

**MEMORANDUM OF UNDERSTANDING FOR
THE TOWN GREEN MIXED USE PROJECT**

THIS **MEMORANDUM OF UNDERSTANDING FOR THE TOWN GREEN MIXED USE 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 64 N. Avondale Road (Tax Parcel Id No. 15 249 16 008), 68 N. Avondale Road (Tax Parcel Id No. 15 249 16 002), and 70 N. Avondale Road (Tax Parcel Id No. 15 249 16 001) for the Town Green Mixed Use Market development (the “Mixed Use Property”) as a multi-tenanted ground level neighborhood restaurant and retail row along and facing N. Avondale Road connecting downtown with existing pedestrian energy and targeted to chef-driven full-service restaurants and catalytic destination local retail with complimentary second-floor office uses (the “Town Green Mixed Use Project”);

WHEREAS, the Developer desires to partner with the DDA to implement the Town Green Mixed Use Project and to construct the multi-tenanted ground level neighborhood restaurant and retail row buildings and related improvements (the “Town Green Buildings”) 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 Town Green Mixed Use Project and to construct the Town Green Buildings as set forth in this MOU;

WHEREAS, the DDA and Developer desire to negotiate and enter into an agreement to implement the Town Green Mixed Use Project and to construct the Town Green Buildings 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 Town Green Mixed Use Project. The DDA determines and finds that negotiating and entering into a legally binding and enforceable development contract with Developer to implement the Town Green Mixed Use Project and to construct the Town Green Buildings 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, and with a target of 90 days of the Effective Date of this MOU, the DDA and Developer shall enter into an agreement for the Developer to implement the Town Green Mixed Use Project and to construct the Town Green Buildings (the “Development Contract”), which shall set forth and include, among other agreed upon terms and conditions, the following:

- a. Development Budget and Schedule. A construction budget and schedule that sets forth (a) a preliminary budget for the construction and development of the Town Green Buildings and completion of the Town Green Mixed Use 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, financing costs and any other costs associated with the development of the project) and for anticipated sales price, net proceeds, and any funding; and, (c) schedule of construction and substantial completion (the “Development Budget”). The DDA and Developer shall agree to the Development Budget prior to execution of the Development Contract.
- b. Feasibility and Market Business Plan and Marketing Profile of Prospective Tenants. A feasibility and market business plan and marketing profile of prospective tenants for the Town Green Mixed Use Project, including, but not limited to project description(s), analysis of market of goods and services to be offered, rental and lease comparables, analysis of competition, marketing strategy, marketing profile of prospective tenants, and schedule for lease-up and business openings.
- 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 Town Green Mixed Use Project and construction of the Town Green Buildings.
- d. Sale and Conveyance of the Mixed Use Property Building Pads to the Developer. The sale and conveyance of those portions of the Mixed Use Property constituting the building pad for the Town Green Buildings (collectively, the “Building Pad”) from the DDA to the Developer at the purchase price of One Hundred Thousand and No/100 Dollars (\$100,000.00), or 1.2% of the Development Budget, for the Developer to own and hold title in and to the Building Pad subject to and conditioned upon the terms of the Development Contract, including implementation of the Town Green Mixed Use Project and construction of the Town Green Buildings. Simultaneously with such conveyance, the DDA shall cause to be delivered to the Developer certain easements or other use agreements for the Developer to utilize outdoor common space such as patios, yards, and other such uses incidental to the Building Pad to serve as outdoor dining and amenity spaces for the Town Green Mixed Use Project and, further, for the provision of sanitation, garbage, deliveries, and other such services for the Town Green Mixed Use Project.

