

ORDINANCE NO. 02-459
SUMTER COUNTY SPECIAL SOURCE REVENUE NOTE
(BIOPURE CORPORATION PROJECT)

AN ORDINANCE AUTHORIZING (1) THE ISSUANCE AND SALE OF A \$4,500,000 MAXIMUM PRINCIPAL AMOUNT SUMTER COUNTY, SOUTH CAROLINA (THE "COUNTY") SPECIAL SOURCE REVENUE NOTE (BIOPURE CORPORATION PROJECT); (2) THE APPLICATION OF THE PROCEEDS OF SAID NOTE TO DEFRAY THE COSTS OF THE ACQUISITION OF CERTAIN IMPROVED OR UNIMPROVED REAL ESTATE LOCATED IN SUMTER COUNTY; (3) DESIGNATION OF CERTAIN FEES IN LIEU OF TAXES RECEIVED BY SUMTER COUNTY WITH RESPECT TO PROPERTY LOCATED IN VARIOUS MULTI-COUNTY INDUSTRIAL PARKS AS SECURITY FOR, AND THE SOLE SOURCE OF REPAYMENT OF, SUCH NOTE; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Sumter County, South Carolina ("Sumter County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended, (the "Code") and particularly Section 4-1-170 of the Code (the "Multi-County Park Act") and Section 4-1-175 of the Code (as read in conjunction with Section 4-29-68 of the Code, the "SSRB Act") (collectively, the "Act"): (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain industrial and commercial projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to issue special source revenue bonds or notes, the proceeds of which will be used to pay for infrastructure or improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of Sumter County; and (iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to facilitate the issuance of such bonds and afford certain enhanced income tax credits to such investors; and

WHEREAS, pursuant to the Act and the terms of the Inducement and Millage Rate Agreement by and among Sumter County, Biopure Corporation ("Biopure") and Sumter Realty Group, LLC ("Sumter Realty") (collectively, the "Companies"), which was approved by County Council on August 28, 2001, and in order to induce the Companies to locate certain industrial facilities within Sumter County to be leased by Sumter County to Sumter Realty for sub-lease to Biopure and to be used by Biopure to manufacture oxygen therapeutic Hemopure® (the "Project"), Sumter County has agreed to issue its special source revenue note in the maximum principal amount of \$4,500,000 (the "Note") to pay for a portion of the cost of improved or unimproved real property associated with the Project (the "Special Source Improvements"), such note to be secured by and payable solely from certain fees in lieu of taxes generated with respect to the Project and certain other properties located in various multi-county industrial parks within Sumter County; and

WHEREAS, Sumter County has, by Ordinance No. 02-460 enacted simultaneously herewith, designated the site of the Project as part of a multi-county industrial park established by agreement with Clarendon County, South Carolina ("Clarendon County") and Lee County, South Carolina ("Lee County") (the "Biopure Park") and has, by Ordinance No. 96-299 enacted by Sumter County on July 23, 1996 designated certain property operated by Becton, Dickinson and Company (the "Becton Dickinson Project") as part of a multi-county industrial park established by agreement with Lee County (the "Becton Dickinson Park"), and has, by Ordinance No. 95-283 enacted by Sumter County on June 29, 1995

designated certain property operated by Robert Bosch Corporation (the "Bosch Project") as part of a multi-county industrial park established by agreement Clarendon County (the "Bosch Park"); and

WHEREAS, Sumter County is negotiating with one or more commercial banks (as finally selected by the Chairman of the Council and the Sumter County Administrator in accordance with the provisions of this Ordinance, the "Bank") for the purchase of the Note on the terms and conditions set forth in the forms of the Note, the Assignment from Sumter County to the Bank (the "Assignment"), pursuant to which Sumter County assigns to the Bank certain of the fees in lieu of taxes derived by Sumter County from the Biopure, Becton Dickinson and Bosch Projects, and a financing agreement to be negotiated between Sumter County and the Bank (the "Financing Agreement") (the Note, the Assignment and the Financing Agreement are herein referred to collectively as the "Note Documents"); and

WHEREAS, the acquisition and construction of the Special Source Improvements and the issuance of the Note by Sumter County as herein recited are expected to be duly approved by the South Carolina State Budget and Control Board, (the "Budget and Control Board") by resolution duly adopted on March 26, 2002 and will serve the intended purposes and in all respects conform to the provisions and requirements of the Act; and

WHEREAS, it appears that the drafts of the Note Documents presented to this meeting and as filed with the Clerk to Council are in appropriate form and are appropriate instruments to be executed and delivered by Sumter County for the purposes intended; and

NOW, THEREFORE, BE IT ORDAINED BY SUMTER COUNTY COUNCIL:

Section 1. In order to promote industry, develop trade and utilize and employ the manpower, agricultural products and natural resources of the State of South Carolina by assisting the Companies to locate the Project in Sumter County, the acquisition, by construction and purchase, of the Special Source Improvements is hereby authorized, ratified approved.

