of the Project.

- b. After receipt and approval by the Authority of a request for Disbursement from Developer, the Authority will distribute reimbursable costs. The total period for Disbursements shall not exceed two (2) calendar years, which period shall commence upon the issuance of a land disturbance permit.

Developer may request additional funding from the Authority should there be cost overages due to unforeseen circumstances (i.e. rise in constructions costs, drop in sales price). Approval is subject to both availability of funds and approval by Authority.

- 10. Development of Qualification Criteria for Homebuyers.** Developer and the Authority shall partner and coordinate with Decatur Land Trust, Inc., a domestic nonprofit corporation (the “Land Trust”) to develop qualification criteria for homebuyers to purchase a Cottage targeting as reasonable for qualification by buyers with a mix of income eligibility from eighty percent (80%) to up to one hundred twenty percent (120%) of the median income in the applicable Metropolitan Statistical Area as established by the U.S. Department of Housing and Urban Development and then applicable at the time the conveyance and consistent with the terms and conditions of this Agreement.
- 11. Sale and Conveyance of the Cottages.** Upon the issuance of a Certificate of Occupancy for an individual Cottage and certification of completion by the Authority of that Cottage (the “Sale Trigger”), Developer shall sell that Cottage to a homebuyer or homebuyers identified and prequalified by the Land Trust at such an adjusted sales price that is targeted as reasonable for qualification by buyers with an income eligibility of up to one hundred twenty percent (120%) of the median income in the applicable Metropolitan Statistical Area as established by the U.S. Department of Housing and Urban Development and then applicable at the time the conveyance. The sale and conveyance of the Cottages shall not include sale, conveyance, or release of the Property or any part thereof, but shall include a ground lease for such portions of the Property upon which the subject Cottage is constructed and subject certain to covenants and easements for the maintenance and preservation of the Project. In the event the Land Trust has not identified or prequalified a homebuyer or homebuyers to purchase a Cottage after ninety (90) days written notice of a Sale Trigger, then Developer may sell a Cottage to any homebuyer or homebuyers with an income eligibility of up to one hundred twenty percent (120%) of the median income in the applicable Metropolitan Statistical Area as established by the U.S. Department of Housing and Urban Development and then applicable at the time, subject to the terms and conditions of this Agreement and certain to covenants and easements for the maintenance and preservation of the Project. Developer shall provide Down Payment Assistance for all interested homebuyers purchasing a Cottage pursuant to this Agreement.
- 12. Transfer of the Property to the Land Trust.** Within thirty (30) days after the sale and conveyance of the final Cottage by Developer to a homebuyer or homebuyers as set forth in Section No. 11, Developer shall bargain, sell, remise, release, and forever quitclaim unto the Land Trust all of Developer’s right, title, and interest that the Developer has in and to the Property at no cost to the Land Trust and for the Land Trust to own and hold title in and to the Property subject to and conditioned upon the terms of this Agreement.

