

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR FAIRFIELD COUNTY, SOUTH CAROLINA
ORDINANCE NO. 504

AN ORDINANCE AUTHORIZING THE EXECUTION AND PERFORMANCE OF AN INFRASTRUCTURE TAX CREDIT AGREEMENT WITH WILBURN ENTERPRISES, LLC AND CAROLINA ADVENTURE WORLD, LLC WITHIN A MULTI-COUNTY INDUSTRIAL PARK IN FAIRFIELD COUNTY, AND OTHER MATTERS RELATED THERETO.

WHEREAS, Fairfield County, South Carolina (the "County") is authorized under Sections 4-1-170 and 4-1-175 of the Code of Laws of South Carolina, 1976, as amended (collectively the "Acts"), to include certain properties and industrial development projects within a multi-county industrial park, such that upon such inclusion, an enterprise undertaking to develop a recreational facility would constitute an industrial development project and the enterprise shall constitute an industry, both being defined under Section 4-29-10 and Section 4-29-67, respectively as a "Project" and as an "Industry"; and,

WHEREAS, Wilburn Enterprises, LLC and Carolina Adventure World, LLC, both South Carolina limited liability companies, and any entity related to Wilburn Enterprises, LLC and Carolina Adventure World, LLC through common ownership (collectively referred to hereinafter as the "Company"), are such an Industry which proposes to locate a Project within an industrial park in Fairfield County, South Carolina (the "Park") upon the availability of certain financial incentives to be provided by the County to the Company to locate the Company's Project in the Park, which Park is designated by prior action of the County Council as a multi-county industrial park as authorized by the Acts; and,

WHEREAS, the County is empowered under the afore-referenced Acts to enter into agreements with an Industry to construct, operate, maintain and improve a Project, including financing agreements prescribing terms and conditions of payment pursuant to Sections 4-29-20 and 4-1-175; and,

WHEREAS, if the County locates the Company's Project within the Park, pursuant to the Acts, the placement of the Company's Project within the Park, shall allow the Company to qualify the Project for financial incentives such as an infrastructure tax credit afforded by the County pursuant to the Acts; and,

WHEREAS, the Company shall retain ownership of all assets in its Project and has to date invested approximately \$3.8 million in the Project and has not requested a reduction to the statutory property tax assessment ratio or fixed millage rate but rather will, upon authorization

of the placement of the Company's Project in the Park, pay to County a fee-in-lieu of taxes at the statutory property assessment ratio applicable to the class(es) of property owned by the Company based on the applicable annual millage rate set for the tax district where the Project will be located, as if it were outside the Park in a tax district of like millage, and as otherwise provided in Title 12 of the South Carolina Code. Provided, however, the Company seeks to defray the cost of certain qualified expenditures on infrastructure by the application of an infrastructure tax credit for the Company's Project to be located in the Park against said fee-in-lieu of taxes as herein provided; and,

WHEREAS, the County, as an inducement to the Company to locate its Project in the Park, has agreed to grant the Company an infrastructure tax credit under the afore referenced provisions of the South Carolina Code in an amount equal to (1) 20% of the annual fees-in-lieu of taxes payable by the Company to the County for a period of 10 years plus (2) an amount equal to any "applicable rollback taxes" (as that term is defined under South Carolina Code Annotated § 12-43-220(d)(4)) payable by the Company to the County. Said infrastructure tax credit shall be applicable to any property that is part of the Company's Project, located in the Park and shall be used to offset eligible infrastructural expenditures incurred in the Park by the Company in connection with its Project; and,

WHEREAS, the County has determined that the utilization of an infrastructure tax credit as provided for under the South Carolina Code and Acts is a suitable mechanism to provide the Company with a financial incentive to locate its facility in the Fairfield County, South Carolina in that (A) the Project serves the purpose of the State and County as required of an Industrial Development Project as therein defined, (B) the Company's Project is anticipated to benefit the public general welfare of the residents of Fairfield County, South Carolina in a way not otherwise provided, and (C) that the Project will give no rise to a pecuniary liability of the County.

NOW, THEREFORE, BE IT ORDAINED BY FAIRFIELD COUNTY COUNCIL AS FOLLOWS:

Section 1. The Chairman and, if necessary, other members of County Council, the County Administrator, and the Clerk to County Council are hereby authorized to execute an Infrastructure Credit Agreement, a form of which is attached hereto as *Exhibit A*. The form, terms and provisions of the Agreement are hereby approved, with any minor revisions approved by the County Attorney, and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Agreement were set forth herein in its entirety.

