

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR FAIRFIELD COUNTY  
ORDINANCE NO. 495

2005 APR -8 A 9:25

AN ORDINANCE AUTHORIZING A DEVELOPMENT AGREEMENT BETWEEN FAIRFIELD COUNTY, SOUTH CAROLINA AND WILBURN ENTERPRISES, LLC, AND OTHER MATTERS RELATED THERETO.

FAIRFIELD COUNTY  
CLERK OF COURT  
DETTY JO BECKHAM

WHEREAS, the South Carolina Local Government Development Agreement Act, South Carolina Code Annotated, Title 6, Chapter 31 (1976), as amended (the "Act"), authorizes local governments to enter into development agreements with a developer as therein defined; and

WHEREAS, Wilburn Enterprises, LLC (the "Owner") is the owner of certain land in northeast Fairfield County and wants to develop a mixed-use village centering around an outdoor recreation which will include elements of retail, amusement, office, and possibly residential, and other land uses appropriate to the property; and

WHEREAS, the County has determined that the coordinated development of this tract of approximately 2581 acres will assist in the County's planning for suitable growth in northeast Fairfield County, consistent with the comprehensive plan and land development regulations; and

WHEREAS, pursuant to the Act, the County is authorized to enter into binding development agreements with certain persons having legal or equitable interests in real property; and

WHEREAS, the County and the Owner have now concluded their negotiations with respect to the terms for a development agreement for the Adventure World;

NOW, THEREFORE, pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE COUNTY COUNCIL FOR FAIRFIELD COUNTY:

SECTION I. The development agreement between Fairfield County, South Carolina and Wilburn Enterprises, LLC, a copy of which is attached hereto and incorporated herein, is hereby approved, and the chair of County Council is authorized to execute same.

SECTION II. Severability. If any section, subsection, or clause of this Ordinance shall be held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such finding shall not affect the validity of the remaining sections, subsections, and clauses of this Ordinance.

SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION IV. Effective Date.  
March 14, 2005.

This Ordinance shall be enforced from and after

FAIRFIELD COUNTY COUNCIL

BY: David L. Ferguson Sr  
David Ferguson, Chair

ATTEST this the 15th day of

March 2005

Shryll M. Brown

Shryll M. Brown  
Clerk to Council

First Reading:	February 14, 2005
First Public Hearing:	January 24, 2005
Committee Meeting:	December 2, 2004
Second Public Hearing:	February 14, 2005
Second Reading:	February 28, 2005
Third Reading:	March 14, 2005

STATE OF SOUTH CAROLINA )  
 ) DEVELOPMENT AGREEMENT  
COUNTY OF FAIRFIELD )

This Development Agreement (the "Agreement") is made and entered into this 14<sup>th</sup> day of March, 2005, by and between WILBURN ENTERPRISES, LLC, a South Carolina Limited Liability Company ("Owner") and COUNTY OF FAIRFIELD, South Carolina, a political subdivision of the State of South Carolina ("County").

WHEREAS, the legislature of the State of South Carolina has enacted the "South Carolina Local Government Development Agreement Act" (the "Act"), as set forth in Sections 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976), as amended (the "South Carolina Code"); and

WHEREAS, the Act recognizes that "The lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning." [Section 6-31-10 (B)(1)]; and

WHEREAS, the Act also states: "Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of a project. Development agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of the government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State." [Section 6-31-10 (B)(6)]; and

WHEREAS, the Act further authorizes local governments, including county governments, to enter into development agreements with developers to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and

WHEREAS, the Owner is the owner of the real property consisting of 2579.08± acres described in Exhibit "A" attached hereto and incorporated by reference herein ("the Property") and Owner desires to ensure proper use and development initially as an outdoor recreation destination. Due to the larger land area of the Property, Owner intends to eventually create a mixed-use village centering around an outdoor recreation park and incorporating elements of residential, retail, recreational, office and institutional, and other general commercial uses, all as further provided herein; and

WHEREAS, Owner and County intend to make the Property subject to conditions, covenants, restrictions and reservations set out in this Agreement, all of which shall be deemed to run with the Property to ensure proper use and appropriate development of the Property so

as to (a) protect the Owners and tenants of Building Sites within the Property from depreciation in the value of their Building Sites; (b) prevent the use of unsuitable materials or improper construction; and (c) encourage attractively designed improvements; and

WHEREAS, the Owner and the County have effected zoning upon the Property in such manner as to limit the various uses within the total land area of the Property while providing the flexibility needed for the development of such a large parcel of land over a lengthy period of time; and

WHEREAS, it is Owner's intention to further confirm, designate and limit the acceptable and conditional uses of the Property in the manner hereinafter particularized by approving all uses generally permitted within the current requirements of B-2 General Business District classification of the Fairfield County Zoning Ordinance, less certain uses which would otherwise be permitted or prohibited outright, which will either be prohibited during the term of this Development Agreement or which are being voluntarily made conditional; and