- 13. Release of the Security Interest.** The Authority shall release and cancel the a pro-rata amount of the Security Interest at the time of the transfer of each Cottage from Developer to the homebuyer as set forth in Section No. 11 with no cost or expense due from or to be incurred by Developer so long as and conditioned upon the full performance by Developer of all covenants and agreements owed under this Agreement.
- 14. Suspension and Termination.** Developer shall have no right to suspend or terminate this Agreement without the written notice to the Authority. The Authority may suspend the Work following written notice to Developer, in which event, the Project Schedule will be equitably adjusted, as approved by The Authority in its reasonable discretion, and the Cost of the Work will be equitably adjusted provided that the suspension was not caused by Developer's breach of this Agreement. The Authority shall have the right to terminate this Agreement for cause upon seven (7) days' written notice or without cause upon thirty (30) days' written notice. Except where a Developer's Default occurs as set forth above, in the event the Authority terminates this Agreement, the Authority shall pay to Developer in an amount that bears the same ratio to the Developer's Fee as the Cost of the Work properly performed at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon completion of the Project.
- 15. Force Majeure.** In the event either party is delayed or hinder in, or prevented from performing any act required by this Agreement (other than monetary obligations) due to the occurrence of a "Force Majeure Event" (as defined below), and such delay, hinderance, or prevention is beyond such party's reasonable control or could not be prevented with reasonable due diligence, then performance of said act is excused for the period of such delay and the time for performance is extended for a period equivalent to the length of such delay. A "Force Majeure Event" is limited to the following: (a) acts of God (including fire, flood, earthquake, storm, hurricane, or other natural disaster); (b) acts of war (regardless of whether war has been declared), invasion, civil war, rebellion, revolution, insurrection, military coup, terrorism; (c) nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, telephone, internet service, or other such utility; or (d) governmental prohibitions, or regulations including or causing administrative delays in obtaining building permits or otherwise, and restrictive governmental laws or regulations including shelter in place, quarantine, or other pandemic-related restrictions.
- 16. No Lien Filings.** Developer hereby represents, warrants, and covenants that it shall not file a mechanic's lien, materialmen's lien or other lien against the Property, any Cottage, or any other assets of the Authority, and hereby waives and releases any right it may have or may hereafter acquire to file such a lien against the Property, any Cottage, or any other assets of the Authority. Developer shall indemnify and hold harmless the Authority from any losses, damages, and/or liabilities, to or as a result of a breach of this provision. This Section 16 shall survive expiration or termination of this Agreement.
- 17. Indemnity.** To the fullest extent permitted by law, Developer agrees to defend, indemnify and hold harmless the Authority and its directors, officers, employees, agents, contractors and affiliates (individually, an "Indemnitee") from all actions, suits, claims, demands and proceedings ("Claims"), and any judgments, damages, losses, debts, liabilities, penalties,

finest, costs and expenses (including reasonable attorneys' fees and expenses actually incurred) resulting therefrom, including but not limited to enforcement of the terms of this Agreement, whether brought or commenced by any person or entity against any Indemnatee for the recovery of damages, including but not limited to, the injury, illness and/or death of any person, or loss of use of or damage to property, arising out of or alleged to have arisen out of the negligence or intentional misconduct of Developer or any entity for whom Developer is liable, regardless of whether or not such claim is caused in part by an Indemnatee; provided, however, that Developer's indemnification obligations hereunder shall not apply to the extent that Claims are caused by the negligence of the Indemnatee seeking indemnification. The terms of this Section shall survive expiration or termination of this Agreement.

18. **Litigation.** Developer will notify the Authority in writing, within five (5) days of its having knowledge thereof, of any actual, pending, or threatened litigation or adversarial proceeding in which a claim is made against Developer or against the Property or Cottages, and of any judgment rendered against Developer.
19. **Insurance.** During all phases of the Project and extending through any warranty period provided in this Agreement, Developer shall purchase and maintain insurance of the types and in the amounts set forth on Exhibit E, attached hereto and incorporated herein, purchased from insurance companies lawfully authorized to issue insurance in the State of Georgia and satisfactory to and approved via signed writing by the Authority. The Authority shall be named as an additional insured under Developer's commercial general liability policy. The Authority and Developer waive all rights against each other for damages to the extent such damages are covered by insurance required by this Agreement, except such rights as they have to proceeds of such insurance.
20. **Dispute Resolution.** Claims, disputes and other matters in question arising out of or relating to the Work (a "Dispute") shall be subject to mediation as a condition precedent to binding dispute resolution; provided, however, that if the Dispute relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. The Parties shall endeavor to resolve their disputes by mediation. Demand for mediation shall be made in writing delivered to the other party and filed with the person or entity administering the mediation.
21. **Attorney's Fees.** Should either party employ an attorney to enforce any of the provisions hereof, the party losing in any final, non-appealable judgment agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorney's fees, expended or incurred in connection therewith.