- e. Promissory Note and Security Deed between the DDA and Developer. Contemporaneously with the sale and conveyance of the Building Pad from the DDA to the Developer, the DDA shall loan the Developer an amount equal to Three Million Two Hundred Sixty Thousand and No/100 Dollars (\$3,260,000.00), associated with the Town Green Mixed Use Project as set forth in the Development Budget to be repaid to the DDA at an interest rate of 3.0% for a 10-year term with interest-only payments for the term, a balloon payment by the DDA upon any sale or refinancing of the Building Pad by the Developer, and to be secured by and encumbering the Building Pad to be evidenced by a *Promissory Note* and *Security Deed* (collectively, the “Security Deed”). Upon the sale or refinancing of the Building Pad by the Developer, the Developer shall pay or cause to be paid to the DDA a monetary amount equal to 15% of the net proceeds from such sale or refinance. The DDA shall cancel and release the Security Deed upon substantial completion of the Town Green Buildings as evidenced upon the later of the issuance of a *Certificate of Occupancy* by the City and its receipt of such payment of 15% of the net proceeds the sale or refinancing of the Building Pad by the Developer.
- f. Additional Loan Funds. Should construction costs associated with the Development Budget increase, the DDA shall grant Developer an additional loan in amount reflecting up to 40% of the Development Budget for the Town Green Mixed Use Project, not to exceed \$10,500,000.00 (the “Second Loan”). Such Second Loan shall be repaid to the DDA at an interest rate of between 4.0- 5.0% to be determined during the development contract period for a 10-year term with interest-only payments for the term, a balloon payment by the DDA upon any sale or refinancing of the Building Pad by the Developer, and to be secured by and encumbering the Building Pad to be evidenced by an additional *Promissory Note* and *Security Deed* (collectively, the “Second Security Deed”).
- g. Completion of the Town Green Mixed Use Project. The establishment of a construction schedule and date of substantial completion of the Town Green Buildings 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 Town Green Mixed Use 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 do not enter 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 Town Green Mixed Use Project.

- A. The DDA and Developer agree and stipulate that the Developer shall implement the Town Green Mixed Use Project and construct the Town Green Buildings 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 Town Green Buildings shall consist of a minimum of 21,000 sq. ft., including multiple independent restaurants with extensive outdoor dining, sundry retail, and offices uses.
- C. The DDA and Developer agree that the Town Green Buildings shall include restroom facilities available to the public, adequate to serve the uses of the Town Green Park and accessible to the public. These restroom facilities shall be open and available to the public during all normal business hours of the Town Green Park. These facilities will be delivered upon completion of construction of the Town Green Buildings as evidenced upon the issuance of a *Certificate of Occupancy* by the City and the delivery of the public restroom facilities to the DDA. Maintenance of these restroom facilities will be determined during the development contract phase. If an agreeable maintenance arrangement cannot be agreed upon, the DDA may move to eliminate the bathrooms from the project.
- D. 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 120 of those parking spaces dedicated to public parking (the “Parking Deck”).
- E. The DDA and Developer agree that the Town Green Mixed Use 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.; Recommended Storefront Design Guidelines attached hereto and incorporated herein as Exhibit B; and, Prohibited Use Restrictions attached hereto and incorporated herein as Exhibit C.
- F. 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 120 of those parking spaces dedicated for the for public use for area visitors including those patronizing the Town Green Mixed Use Project.

- G. The Developer shall commence construction of the Town Green Buildings within nine (9) months of the execution of this MOU, contingent upon the Parking Deck having been financed and construction having begun. Notwithstanding anything to the contrary herein, the DDA and Developer agree and stipulate that the Developer is not required to commence implementation of the Town Green Mixed Use Project or construction of the Town Green Buildings 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

Recommended Storefront Guidelines

The following recommended Storefront Guidelines shall govern the Town Green Mixed Use Project, Townhome Project, and Hotel & Retail Project in addition to all applicable provisions of the Avondale Estates Zoning Ordinance, Sec. 21-1.1.1 et seq.:

General Design

- Avoid Monotonous design at ground level by breaking up retail bays
- Varied storefront materials are encouraged
- Storefronts should be distinctive from the floors above and allow easy transition from one retailer to another.
- Provide design flexibility for the unique branding needs of individual tenants
- The line-of-sight should be unobstructed from one retail bay to another.
- Entries should be recessed to allow doors to swing out
- Where appropriate, slide doors and windows allow for flexibility and activities may spill onto the sidewalks
- Clear glass fenestration TO allow for transparency.
Minimum of 65% fenestration on street frontage
- Fenestration must have a minimum height of 10-feet and must begin at a point not higher than 35-inches above the sidewalk.