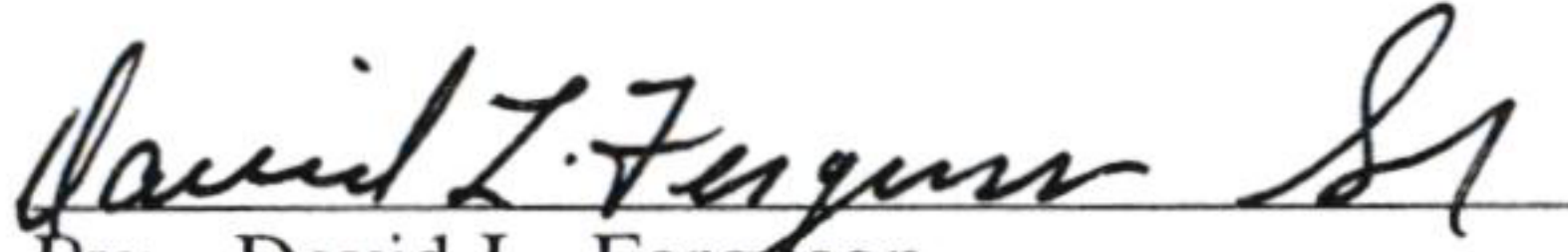
Section 2. The Chairman and, if necessary, other members of County Council, the County Administrator, and the Clerk to County Council are hereby authorized and shall execute and record all necessary documents to designate and include the Company's Project property as within a Multi-County Industrial/Business Park created by Fairfield County and _____ County but located entirely within Fairfield County and the Company shall provide such instruments and information to the County as may be needed to effect same.

Section 3. If any portion of this Ordinance shall be deemed unlawful, unconstitutional or otherwise invalid, the validity and binding effect of the remaining portions shall not be affected thereby.

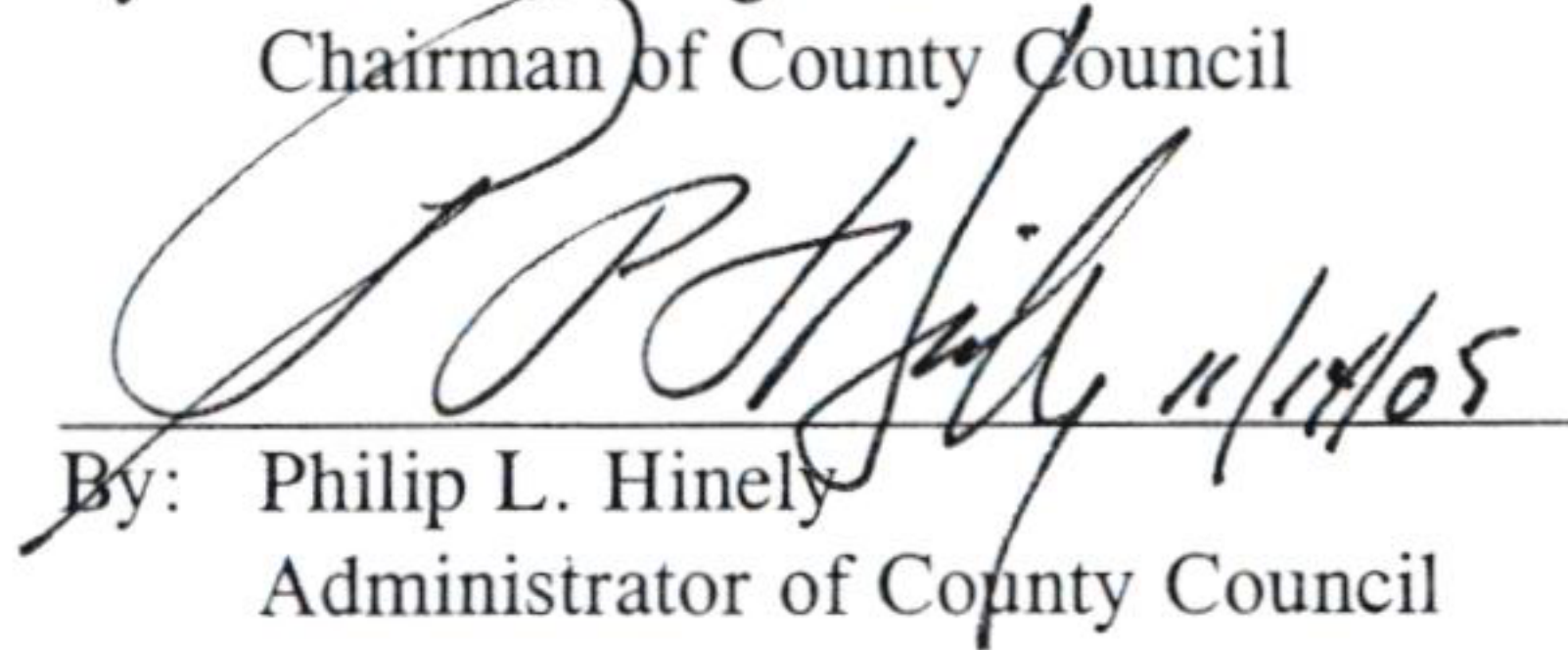
Section 4. Any prior Ordinance, the terms of which are in conflict herewith, is, only to the extent of such conflict, hereby repealed.

