



**ORDINANCE NUMBER 58-2021**

**AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF GREER, SOUTH CAROLINA AND ADVENIR-OAKLEY DEVELOPMENT GROUP, LLC, OR ITS ASSIGNS, WITH RESPECT TO INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF GREER, AND OTHER MATTERS RELATED THERETO**

WHEREAS, pursuant to Greer City Ordinances 56-2021 and 57-2021, the property owners for parcels of land designated as Greenville County Tax Map Parcels P/O G004000104400; P/O G002000301903; G002000301800; and, G002000301801 (collectively the "Property") have petitioned to annex the Property into the City of Greer, South Carolina; and,

WHEREAS, Advenir-Oakley Development Group, LLC, or its assigns, intends to purchase and develop a multifamily housing project on the Property; and,

WHEREAS, the parties desire to enter into the Agreement attached hereto as Exhibit "A" ("Agreement") whereby the Developer agrees to the payment identified in the Agreement in exchange for the City's annexation of the Property which the City agrees to use for capital projects in the City; and,

WHEREAS, the development on the Property will serve the interests of the City by expanding housing opportunities, providing meaningful development, and by increasing the City's tax base; and,

WHEREAS, the Mayor and Council conclude that the Agreement is in the best interests of the City;

NOW, THEREFORE, be it ordained by the Mayor and Council of the City of Greer that:

1. Upon approval of Ordinances 56-2021 and 57-2021, the Mayor of the City is hereby authorized to execute and deliver the Development Agreement in substantially the form attached to this Ordinance as Exhibit "A," or with such minor changes as are not materially adverse to the City and which are not inconsistent with the matters contained herein.

This ordinance shall take effect immediately upon second reading.

**CITY OF GREER, SOUTH CAROLINA**

A handwritten signature in blue ink, appearing to read "Rick Danner", written over a horizontal line.

Richard W. Danner, Mayor

**ATTEST:**

  
\_\_\_\_\_

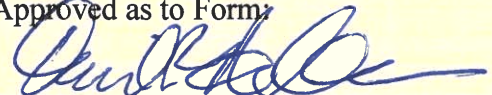
Tammela Duncan  
Municipal Clerk

Introduced By: Councilmember Judy Albert

First Reading: November 9, 2021

Second and  
Final Reading: November 23, 2021

Approved as to Form:

  
\_\_\_\_\_

Daniel R. Hughes, City Attorney





record or a final judgment approving the annexation has been entered by a court of appropriate jurisdiction. The City agrees to use the Payment for capital improvement projects in the City. Advenir shall have no obligation to make this payment to the City until such time as (a) the Property has been annexed into the City and either (i) the 60-day period to challenge the annexation has timely expired pursuant to S.C. Code §5-3-270 (1976) without any challenges having been filed, or (ii) all challenges have been withdrawn of record or a final judgment approving the annexation has been entered by a court of appropriate jurisdiction, and (b) City has granted approval to Advenir for its Development Permit.

4. **Notices.** All notices requests, demands or other communications hereunder shall be in writing and deemed given (a) by depositing same in the United States mail, certified mail, return receipt requested, with postage prepaid, addressed to the party at the address shown below, (b) when delivered personally, (c) the day following the date said in communication is deposited for next morning delivery with a nationally recognized overnight courier service, or (d) on the day said communication is sent by e-mail, with receipt confirmed, as follows:

**City:** **The City of Greer**  
**ATTN: City Administrator**  
**301 East Poinsett Street**  
**Greer, SC 29651**  
**amerriman@cityofgreer.org**

**Advenir Oakley** \_\_\_\_\_  
**Capital, LLC:** \_\_\_\_\_  
\_\_\_\_\_

5. **Absence of Certain Commercial Practices.** Neither Advenir nor any officer, member, director, employee or agent of them (nor any person acting on behalf of any of the foregoing), has given or agreed to give any gift or similar benefit, including, without limitation, any contribution, payment or expenditure, of more than normal value to any customer, supplier, City or other governmental employee or official or any other person who is or may be in a position to help or hinder the foregoing entities or assist them in connection with any actual or proposed activity described in this Agreement.

6. **Attorneys' Fees and Costs of Collection.** In the event of any litigation, contest, dispute, suit, proceeding or action (collectively an "Action") instituted by a party to this agreement regarding this Agreement, the non-prevailing party to this agreement shall pay the prevailing party reasonable expenses and attorneys' fees to be determined by the court. Each of the parties shall be responsible for its own professional fees and

expenses incurred in connection with the drafting and review of this Agreement and any amendments thereto.