Awnings

- When awnings are used, they should accept the top edge of ground floor windows and door frames
- Awnings should project no more than 6-feet from the building and mounted at least 8-feet above the sidewalk.
- Awnings should be constructed of high-quality materials; use of aluminum, vinyl, or other plastic materials is not recommended.
- Under-awning lights can be used to illuminate the sidewalk and storefront
- Internally illuminated awnings should not be used.

Lighting

- Indirect lighting is welcomed
- Floodlights and other security lighting should be hidden or shielded to avoid glare
- Decorative fixtures like sconces and facade up lighting on the storefront should be encouraged.
- Storefront displays should be well lit and stay on past store closing to activate the street.

Signage

- Custom and artistic signage are required rather than conventional acrylic and/or plastic faced signs that are internally lit
- Signage should be graphically oriented or three dimensional
- Signs should be lit with small, shielded light sources as opposed to floodlighting
- Signs should be limited in size and scale in keeping with a pedestrian environment
- The architectural elements of the façade should be considered when determining the size and location of the sign
- Signage should focus on creative under canopy signs, blade signs and window signs
- Blade signs are preferred.
- Blade signs should be mounted 8-feet above the sidewalk and hung perpendicular to the sidewalk.
 - a. Two-sided blade signs shall be permitted to be mounted perpendicular to the storefront.
 - b. No sign shall extend above the parapet wall of the storefront building.
 - c. Blade signs shall provide a minimum clearance of 4” between the storefront and sign face. Blade signs shall project a maximum of 48” from the storefront and shall have a maximum 44” width.
 - d. 7’-6” clearance shall be provided between the baseline of any sign and the sidewalk.
 - e. Blade signs shall have a maximum depth of 12” if located at a height less than 9’-0”, and a maximum depth of 18” if located at 9’-0” height or higher.
- Allow chalkboard and high-design sandwich board signs.

Curb Appeal

- Sidewalk merchandise displays and planting boxes are encouraged
- Tree well fencing and planting provide an opportunity to individualize at store

Window Displays

- Window displays should be simple and easy to understand
- Keep storefronts free of window treatments to allow unobstructed views into the store
- Keep the back of the display window open to allow the store’s interior to be visible to passing people

Street Furniture

- Encourage high quality movable street furniture. Approval of street requirement should be given in advance.
- Street furniture (umbrellas, tables, chairs, benches) should not be locked up at the end of the day.
- Low fencing can be used to frame private dining space.

- Well maintained planters are encouraged.

EXHIBIT C

Prohibited Use Restrictions

The following uses are prohibited in regard to the Town Green Mixed Use Project, Townhome Project, and Hotel & Retail Project in addition to all applicable provisions of the Avondale Estates Zoning Ordinance, Sec. 21-1.1.1 et seq. unless otherwise excepted and agreed upon by the DDA upon request by the Developer:

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 as the primary business of an establishment;
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 actionable under applicable codes or other regulation of the City 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 barbeque 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 all-terrain recreational (ATV) 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, including electric bicycles;

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 unless located on the second floor and not constituting more than 25% of the total square footage of the Town Green Buildings;
20. Any carnival, amusement park, or circus;
21. Any amusement or video arcade as the primary business of the establishment;
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 unless located on the second floor and not constituting more than 25% of the total square footage of the Town Green Buildings;
25. Any tobacco shop, smoke shop, or vape shop;
26. Any athletic club, fitness studio, personal training center, or gym (as a primary use) unless located on the second floor and not constituting more than 25% of the total square footage of the Town Green Buildings;
27. Any club or lodge;
28. Any daycare or educational services;
29. Any place of worship;
30. Any bank, credit union, brokerage, or investment services unless located on the second floor and not constituting more than 25% of the total square footage of the Town Green Buildings;
31. Any medical service unless located on the second floor and not constituting more than 25% of the total square footage of the Town Green Buildings; and,
32. Any consumer service (i.e., consumer maintenance and repair service, personal service, studio or instructional service)