Section 5. This Ordinance shall be effective after third and final reading.

FAIRFIELD COUNTY COUNCIL



By: David L. Ferguson
Chairman of County Council



By: Philip L. Hinely
Administrator of County Council

ATTEST:



By: Shryll M. Brown
Clerk to County Council
Fairfield County, South Carolina

First Reading: 8/11/05
Second Reading: 8/22/05
Public Hearing: 9/26/05
Third Reading: 9/26/05

INFRASTRUCTURE TAX CREDIT AGREEMENT

BETWEEN

WILBURN ENTERPRISES, LLC, CAROLINA ADVENTURE WORLD, LLC

AND

FAIRFIELD COUNTY, SOUTH CAROLINA

DATED AS OF _____, 2005

INFRASTRUCTURE TAX CREDIT AGREEMENT

THIS INFRASTRUCTURE TAX CREDIT AGREEMENT (this "Agreement") is made and entered into as of _____, 2005, by and between **FAIRFIELD COUNTY, SOUTH CAROLINA** (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), acting by and through the Fairfield County Council (the "County Council") as the governing body of the County, and **WILBURN ENTERPRISES, LLC and CAROLINA ADVENTURE WORLD, LLC**, both being South Carolina limited liability companies, and any entity related to Wilburn Enterprises, LLC and/or Carolina Adventure World, LLC through common ownership (hereinafter collectively referred to as the "Company").

WITNESSETH:

WHEREAS, the County is authorized by Title 4, Chapter 1, Section 170; Title 4, Chapter 1, Section 175; Title 4, Chapter 29, Section 68; and Title 12 Chapter 44 Section 40 of the Code of Laws of South Carolina, 1976, as amended (collectively, the "Acts") to (i) create multi-county industrial parks in partnership with contiguous counties; (ii) include the property of eligible companies within such parks as an inducement to locate within the County, which inclusion under the terms of Section 13 of Article VIII of the Constitution of the State of South Carolina makes such property exempt from *ad valorem* property taxes, therefore changing the character of the annual receipts from such properties from *ad valorem* property taxes to fees-in-lieu of *ad valorem* property taxes; and (iii) grant an annual tax credit against such fee-in-lieu of tax receipts (an "Infrastructure Tax Credit") in order to assist a company in paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the property of any company located within such multi-county industrial parks or for improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County.

(a) Pursuant to an Ordinance dated _____, _____, Fairfield County created a multi-county industrial park at _____ (the "Park") in Fairfield County under the terms of the Acts with _____ County, South Carolina. The County has committed to take sufficient steps to amend such resolutions, promulgated such ordinances, adopted and executed such instruments it deemed necessary in order to include the Company's property within the Park and afford it tax benefits. Further, the County has committed to take such actions as may be reasonably necessary in working with _____ County to inform and cooperate with _____ County as may be required to effect the placement of the Project of the Company in the Park as required pursuant to the Acts and the Ordinance to afford the Infrastructure Tax Credit to the Company.

(b) The Company has made an investment in the County of \$3.8 million in land cost to establish recreational facilities available to the public.

(c) The County has determined to induce the Company's investment through the granting of an Infrastructure Tax Credit equal to (1) 20% of the Company's annual fee-in-lieu of tax payable by the Company for a period of 10 years plus (2) the amount of any "applicable rollback taxes," as that term is used in South Carolina Code § 12-43-220(d)(4), related to the property.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and covenants hereinafter contained, with the understanding that no obligation of the County described herein shall create a pecuniary liability or charge upon its general credit or taxing powers, but shall be payable solely out of the sources of payment described herein and shall not under any circumstances be deemed to constitute a general obligation to the County, the parties hereto agree:

Section 1. *Infrastructure Tax Credit.*

A. The parties acknowledge and agree that under Section 3, Article 1 of the Constitution of South Carolina, the Project shall be exempt from ad valorem property taxes upon qualification and placement of the Project within the Park but the Company shall pay an annual fee-in-lieu of taxes on the Project in an amount equal to the annual ad valorem property taxes as if it were taxable, with such fee-in-lieu of taxes payments being due and payable and subject to interest and penalties as set forth in the Agreement and the Acts. Contingent on the foregoing, the County hereby grants to the Company, and the Company hereby accepts from the County, an Infrastructure Tax Credit to be applied to its annual fee-in-lieu of taxes liability in the amount of (1) twenty (20%) percent of the Company's annual fee-in-lieu of tax payable by the Company for ten (10) years plus (2) a credit in the amount of any applicable rollback taxes related to the property. Said Infrastructure Tax Credit extended to the Company may be taken during a term of ten (10) years measuring from the first year its property becomes subject to a property tax.

B. The County Auditor is hereby directed to apply the credit amount annually as per the limitations stated herein to reduce (1) the Company's annual fee-in-lieu of tax liability by twenty (20%) percent for a period of ten (10) years plus (2) a credit in the amount of any applicable rollback taxes related to the property. The Infrastructure Tax Credit amount shall be shown on the bill sent by the County to the Company. The Infrastructure Tax Credit shall be effective starting with the property tax year in which the Company has property tax liability. The Company shall be required to use the Infrastructure Tax Credit to pay for, defray or reimburse itself for eligible expenditures as authorized by the Acts, which shall include but not be limited to, the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the Company's property in the Park and for improved or

unimproved real estate in the Park, and any other such similar or like expenditures authorized by the Acts.

Section 2. *Binding Effect.* This Agreement shall be binding, in accordance with its terms, upon and inure to the benefit of the Company and the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any geographical part of the land currently located in Fairfield County, South Carolina with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises and agreements of this Agreement shall bind and inure to the benefit of the Company and successors of the County, and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 3. *Counterparts.* This Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one instrument.

Section 4. *Governing Law.* This Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina. To the extent of any conflict between the provisions of this Agreement and the Acts, the Acts control. However, the benefits afforded under this Agreement shall vest in the Company upon execution hereof and any subsequent changes in the law shall not impair nor divest the Company of any right, title interest in or entitlement to the benefits of this Agreement.

Section 5. *Amendments.* The provisions of this Agreement may only be modified or amended in writing by an agreement or agreements entered into between the parties.

Section 6. *Further Assurance.* The County agrees to execute and deliver to the Company such additional instruments as either may reasonably request to effectuate the purposes of this Agreement.


Section 7. *Severability.* If any provision of this Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company this inducement to locate the Project in the Park. In the event the tax benefit afforded hereunder is declared unavailable or the Company is deemed statutorily ineligible, by any court or tax agency with appropriate jurisdiction, the County will enter into negotiations with the Company to confer a different tax incentive otherwise available of value equivalent to the monetary value of the benefit lost to the Company by reason of such agency or court action.

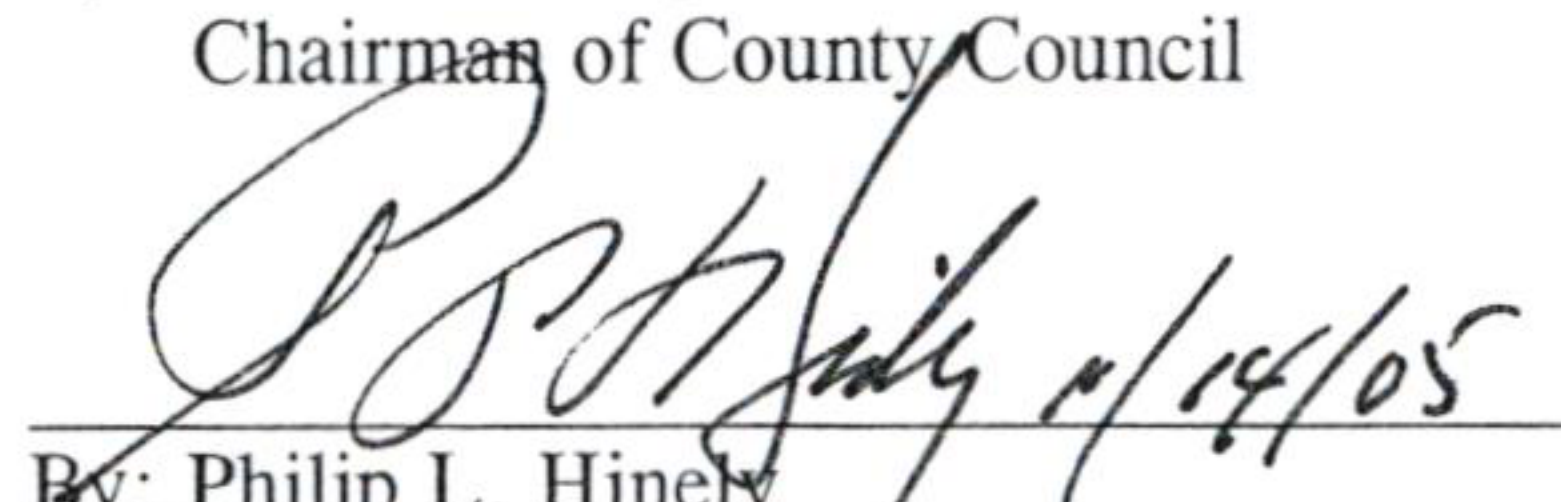
Section 8. Limited Obligation. ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS AGREEMENT SHALL BE A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THE FEE IN LIEU TAX STATUTES CONFERRED ON THE COMPANY BY VIRTUE OF LOCATION OF THE PROJECT IN FAIRFIELD COUNTY, SOUTH CAROLINA AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION.