7. **No Joint Venture.** Neither this Agreement nor any agreements, instruments, documents or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making Advenir a partner or joint venturer with the City or as creating any similar relationship or entity. Neither party has the authority to act on behalf of or bind the other party concerning this Agreement.

8. **Defaults and Remedies.**

A. Events of Default. The following are “Events of Default” under this Agreement:

a. Failure by Advenir to make the Payment, which failure has not been cured within thirty (30) days following receipt of written notice from the City specifying the delinquency in payment and requesting that it be remedied;

b. Failure by Advenir to perform any of the terms, conditions, obligations, or covenants under this Agreement, which failure has not been cured within thirty (30) days following receipt of written notice from the City specifying such failure and requesting that it be remedied, unless Advenir has instituted corrective action within the thirty (30) day period and is diligently pursuing corrective action until the default is corrected, in which case the thirty (30) day period is extended to include the period during which Advenir is diligently pursuing corrective action;

c. A representation or warranty made by the City which is deemed materially incorrect when deemed made; or

d. Failure by the City to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within thirty (30) days after written notice from Advenir to the City specifying such failure and requesting that it be remedied, unless the City, as the case may be, has instituted corrective action within the thirty (30) day period and is diligently pursuing corrective action until the default is corrected, in which case the thirty (30) day period is extended to include the period during which the City is diligently pursuing corrective action; provided however, in no event shall such extended period extend beyond ninety (90) days from delivery of notice of a failure of performance.

B. Remedies on Default.

a. If an Event of Default by Advenir has occurred and is continuing, then the City may take any one or more of the following remedial actions: (i) terminate the Agreement; or (ii) take whatever action at law or in equity

may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default.

b. If an Event of Default by the City has occurred and is continuing, Advenir may take one or more of the following actions: (i) bring an action for specific enforcement; (ii) terminate the Agreement; or (iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

C. Remedies Not Exclusive. No remedy described in this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute.

9. **Mediation.** Prior to the commencement of any litigation, the parties agree to mediate any dispute concerning this Agreement and will share equally the costs for the mediation except that each will pay their own attorney. The parties agree to agree upon a mediator located within twenty-five (25) miles of the City of Greer.

10. **No Third Party Beneficiaries.** The terms, provisions, conditions and requirements made and set forth herein are solely for the benefit of the parties hereto, and their permitted assigns. It is specifically further intended that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto, and their permitted assigns.

11. **Organization and Power.** Advenir represents and warrants to the City that it (i) is a corporation organized, validly existing, and in good standing under the laws of the State of South Carolina, (ii) has the power to engage in the transactions contemplated hereby; and (iii) has the full power, authority and legal right to execute and deliver this Agreement and other documents and to perform and observe the terms and provisions thereof. The City represents and warrants to Advenir that it has the right, power and authority to execute and deliver this Agreement and to perform and observe the terms thereof. This Agreement, when executed and delivered by the parties, is a valid and binding obligation of the parties and is enforceable in accordance with its terms, subject to the conditions precedent set forth above.

12. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and the plural shall include the singular. Titles of Articles and Sections in this Agreement are for convenience only and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to Articles, Sections, Subsections, paragraphs, clauses, subclauses or Exhibits shall refer to the corresponding Article, Section, Subsection, paragraph, clause, subclause of, or Exhibit attached to, this Agreement unless specific reference is made to the articles, sections or other subdivisions of an exhibit to another document or instrument.

13. **Indemnification.** Advenir shall indemnify, defend and hold the City and its elected or appointed officials, employees and agents harmless with respect to any and all suits, claims, liabilities of every kind, nature and description arising out of this Agreement except as may arise out of (i) the negligence or willful misconduct of the City, or its elected or appointed officials, employees, agents or contractors or (ii) acts performed by the City which are outside of the authority of the City under this Agreement. Such indemnity shall include all costs and expenses incurred by such indemnitee arising from any suit, claim or liability, including all reasonable attorneys' fees.

14. **Assignment.** Without the prior consent of the City, Advenir shall have the right to assign or in any manner transfer this Agreement or any interest herein to: (a) any direct or indirect wholly-owned subsidiary of Advenir, (b) any entity that controls Advenir, (c) any entity under common control with Advenir, (d) any entity that purchases substantially all of the assets or ownership interests in Advenir, or (e) any entity that results from a merger, consolidation or restructuring of Advenir. Except as provided in the preceding sentence, Advenir shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, assign this Agreement without the prior written consent of the City, whose consent shall not be unreasonably withheld, conditioned or delayed. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective permitted assigns of said parties.