22. **Nondiscrimination in Employment.** During the performance of this Agreement, Developer agrees that it will not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age or disability. Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their gender, race, color, genetic information, religion, national origin, political affiliation, age, handicapped status, sexual orientation, sexual preference, or gender identity and expression. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
23. **Successors and Assigns.** This Agreement shall be binding on the parties hereto, their heirs, successors, and assigns. However, this Agreement may not be assigned by Developer without the prior written consent of the Authority.
24. **Separability of Provisions.** Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid. E-mail signatures or signatures sent by other electronic means appearing hereon shall be deemed originals. The Effective Date of this Agreement shall be date that the last Party executes this Agreement.
25. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.
26. **No Continuing Waiver.** The waiver by any party of any requirement, right, or breach of this Agreement shall not operate or be construed to be a waiver of any subsequent requirement, right, or breach.
27. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia. Venue for any action arising herefrom shall lie exclusively in the state courts of DeKalb County, Georgia.
28. **Amendment.** This Agreement may not be amended without the written consent of the Authority and Developer.
29. **Entire Agreement.** This Agreement, including all exhibits attached hereto, represents the entire agreement between the Authority and Developer and supersedes all prior negotiations, representations, and agreements.
30. **Time of the Essence.** Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed under seal as of the date first written above.

**DEVELOPMENT AUTHORITY OF THE
CITY OF DECATUR, GEORGIA**

Conor McNally, Chair

**ATLANTA NEIGHBORHOOD
DEVELOPMENT PARTNERSHIP, INC.**

John O'Callaghan, President & CEO

EXHIBIT A

Legal Description

All that tract or parcel of land lying and being in Land Lot 247 of the 15th District of DeKalb County, Georgia, and being more particularly described as follows:

Beginning at a 1/2 inch reinforcing bar found on the northern right-of-way line of Commerce Drive (having a 60 foot right-of-way) a distance of 211.70 feet in an easterly direction along the northern right-of-way line of Commerce Drive from the intersection of the northern right-of-way line of Commerce Drive with the eastern right-of-way line of Sycamore Place (having a 30 foot right-of-way, formerly known as North Columbia Drive and formerly known as Oak Street); running thence along the northern right-of-way line of Commerce Drive south 87 degrees 16 minutes 14 seconds east a distance of 59.53 feet to a point located on said right-of-way line; running thence along the northern right-of-way line of Commerce Drive along the arc of a 231.00 foot radius curve to the right, a distance of 138.48 feet to a 1/2-inch reinforcing bar found on the northeastern right-of-way line of Commerce Drive (said arc being subtended by a cord lying to the southwest thereof bearing south 70 degree 05 minutes 48 seconds east, a distance of 136.42 feet), said 1/2 inch reinforcing bar found is also located a distance of 192.02 feet along the northeastern right-of-way line of Commerce Drive from the intersection of the northeastern right-of-way line of Commerce Drive with the northwestern right-of-way line of the Georgia Railroad, and said 1/2 inch reinforcing bar found is located a distance of 508.92 feet on a bearing of north 37 degrees 15 minutes 24 seconds east from Brass Monument Number 2002 – State Plane Coordinates equal N-1372973.877 E-463333.494 (West Zone); thence leaving the northern right-of-way line of Commerce Drive, running north – degrees 30 minutes 00 seconds west a distance of 129.96 feet to a 1/2 inch reinforcing bar set; running thence south 87 degrees 24 minutes 10 seconds west a distance of 206.74 feet to a 1/2 inch reinforcing bar set; running thence south 00 degrees 19 minutes 03 seconds east a distance of 33.09 feet to a 3/4 inch open top pipe found; running thence north 88 degrees 27 minutes 34 seconds east a distance of 1821 feet to a 1/2 inch reinforcing bar found; running thence south 02 degrees 17 minutes 38 seconds east a distance of 38.74 feet to a 1/2 inch reinforcing bar found on the northern right-of-way line of Commerce Drive, said 1/2 inch reinforcing bar found being the point of beginning.

The above-described property is sown as being 0.401 acres on, and is described according to, Plat of Survey for Charles L. Martin, Valerie D. Martin and Lawyers Title Insurance Corporation, prepared by James H. Carter, GRLS No. 1999, for the Carter Group, Inc., bearing Job Number 95020131, dated February 10, 1995, which Plat of Survey is incorporated herein by this reference.

EXHIBIT B
Cottage Court Building Plans
[to be inserted]

EXHIBIT C

ANDP Presentation dated September 10, 2021

[to be inserted]

ANDP

Decatur Cottages Single-Family Development



September 10, 2021
Presentation to

**Decatur
Development Authority**



Presented by

John O'Callaghan
ANDP President & CEO

Jay Perlmutter
ANDP Director of SF Development



ANDP MISSION

ANDP develops, finances and advocates for affordable housing at scale that promotes racial equity and healthy communities where families thrive.



