

**MEMORANDUM OF UNDERSTANDING FOR  
THE TOWN GREEN LIVE-WORK TOWNHOME PROJECT**

THIS **MEMORANDUM OF UNDERSTANDING FOR THE LIVE-WORK TOWNHOME PROJECT** (this “MOU”) is made and entered into this \_\_\_\_\_ day of June, 2022 (the “Effective Date”) by and between the **DOWNTOWN DEVELOPMENT AUTHORITY OF AVONDALE ESTATES, GEORGIA**, a public body corporate and politic created and existing under the laws of the State of Georgia (the “DDA”) and **FABRIC DEVELOPERS, LLC**, a Georgia limited liability company or its permitted assigns (the “Developer”).

**RECITALS**

WHEREAS, the **CITY OF AVONDALE ESTATES, GEORGIA**, a municipality existing under the laws of the State of Georgia (the “City”) is the governing municipality for the City of Avondale Estates, Georgia pursuant to the Charter of the City of Avondale Estates, Georgia, and promotes the health, prosperity, comfort, safety, security, good order, welfare, and proper government of the City of Avondale Estates, Georgia and for the benefit of its citizens;

WHEREAS, the DDA is a body corporate and politic of the State of Georgia pursuant to the provisions of the Downtown Development Authorities Law (O.C.G.A. Section 36-42-1 et seq.), as amended (the “Act”); and it is now existing and operating and its members have been duly appointed and entered into their duties;

WHEREAS, under the Act, the mission and purpose of the DDA is to facilitate the revitalization and redevelopment of the central business district of the City of Avondale Estates, Georgia and to thereby “develop and promote for the public good and general welfare trade, commerce, industry, and employment opportunities” (O.C.G.A. § 34-42-2);

WHEREAS, under the Act, the DDA possesses certain skills, qualifications, and experience which may be put to use to facilitate the revitalization and redevelopment of the central business district of the City of Avondale Estates, Georgia;

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 Avondale Estates, Georgia, as part of any “Project” and to loan money for paying the costs of “Projects” (as defined in the Act);

WHEREAS, the DDA is authorized under the Act to make and execute contracts, agreements, and other instruments necessary or convenient to exercise the powers of the DDA or to further the public purpose for which the DDA is created that will revitalize and redevelop the City’s downtown commercial business district;

WHEREAS, the DDA is authorized under the Act to finance (by loan, grant, lease, or otherwise), operate, or manage projects and to pay the cost of any project from the proceeds of the DDA or any other funds of the DDA, or from any contributions or loans by persons, corporations, partnerships, or other entities, all of which the DDA is authorized to receive, accept, and use;

WHEREAS, the DDA is authorized under the Act to extend credit or make loans to any person, corporation, partnership (whether limited or general), or other entity for the costs of any project or any part of the costs of any project, which credit or loans may be evidenced or secured by loan agreements, notes, or such other instruments;

WHEREAS, the City and DDA entered into that certain *Intergovernmental Agreement for the Redevelopment of Certain N. Avondale Properties* (the “IGA”) on May 11, 2022 to work cooperatively together to facilitate the revitalization and redevelopment of certain properties in the central business district of the City of Avondale Estates, Georgia, including specifically the development of certain portions of 90 N. Avondale Road (Tax Parcel Id No. 15 249 15 009), 88 N. Avondale Road (Tax Parcel Id No. 15 249 15 010), 84 N. Avondale Road (Tax Parcel Id No. 15 249 15 007), 4 Lake Street (Tax Parcel Id No. 15 249 15 005), and 6 Lake Street (Tax Parcel Id No. 15 249 15 004) to be verified by a survey (the “Live-Work Property”) as a live-work residential townhome community development (the “Live-Work Project”) as detailed in the IGA and as more specifically set forth in this MOU;

WHEREAS, the Developer desires to partner with the DDA to implement the Live-Work Project to construct a minimum of 10 live-work residential townhomes each consisting of a minimum of 2,500 square feet of conditioned livable space (the “Live-Work Units”) as detailed in the presentation to the DDA on June 14, 2022, attached herein and incorporated herein as Exhibit A;