15. **Miscellaneous.**

A. In the event any party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of acts of God, acts of war, terrorist acts, civil unrest, riots, newly announced or enacted governmental restrictions, labor disputes which are regional or national in scope (excluding disputes with laborers employed by the party claiming delay), abnormal adverse weather conditions not reasonably anticipated, unavoidable material shortages, governmental shutdowns, forced closures of private business or governmental offices by governmental authorities, epidemic, serious illness or plagues, pandemic, disease, state or national health emergency or similar outbreak or other unavoidable casualty loss, and any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the reasonable control of such party.

B. This Agreement, and all of its exhibits and incorporated documents, constitutes the entire integrated agreement among the parties relating to the work and items described herein, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral.

C. The City and Advenir acknowledge that they and their counsel have reviewed and had the opportunity to revise this Agreement and that the normal rule of



construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

D. Failure of any party hereto to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver by any party of its right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

E. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina.

G. The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

H. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays and any state or national holidays. If the date or last date to perform any act or to give any notice is a Saturday, Sunday, or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not Saturday, Sunday, or state or national holiday.

I. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute on and the same Agreement. Executed counterparts of this Agreement transmitted by facsimile shall be deemed to constitute an original for all purposes.

J. This Agreement cannot be amended, changed, discharged or terminated orally, but only by an instrument in writing signed by the parties to this Agreement.

K. The commitments made by the City in this Agreement are commitments to Advenir and its permitted assigns only, and are otherwise nontransferable.

[SIGNATURE PAGES TO FOLLOW]



WHEREFORE, in consideration of the foregoing, the parties do bind themselves by terms and conditions of the Agreement by providing below the signature of their authorized officers.

WITNESSES:

Advenir Oakley Capital, LLC

Cindy Shields  
[Signature]

BY: [Signature]

ITS: Authorized Signatory

STATE OF Alabama )

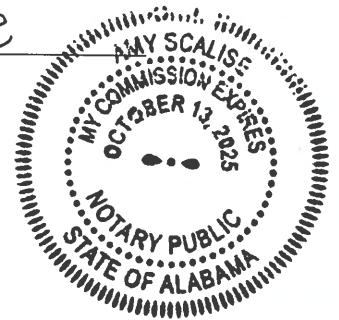
COUNTY OF Jefferson )

ACKNOWLEDGEMENT

The forgoing instrument was acknowledged before me this 8<sup>th</sup> day of November, 2021, by Michael Krosch Authorized Signatory

[Signature]  
Notary Public  
My Commission Expires: 10/13/2025

Amy Scalise  
Printed Name of Notary



WITNESSES:

Kimberly  
Elizabeth Adams

CITY OF GREER

BY: Rick Damm  
ITS: Mayor

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

ACKNOWLEDGEMENT

The forgoing instrument was acknowledged before me this 23<sup>rd</sup> day of November, 2021, by Tammela V. Duncan as Municipal Clerk of City of Greer.