Veteran Homebuyer
Kat Aristyl

Advocacy/Community Engagement

- 500+ Neighborhood Leaders Trained
- Participants: Nationally recognized, engaged in policy and community transformation

Lending

- Capital for development of affordable housing and other community development facilities

Down Payment Assistance

- Providing critical resources for low- and moderate-income families to achieve homeownership

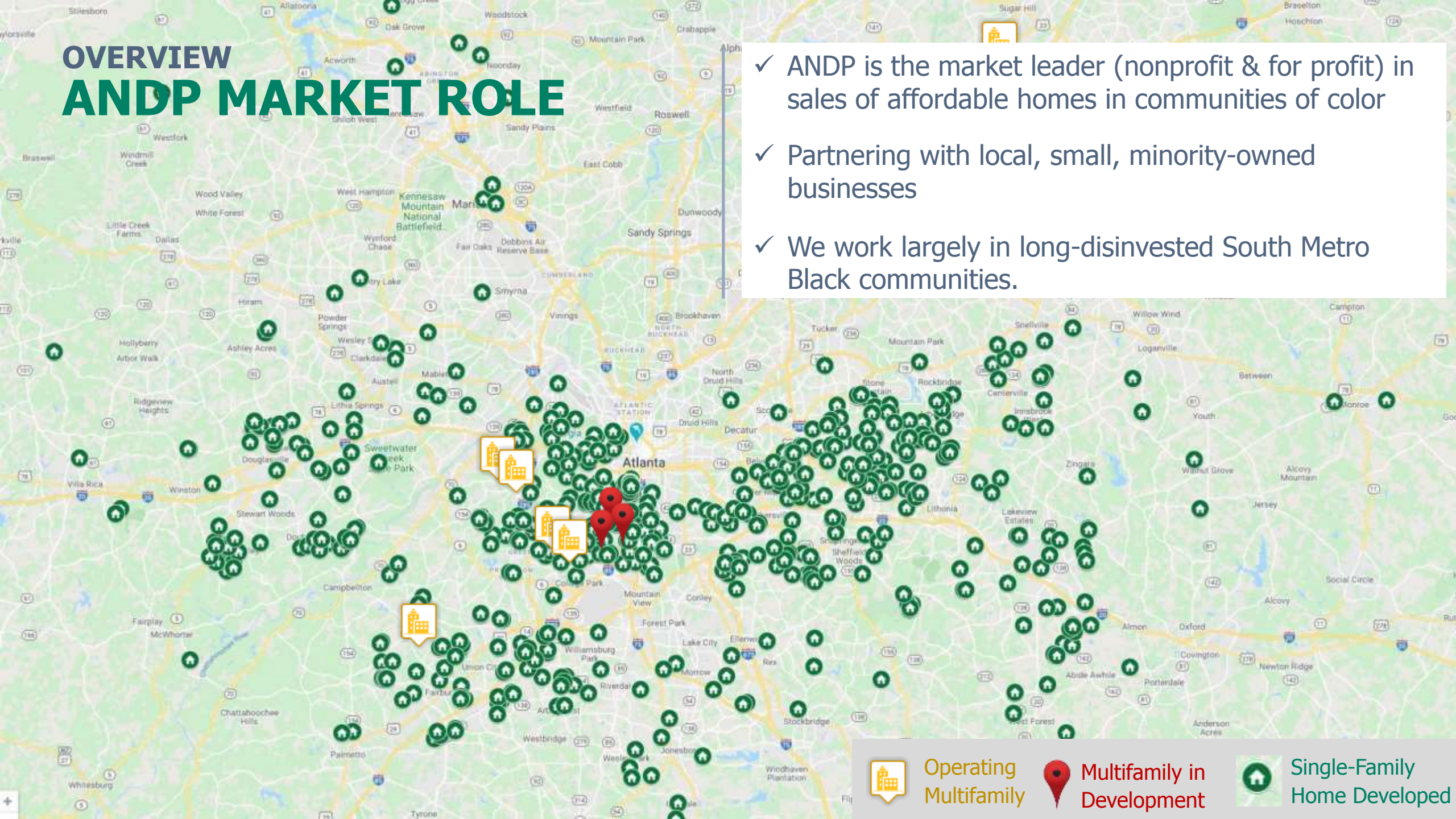
Development of Affordable Housing

- Single-Family
- Multifamily

OVERVIEW

ANDP MARKET ROLE

- ✓ ANDP is the market leader (nonprofit & for profit) in sales of affordable homes in communities of color
- ✓ Partnering with local, small, minority-owned businesses
- ✓ We work largely in long-disinvested South Metro Black communities.



Operating
Multifamily



Multifamily in
Development



Single-Family
Home Developed

OUR PLAN: Closing the Gap: 2000 by 2025

Single-Family
Rental

250

Single-Family
Homeownership

500

Multifamily
Rental

1,250

\$438,128,238 Investment in Equitable Housing
\$18M in one-time charitable grants

ANDP Decatur Cottages

Project Overview

- 230 Commerce Drive, Decatur, GA
- 6 single-family homes
 - 1-Bedroom: 1 home
 - 2-Bedroom: 1 home
 - 3-Bedroom: 4 homes
- New construction
 - 528 – 1117 square feet homes
- Estimated Sales Price \$199-275K
- Down Payment Assistance for qualifying buyers