WHEREAS, the County seeks to protect and preserve the natural environment and to secure for its citizens quality, well planned and designed developments and a stable and viable tax base; and

WHEREAS, the County finds that the program of development proposed by the Owner for its Property is consistent with the County's comprehensive land use plan and will further the health, safety, welfare and economic well being of the County and its residents; and

WHEREAS, the Owner's program for development of the Property presents an opportunity for the County to secure quality planning and growth, thoughtful concern for the environment, and a strengthened tax base, all in accordance with the County's said plan; and

WHEREAS, this Development Agreement is being made and entered between the Owner and the County, under the terms of the Act, for the purpose of providing assurances to the Owner that it may proceed with its development plans under the terms hereof, without encountering future changes of law which materially adversely affect the Owner's ability to develop under its plans, and for the purposes of providing important protection to the natural environment and long term financial stability and a viable tax base to the County;

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic benefits to both the County and the Owner of entering into this Agreement, and to encourage well planned developments in the County, the receipt and sufficiency of such consideration being hereby acknowledged, the County and the Owner hereby agree as follows:

**1. INCORPORATION.** The above recitals are hereby incorporated into this Agreement, together with the South Carolina General Assembly findings as set forth under Section 6-31-10 (B) of the Act.

**2. DEFINITIONS.** As used herein, the following terms mean:

a) "ARC" means any architectural review committee formed for the Property as established under a declaration of Covenants applicable to said Property (or a portion thereof).

b) "Act" means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-31-10 through 6-31-160 of the S.C. Code.

c) "Agreement" means this Development Agreement, including the recitals and exhibits attached hereto.

d) "Apartments" means and includes multi-family apartment units, duplexes, triplexes, quadriplexes, condominiums, and townhouses.

e) "Association" means any Community Association formed for the Property (or a part thereof) as established by or under any Declaration of Covenants applicable to said Property (or a portion thereof).

f) "Building Development Standards" means minimum standards for the area, width, building setback, yard requirements, and the maximum standards for height and building coverage, for Lots or Developed Parcels within the Property set out in the Zoning Regulations or the Land Development Regulations.

g) "Common Property" means "Common Property" as that term is defined under an Association's Covenants. The designation of any land and/or improvements as Common Property shall not mean or imply that the public at large acquires any easement of use or enjoyment therein unless that intent is clearly expressed by the context.

h) "Condominium" means the individual ownership of a particular apartment in a building and the common right to a share, with other co-owners, in the general and limited common elements of the property.

i) "County" means the County of Fairfield, a political subdivision of the State of South Carolina.

j) "County Council" or "Council" means the elected governing body of the County of Fairfield.

k) "Covenants" or "Declaration" means and refers to any Declaration of Restrictive and Protective Covenants for the Property (or any portion thereof) recorded in the Register of Deeds or Clerk of Court's Office for Fairfield County, South Carolina and all amendments and supplements thereto that apply to the Property. In the absence of any such recorded Declaration applicable to all or a portion of the Property, this Agreement shall be treated as such Declaration.

l) "Density" means the total number of Lots and/or Dwelling Units permissible

for a specific portion of the Property under the terms of this Agreement.

m) "Developer" means the Owner and all successors in title or lessees of Owner who undertake Development of the Property or to whom Development Rights are transferred.

n) "Development" means the planning for or carrying out of building activity or site work, or the dividing of land into parcels, and is intended by the Parties to include all uses of, activities upon or changes to the Property (or any portion thereof) as are authorized by this Agreement.

o) "Development Agreement Ordinance" means the ordinance adopted by the County on March 14, 2004<sup>5</sup>, approving this Development Agreement (Ordinance No. 495).

p) "Development Parcel" means any parcel of land on which Development may occur, including platted Lots and unplatted parcels.

q) "Development Permits" includes a building permit, zoning permit, subdivision approval, zoning certification, special exception, variance, certificate of occupancy, or any other official action of the County having the effect of permitting the Development or use of the Property, or any portion thereof.

r) "Development Rights" means Development undertaken by the Owner or Developer in accordance with this Development Agreement and applicable law.

s) "DHEC" means the South Carolina Department of Health and Environmental Control (and any successor entity).

t) "Dwelling Unit" means one or more rooms, designed, occupied or intended for occupancy as a separate living quarters, with a kitchen, sleeping and sanitary facilities provided within the dwelling unit. An accessory building or a guest suite that does not contain a kitchen is not considered to be a dwelling unit.

u) "Facilities" means major capital or community improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage and potable water. The Owner and the County, respectively, are responsible for only those specific Facilities that Owner and/or County expressly undertake to provide in this Agreement.

v) "Finished Grade" means the average elevation of a Lot or Building Site after site improvements.

w) "Gross Leasable Area" ("GLA") or "Gross Commercial Footage" ("GCF") means total floor area for which a tenant pays rent or that is designed for a tenants' occupancy and exclusive use. Said floor area does not include public or common areas, such as utility rooms and stairwells. GLA or GCF shall be counted toward the square footage caps established by Covenants.