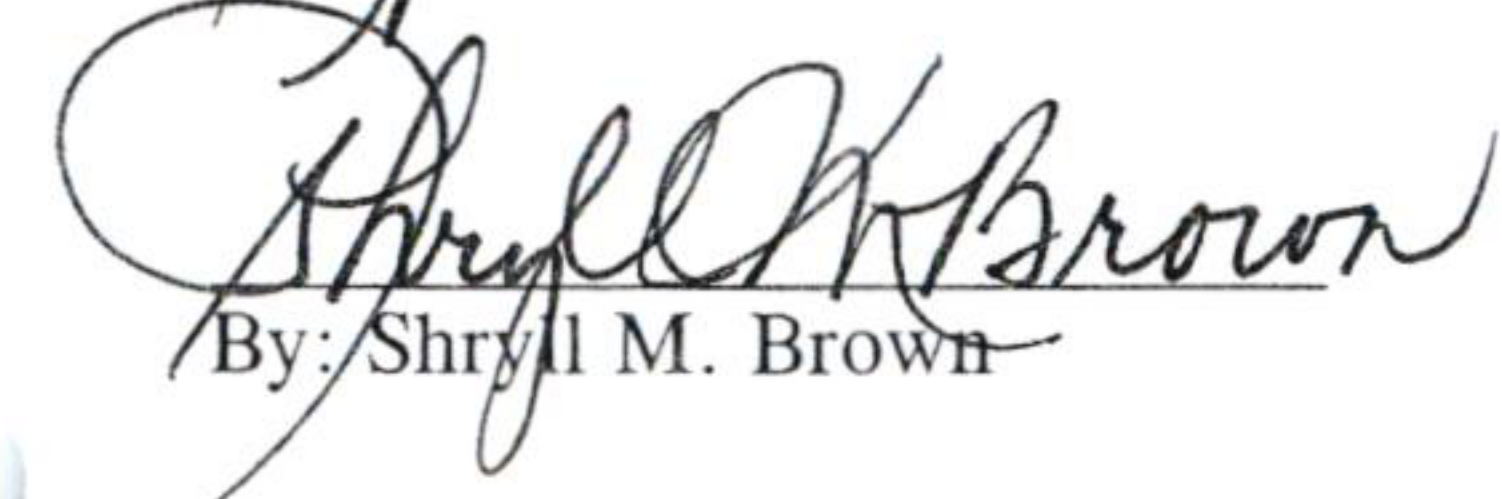
Section 9. Execution Disclaimer. Notwithstanding any other provisions, the County is executing this Agreement as a statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Agreement to be executed in its name and behalf by the Chairman of County Council and to be attested by the Clerk to County Council; and the Company has caused this Agreement to be executed by its duly authorized officers, all as of the day and year first above written.

FAIRFIELD COUNTY, SOUTH CAROLINA


By: David L. Ferguson
Chairman of County Council


By: Philip L. Hinely
Administrator of County Council

ATTEST THIS 26th DAY OF
September, 2005

By: Shryll M. Brown

Clerk to County Council
Fairfield County, South Carolina

WILBURN ENTERPRISES, LLC

By: Donald Wilburn
Its: Managing Member

CAROLINA ADVENTURE WORLD, LLC

By: _____
Its: _____