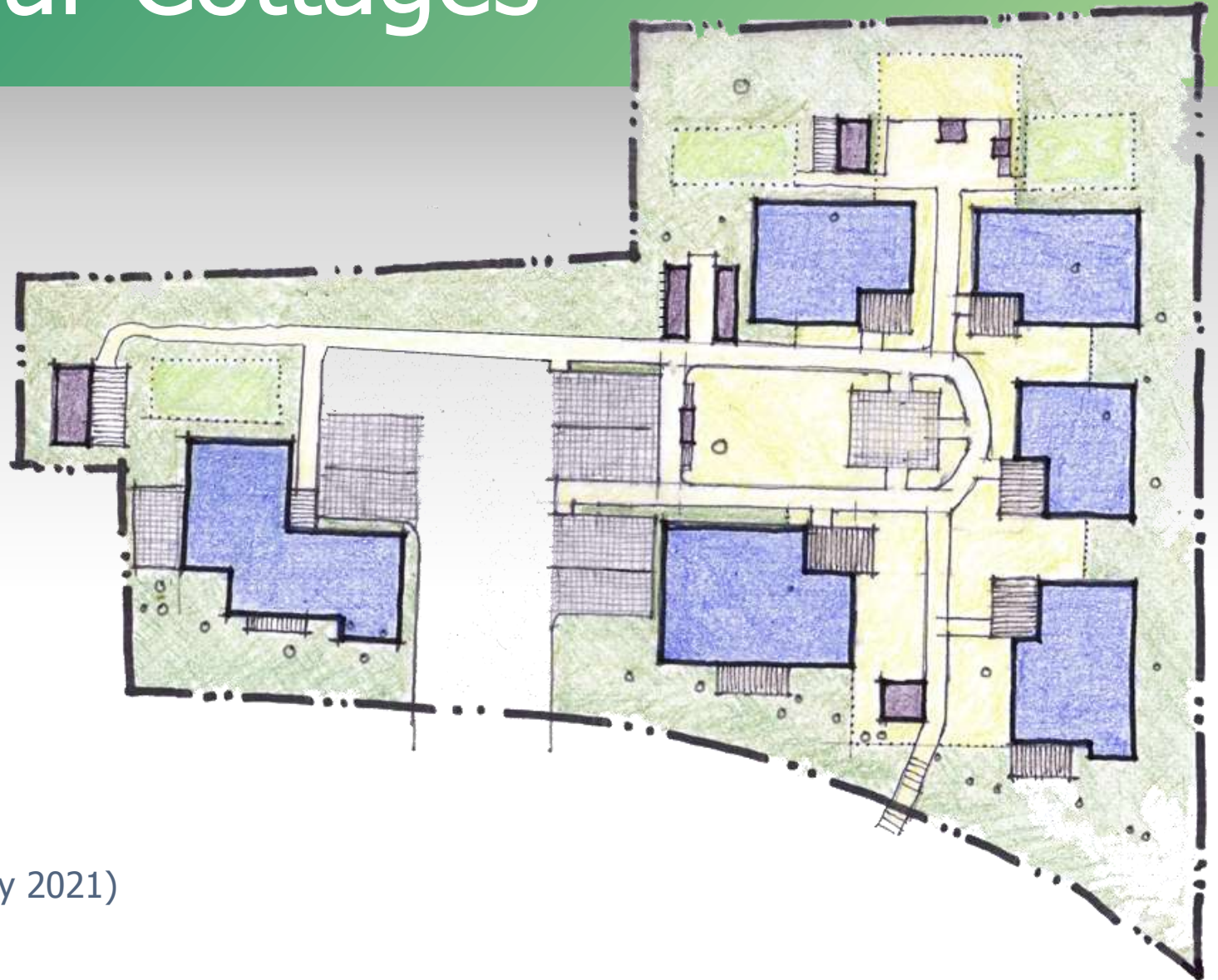
ANDP Decatur Cottages

Project Overview

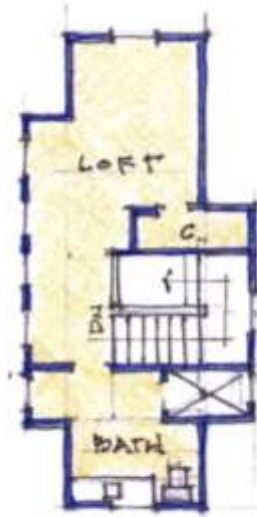
Unit	Bed	Sq. Ft.	Est. Sales Price
1	1-Bed	528	\$199,900
2	2-Bed	868	\$225,000
3	3-Bed	988	\$235,000
4	3-Bed	988	\$260,000
5	3-Bed	1017	\$260,000
6	3-Bed	1117	\$275,000

\$336,000

Metro Atlanta's median home sales price (July 2021)