Tammela Duncan

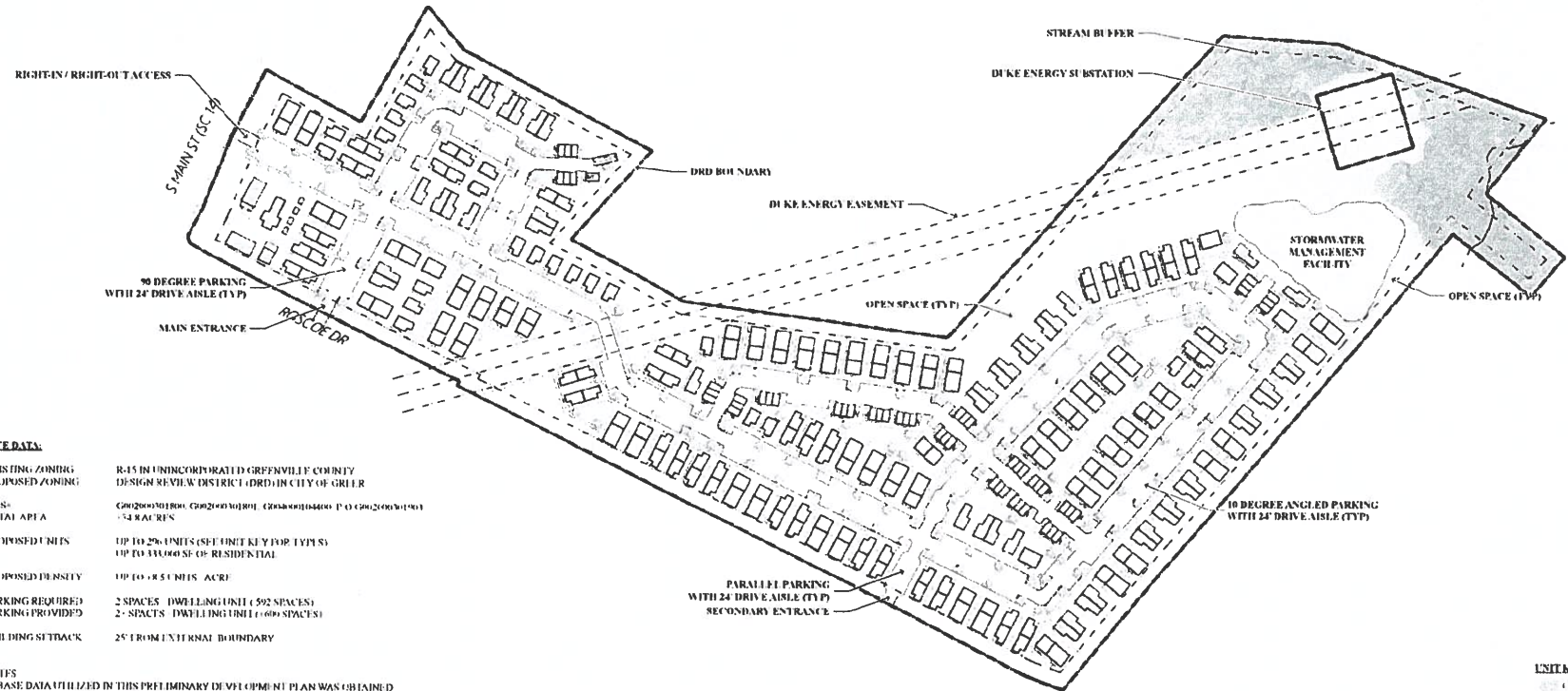
Notary Public for South Carolina

My Commission Expires: 12/17/2028

Tammela Duncan

Printed Name of Notary

LOCATION MAPS



**SITE DATA:**

EXISTING ZONING	R-45 IN UNINCORPORATED GREENVILLE COUNTY
PROPOSED ZONING	DESIGN REVIEW DISTRICT (DRD) IN CITY OF GREER
TMS#	G902009301806 G902009301807 G90200930184460 P 03 G902009301901
TOTAL APTA	154 UNITS
PROPOSED UNITS	UP TO 296 UNITS (SEE UNIT KEY FOR TYPES) UP TO 330,000 SF OF RESIDENTIAL
PROPOSED DENSITY	UP TO 0.85 UNITS / ACRE
PARKING REQUIRED	2 SPACES / DWELLING UNIT (592 SPACES)
PARKING PROVIDED	2 SPACES / DWELLING UNIT (600 SPACES)
BUILDING SETBACK	25' FROM EXTERNAL BOUNDARY

- NOTES**
1. BASE DATA UTILIZED IN THIS PRELIMINARY DEVELOPMENT PLAN WAS OBTAINED FROM GREENVILLE COUNTY GIS AND IS THEREFORE APPROXIMATE IN NATURE. A FULL BOUNDARY AND TOPOGRAPHIC SURVEY IS CURRENTLY UNDERWAY.
  2. ALL ROADWAYS/DRIVEWAYS WITHIN THE DEVELOPMENT TO BE PRIVATELY OWNED AND MAINTAINED BY THE OWNER.
  3. ADDITIONAL COORDINATION WITH DUKE ENERGY REGARDING ACCESS TO SUBSTATION IS REQUIRED AND ONGOING.
  4. ADDITIONAL STORMWATER MANAGEMENT FACILITIES MAY BE REQUIRED.

**UNIT KEY:**

	Clubhouse & Amenities
	2 Bedroom Carriage House
	1 Bedroom Cottage
	2 Bedroom Cottage
	2 Bedroom Townhouse
	3 Bedroom Townhouse



**REVISED PRELIMINARY DEVELOPMENT PLAN**  
**Leo Living Cottages | Horizontal Multi-family Community**

2021.10.18 | 1" = 100'