WHEREAS, the DDA desires to partner with the Developer to implement the Live-Work Project as set forth in this MOU;

WHEREAS, the DDA and Developer desire to negotiate and enter into an agreement to implement the Live-Work Project consistent with this MOU;

NOW, THEREFORE, in consideration of the mutual promises, covenants and understandings made in this agreement, and for other good and valuable consideration, the DDA and Developer consent and agree as follows:

1. Development Contract to Implement Live-Work Project. The DDA determines and finds that negotiating and entering into a legally binding and enforceable development contract with Developer to implement the Live-Work Project as detailed in this MOU will further trade, commerce, industry, and employment opportunities within the City as required by and consistent with the IGA and the purposes and provisions of the Act.

Within 180 days of the Effective Date of this MOU, the DDA and Developer shall enter into an agreement for the Developer to implement the Live-Work Project (the

“Development Contract”), which shall set forth and include, among other agreed upon terms and conditions, the following:

- a. Construction Budget and Schedule. A construction budget and schedule that sets forth (a) a preliminary budget for the construction and development of the Live-Work Units and completion of the Live-Work Project, including, but not limited to all design, construction, fees, hard costs, and other soft costs; (b) a pro forma detailing projections of total development costs (i.e., built costs, price per square foot, site costs, soft costs, developer fees) and for anticipated sales price, net proceeds, and any funding; and, (c) schedule of construction and substantial completion.
- b. Feasibility and Market Business Plan and Marketing Profile of Prospective Buyers. A feasibility and market business plan and marketing profile of prospective buyers for the Live-Work Project, including, but not limited to project description(s), analysis of market of housing to be offered, analysis of competition, marketing strategy, marketing profile of prospective buyers, and sales prices.
- c. Appointment and Authority of Developer. The appointment by the DDA of the Developer to render services for the DDA in supervising and overseeing the implementation of the Live-Work Project and construction of the Live-Work Units.
- d. Subdivision and Pre-Development Obligations of the DDA. Survey, subdivision and, if elected by the DDA, pre-development activities to be performed by the DDA prior to the sale and conveyance of the Live-Work Property to the Developer.
- e. Sale and Conveyance of the Live-Work Property to the Developer. The sale and conveyance of the Live-Work Property from the DDA to the Developer, consisting of the purchase of individual Live-Work Units at the purchase price of \$85,000.00 per unit for non-“pad-ready” units, for the Developer to own and hold title in and to, and subject to and conditioned upon the terms of the Development Contract, including implementation of the Live-Work Project and construction of the Live-Work Units. For purposes of this section, “pad-ready” is defined as completing pre-development activities required to provide the unit with utilities for tie-in by the Developer to provide service to the Live-Work Property.
- f. Payment Schedule. The sale of and conveyance of the Live-Work Property from the DDA to the Developer shall be structured as a payment schedule, whereby Developer will pay twenty-five percent (25%) of the total cost of all Live-Work Units when construction commences, another twenty-five percent (25%) per quarter, and the remaining balance to be paid within twelve (12) months of the commencement of construction.

- g. Completion of the Live-Work Project. The establishment of a construction schedule and date of substantial completion of the Live-Work Units as evidenced upon the issuance of a *Certificate of Occupancy* by the City.
- h. Events of Default and Remedies. The events of default and available remedies upon breach and default by the Developer of its obligations owed to the DDA under the Development Contract.
- i. Accounts and Records. The minimum requirements of the Developer to prepare and maintain such books of account and other records as may be required and approved by the DDA, including, but not limited to, records relating to insurance, invoices, material supplies, and soft costs associated with the Live-Work Project.
- j. Construction Warranty. The minimum warranty requirements of the materials and equipment furnished by the Developer in accordance with the Development Contract.

In the event the DDA and Developer have not entered into the Development Contract within 180 days of the Effective Date, then either party may at its option terminate this MOU with the parties relieved of liability to each other under this MOU except as otherwise specifically set forth in this MOU.