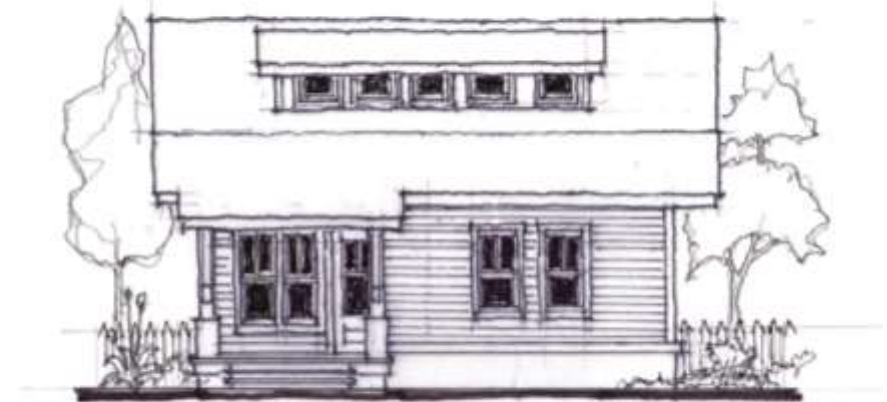
Design Examples



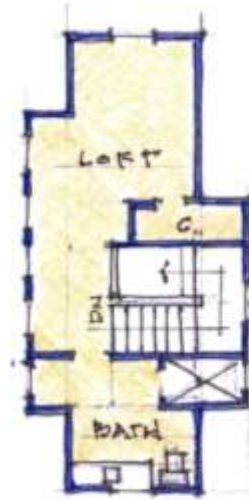
SECOND LEVEL



FIRST LEVEL



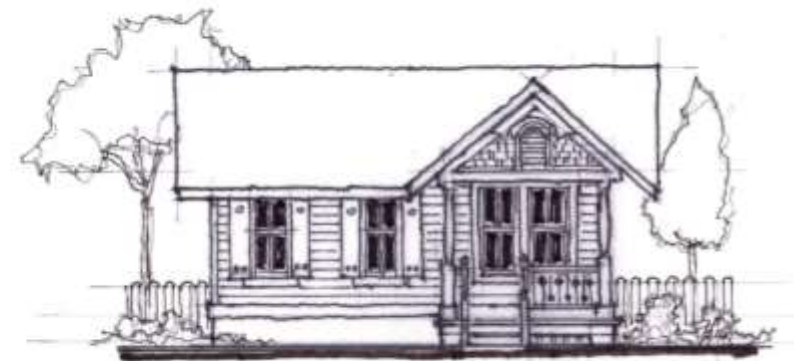
Design Examples



SECOND LEVEL



FIRST LEVEL



ANDP Decatur Cottages

General Partnership Structure

- ANDP to purchase property from the **Decatur Development Authority** (DDA) with seller financing
 - Loan from DDA protects DDA's interest in the development and ensures all terms of the agreement are met
- ANDP to finance the development with equity to be repaid with proceeds from sale
 - ANDP to provide capital at direct cost (no financing expense)
- ANDP is partnering with **Fortas Homes** to construct the units.
- ANDP will earn a developer fee and this fee will be included in the development budget
- ANDP will sell the cottages to homebuyer and concurrently transfer the underlying land to the **Decatur Land Trust** (DLT)
 - ANDP will work with DDA and DLT to develop a selection criteria for homebuyers
 - DDA will release their loan from acquisition at no cost to ANDP provided all terms of the agreement are met.

ANDP Decatur Cottages

Development Partner:

Fortas Homes

James Cheeks, CEO

- Fortas Homes has been building in Metro Atlanta for more than 20 years. During the last five years we have focused the company exclusively on building affordable housing. We do this in various ways but primarily we build smaller, high-quality homes.
- Experienced builder of single-family, affordable homes in metro Atlanta.
- Innovative projects including: the Cottages on Vaughn, Accessory Dwelling Units and numerous homes below 1,000 SF.
- Mission-driven developer, active with local governments advocating for better policy around housing through zoning primarily.
- James Cheeks is the current President of the Greater Atlanta Home Builders Association's Inner Atlanta Chapter.

ANDP Maximizing Lot Space



523 Griffin St, Atlanta
\$186,750



1263 Lyle Ave, East Point
\$249,900



913 Ira St, Atlanta
\$247,900

QUESTIONS? CONTACT

Jay Perlmutter
ANDP Director of Single-Family Development
jperlmutter@andpi.org



www.andpi.org
www.andphomes.org



EXHIBIT D
Cost of Work
[to be inserted]

EXHIBIT E

Insurance Requirements

Developer shall, at the time of execution of this Agreement, file with the Authority the certificate of insurance as contained in the Agreement, which shall cover all of Developer's insurance as required herein including evidence of payment of premiums thereon, and the policy or policies of insurance covering the Authority and its officers, agents, and employees. Each such policy and certificate shall be satisfactory to the Authority and shall bear an endorsement precluding the cancellation or reduction in coverage without giving the Authority at least fifteen (15) days prior notice thereof in writing. All policies shall be written by insurers licensed to do business in the State of Georgia and acceptable to the Authority, with a current A.M. Best rating of no less than A-:VII. All coverages indicated on the certificate of insurance shall be included in the Comprehensive General Liability and Automobile Liability insurance policies unless they are not applicable due to the nature of the work under this Agreement. Nothing contained in these insurance requirements is to be construed as limiting the extent of Developer's responsibility for payment of damages resulting from its operations under this Agreement.

On all required coverages, Developer shall secure from all subcontractors certificates of insurance as evidence that each subcontractor carries insurance to provide coverage under this Agreement up to the same minimum limits required of Developer in this Agreement. Developer shall submit copies of its subcontractors' insurance certificates to the Authority as evidence of such insurance coverage. Developer acknowledges and agrees that each subcontractor performing work for this Agreement will meet these minimum insurance requirements and that any costs or uninsured events arising from or involving a subcontractor working on behalf of Developer for this Agreement is the sole responsibility of Developer. Developer agrees to indemnify said Authority for any costs, expenses or damages that may arise from any subcontractor having insufficient insurance coverage.