2. Minimum Development Conditions for the Live-Work Project.

- A. The DDA and Developer agree and stipulate that the Developer shall implement the Live-Work Project substantially consistent with the presentation to the DDA on June 14, 2022, attached herein and incorporated herein as Exhibit A;
- B. The DDA and Developer agree that the Live-Work Project shall consist of a minimum of 10 live-work residential Live-Work Units each consisting of approximately 2,500 square feet of conditioned livable space.
- C. The DDA and Developer agree as condition of this MOU that the DDA shall cause a wrapped parking garage deck to be constructed on certain portions of 90 N. Avondale Road (Tax Parcel Id No. 15 249 15 009), 88 N. Avondale Road (Tax Parcel Id No. 15 249 15 010), 84 N. Avondale Road (Tax Parcel Id No. 15 249 15 007), and 4 Lake Street (Tax Parcel Id No. 15 249 15 005) that will include a minimum of 183 parking spaces with a 22 of those parking spaces dedicated by easement for the Live-Work Project and use by the owners of and visitors to the Live-Work Units (the “Parking Deck”).
- D. The DDA and Developer agree that the Live-Work Project shall be consistent with this MOU and subject to all applicable provisions of the Avondale Estates Zoning Ordinance, Sec. 21-1.1.1 et seq.; and, Prohibited Use Restrictions attached hereto

and incorporated herein as Exhibit B.

- E. The Developer shall commence construction of the Live-Work Units within ninety (90) days of substantial completion of the Parking Deck and complete the construction within twelve (12) months of that date. Notwithstanding anything to the contrary herein, the DDA and Developer agree and stipulate that the Developer is not required to commence implementation of the Live-Work Project or construction of the Live-Work Units until and unless construction of the Parking Deck has commenced.

3. Miscellaneous.

- A. This MOU, including any attachments and exhibits, constitutes all of the understandings and agreements existing between the DDA and Developer with respect to the subject matter identified in this agreement. Furthermore, this MOU supersedes all prior agreements, negotiations, and communications of whatever type, whether written or oral, between the parties hereto with respect to such subject matter, except as may be reflected in prior written agreements signed by both parties. No representation, written or oral, not incorporated in a mutually executed written agreement between the parties shall be binding upon the DDA or Developer.
- B. This MOU shall not be amended or modified except by agreement in writing executed by the Chairman of the DDA upon approval by the Board of Directors of the DDA and the Developer, respectively.
- C. The DDA and Developer each warrant and represent that it has full and complete authority to enter into this MOU, and each person executing this MOU on behalf of the respective party has been fully authorized to execute this MOU on behalf of such party and that such party is bound by the signature of such person(s). Notwithstanding the foregoing, neither the DDA shall be bound under this MOU until such time as both parties have fully executed this MOU and this MOU has been duly approved and authorized by all necessary and appropriate official action on the part of the governing body of the DDA.
- D. This MOU is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this MOU, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this MOU require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.
- E. If a court of competent jurisdiction renders any provision of this MOU (or portion

thereof) to be invalid or otherwise unenforceable, that provision or portion thereof shall be severed, and the remainder of this MOU shall continue in full force and effect as if the invalid provision or portion thereof was not part of this MOU. No action taken pursuant to this MOU shall be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this MOU and should not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.

F. This MOU shall inure to the benefit of, and be binding upon, the DDA and Developer. This MOU does not and is not intended to confer any rights or remedies upon any persons other than the DDA and Developer. Notwithstanding anything to the contrary herein, the DDA agrees that the Developer may assign all of its right, title and interest in, to and under this MOU to another entity affiliated with the Developer or which the Developer has an interest in, but without releasing Developer from its obligations hereunder.