(a) Public Liability and Property Damage Insurance – Developer shall take out, pay for, and maintain until completion and acceptance of the work required by this Agreement, public liability and property damage insurance as shall protect Developer and the said Authority from all claims for bodily injury and property damage which may arise because of the nature of the work or from operations under this Agreement. Developer is not required to have its subcontractors named as co-insureds in Developer's policy of public liability and property damage; but the policy shall protect Developer and the Authority from contingent liability which may arise from operations of subcontractors.

Each of said policies of insurance shall provide coverage in the following minimum amounts: Commercial general liability insurance with a minimum combined bodily injury and property damage limit of One Million and No/100 Dollars (\$1,000,000) per occurrence, a personal and advertising injury limit of One Million and No/100 Dollars (\$1,000,000), a products-completed operations aggregate limit of Two Million and No/100 Dollars (\$2,000,000) and a general aggregate limit of Two Million and No/100 Dollars (\$2,000,000) per location.

\$1,000,000	Each Occurrence Limit
\$1,000,000	Personal and Advertising Injury Limit
\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	General Aggregate

(b) Comprehensive Automobile Liability - Developer shall also take out, pay for, and maintain until completion and acceptance of the work required by this Agreement, automobile public liability and property damage insurance as shall protect Developer and said Authority from claims for bodily injury or

property damage which may arise from the use of motor vehicles engaged in various operations under this Agreement.

The policy or policies of automobile insurance shall provide coverage in the following minimum amounts: Automobile liability insurance covering owned, hired and non-owned vehicles, with separate coverage in an amount not less than One Million and No/100 Dollars (\$1,000,000) combined single limit for bodily injury and property damage.

\$1,000,000	Bodily Injury or death to any one person
\$1,000,000	Bodily Injury, each occurrence
\$1,000,000	Property Damage, each occurrence

(c) Umbrella Policy- Developer shall have an umbrella policy over General Liability, Automobile Liability, Workers' Compensation/Employers' Liability and any such policies that the umbrella can be placed over that involves insurance that is applicable to the work under this Agreement or at least applicable to the minimum required insurance under this Agreement. The policy shall be placed in the amount of One Million and No/100 Dollars (\$1,000,000) or an amount equal to that to be paid for the work being performed under this Agreement, whichever is greater.

(d) Workers' Compensation Insurance - Before beginning the work, Developer shall furnish to the Authority satisfactory proof that it has taken out, for the period covered by the work under this Agreement, Statutory Workers' Compensation and Employers' Liability Insurance. Such insurance shall be maintained in full force and effect during the period covered by this Agreement.

(e) Notification of Insurance Companies - Developer shall advise all insurance companies to familiarize themselves with all of the conditions and provisions of this Agreement, and insurance companies shall waive the right of special notification or any change or of decreased or increased work, or of cancellation of the Agreement or of any other act or acts by the Authority or its authorized employees and agents, under the terms of this Agreement and failure to so notify the aforesaid insurance companies of changes shall in no way relieve the insurance companies of their obligation under this Agreement.

(f) Indemnification - Developer shall indemnify and save harmless the Authority and all of their officers, agents, and employees from all suits, actions or claims of any character brought for or on account of any injuries to or death of or damages received by any person, persons or property resulting from the operations of Developer or any of its subcontractors, in prosecuting the work under this Agreement.

(g) Additional Insured - Developer shall name the Authority as an additional insured and shall provide Authority with proof thereof with the certificate of insurance and copy of endorsement that meets the additional insured requirement or specifically lists Authority as additional insured for said contract in the policy for said work by Developer on behalf of this Agreement.

(h) Subrogation Waiver - Developer waives all rights of subrogation against the Authority. Written evidence that each respective insurer acknowledges and agrees to such waivers of subrogation rights shall be submitted to the Authority prior to commencement of the project (at minimum, a certificate of insurance, followed by a copy of an endorsement or policy language evidencing the insurer's acknowledgement of and agreement to such waiver). In the event such requirement is not met and/or any subrogation proceeding is commenced by or on behalf of Developer or its insurers, Developer shall fully indemnify and save harmless the Authority for all costs, expenses and damages resulting therefrom, and shall take action necessary to stop any subrogation proceedings by Developer's insurers.