G. This MOU may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this MOU on the \_\_\_\_\_ day of June, 2022.

**DOWNTOWN DEVELOPMENT  
AUTHORITY OF AVONDALE ESTATES,  
GEORGIA**, by its Board of Directors:

\_\_\_\_\_  
Dave Deiters, Chair

Attest:

\_\_\_\_\_  
Shannon Powell, Executive Director

Approved as to form:

\_\_\_\_\_  
R. Kyle Williams, General Counsel

**FABRIC DEVELOPERS, LLC:**

\_\_\_\_\_  
Jerry Miller, Managing Member

**EXHIBIT A**

Presentation

## **EXHIBIT B**

### Prohibited Use Restrictions

The following uses are prohibited in regard to the Live-Work Project, Live-Work Project, and Hotel & Retail Project in addition to all applicable provisions of the Avondale Estates Zoning Ordinance, Sec. 21-1.1.1 et seq.:

1. Any “second hand” store, “surplus” store, used clothing or thrift store, pawn shop, or “consignment” store;
2. Any retail operation in which more than twenty percent (20%) of the sales area of such operation is used for the display and/or sale of clothing or goods commonly referred to as close outs, manufacturer’s overruns, or excess inventory or manufacturer’s seconds of imperfect merchandise;
3. Any “small-box discount store” conducting business operating as a Family Dollar Store, Dollar Tree, Dollar General, or similar retail store offering for sale a variety of convenience shopping goods and continuously offers the majority of items in their inventory for sale at a price lower than traditional retail stores;
4. Any “big-box retailer” occupying a floor area of more than five thousand (5,000) square feet;
5. Any bowling alley, poolhall, dance hall, or discotheque;
6. Any movie theater occupying a floor area of more than five thousand (5,000) square feet;
7. Any use which emits or results in strong or offensive odors, fumes, dust, or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness, or loudness, creates a hazardous condition, or is used, in whole or in part, for warehousing or the dumping or disposing of garbage or refuse; provided however, this subsection shall not apply to the operation of a barbecue or other open-fire pit cooking installation or restaurant;
8. Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operations;
9. Any junkyard, stockyard, or any use for dumping, disposing, incineration, or reduction or garbage (exclusive of the areas specifically designated by the Design Review Committee for such purposes);
10. Any gasoline or service station, automobile, truck, trailer, or recreational vehicle sales, leasing, display, or body shop repair operations; provided however, this subsection shall not apply to the operation of a bicycle sales or rental shop;
11. Any veterinary hospital, clinic, animal raising, or boarding facility;
12. Any mortuary or funeral home;
13. Any coin-operated laundry;
14. Any “pornographic use,” which shall include, without limitation, a store displaying for sale or exhibition books, magazines, or other publications containing any combination of photographs,



drawings, or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale, or rental, video implements (such as DVDs, video cassettes, or such subsequent advances in technology) or other medium capable of projection, transmitting, or reproducing, independently or in conjunction with another device machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or X or unrated by the Motion Picture Rating Declarant, or any successor thereto; provided, however, the parties hereto acknowledge and agree that the sale of books, magazines, and other publications by a retailer of the type normally associated with the sale of books, magazines, and other publications and normally located in a first-class retail center shall not be deemed a pornographic use hereunder;

15. Any so-called "head shop" or other establishment primarily selling or exhibiting drug-related paraphernalia, including cannabis and cannabis-derived products;
16. Any gambling activities, facility, or operation, including, but not limited to an off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker-black-jack/keno/slot machines or similar device; or bingo hall;
17. Any gun or ammunition shop, shooting range, or gun range;
18. Any tattoo or piercing parlor;
19. Any massage parlor or health spa, except insofar as a licensed massage therapist may operate out of one unit
20. Any carnival, amusement park, or circus;
21. Any amusement or video arcade;
22. Any car wash, gasoline station, automobile repair shop, or any business performing the service of motor vehicles, including, without limitation, any quick lube oil change service, tire center, or service station or facility;
23. Any dry-cleaning establishment;
24. Any hair or nail salon, except that one unit may contain a hair or nail salon
25. Any tobacco shop, smoke shop, or vape shop;
26. Any athletic club
27. Any club or lodge;
28. Any daycare;
29. Any place of worship, but note that individual unit owners may have private gatherings of a religious nature
30. Any bank, credit union, brokerage, or investment services, except that financial advisory firms are permitted