Section 2. Subject to approval by the Budget and Control Board and to the other terms and conditions set forth herein and pursuant to the authority of the Act and this Ordinance and for the purpose of defraying the cost of constructing the Special Source Improvements, the Note is hereby authorized to be issued in the maximum principal amount of \$4,500,000. The Note shall be designated "Sumter County, South Carolina, Special Source Revenue Note (Biopure Corporation Project)" with such further and other designation as is appropriate therefor. The Chairman of the Council and the Sumter County Administrator are hereby authorized and directed to award the sale of the Note to the bank or group of banks, which in their judgment, offers Sumter County the best terms and conditions and which conform to the terms of this Ordinance, their execution and delivery of the Note to such Bank to constitute conclusive evidence of the approval by Council of such award. Up to \$3,500,000 from the proceeds of the Note shall be advanced from time to time by the Bank as requested by Sumter Realty and in accordance with the terms of the Note Documents to pay the costs associated with the Special Source Improvements. The balance of the credit under the Note shall be drawn by Sumter County to pay capitalized interest on the Note, if deemed necessary by Sumter County Administrator, to reimburse itself for the costs of issuing the Note (including reimbursement to Sumter County of costs of issuance heretofore incurred) and to establish the reserves, if any, required by the Bank, all as set forth in the Note Documents.

Section 3. The Note shall bear interest at a fixed rate per annum not to exceed 9% and shall be payable at the times, places and in the amounts, shall be of the tenor, shall be subject to such terms of prepayment, and shall be subject to such other terms and conditions, as are set forth in the forms of the Note Documents presented to this meeting.

Section 4. The Note shall be secured by, and payable by Sumter County solely from, the fees in lieu of tax revenues derived by Sumter County from the Biopure, Becton Dickinson and Bosch Projects, net of the revenues used by Sumter County to pay any fees to Clarendon County or Lee County under the agreements establishing the Biopure, Becton Dickinson and Bosch Parks (the “Pledged Revenues”).

Section 5. The Note shall be a limited obligation of Sumter County payable by Sumter County solely out of the Pledged Revenues. The Note is not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of Sumter County and does not, and shall never, constitute an indebtedness of Sumter County within the meaning of any State Constitutional provision or statutory limitation, but is payable solely from the Pledged Revenues, which constitute a special source that does not include revenues from any tax or license. The Note does not give rise to a pecuniary liability within the meaning of the State Constitution of Sumter County or a charge against its general credit or taxing power.

Section 6. Sumter County represents that it has not heretofore pledged nor will it hereinafter pledge the Pledged Revenues except as provided herein and in the Note Documents. Nothing in this Ordinance or the Note Documents shall be construed as an obligation or commitment by Sumter County to expend any of its funds other than (i) the proceeds of the Note and (ii) the Pledged Revenues. These limitations shall be stated on the face of the Note.

Section 7. The Note Documents shall be executed in the name of Sumter County with the manual or facsimile signatures of the Chairman of the Council, and the Sumter County Administrator and shall be attested by the manual or facsimile signature of the Clerk to Council (the “Clerk”), and shall have the seal of Sumter County impressed or imprinted thereon.

Section 8. The Note Documents shall be in substantially the form presented to this meeting, with necessary or appropriate variations, omissions, and insertions as permitted or required hereby and such changes as do not adversely affect the interests of Sumter County as may be approved by the Chairman and the Administrator, their execution thereof to be conclusive evidence of approval of any and all changes or revisions therein from the forms of Note Documents now before this meeting. The Chairman of the Council and the Sumter County Administrator are hereby authorized and directed to negotiate and enter into such other instruments, agreements, and other documents as shall, in their judgment, be appropriate to effectuate the transactions contemplated hereby, their execution and delivery of the same being conclusive evidence of the approval by Council of such documents.

Section 9. Sumter County Council hereby affirms the findings heretofore made with respect to the Project, the Special Source Improvements, the Note and related documentation, to wit:

(a) the Project and the Special Source Improvements will subserve the purposes and in all respects conform to the provisions and requirements of the Act;

(b) it is anticipated that the Project will benefit the general public welfare of Sumter County by providing services, employment and other public benefits not otherwise provided locally.

(c) neither the Project, the Special Source Improvements, nor any documents or agreements entered into by Sumter County in connection therewith, will constitute or give rise to a pecuniary liability of Sumter County or a charge against its general credit or taxing power, except the Note which shall be payable solely from a special source which source does not include revenues from any tax or license.

(d) the issuance of the Note by Sumter County in the maximum principal amount of \$4,500,000 will be required to defray that portion of the cost of the Special Source Improvements to be funded by Sumter County in support of the Project.

(e) the amount necessary in each year to pay the principal and interest on the Note is as set forth in the Note.

(f) the establishment of reserve funds in connection, respectively, with the retirement of the Note and the maintenance of the Project and Special Source Improvements is deemed unnecessary; provided, however, that the Chairman of the Council and the Sumter County Administrator are authorized to establish such reserves as may be required by the Bank.

(g) the proceeds of the Note will be made available by Sumter County to the Companies upon terms which will require the Companies or their successors in interest, at their own expense, to maintain the Project and the Special Source Improvements in good repair and to carry all proper insurance with respect thereto.

Section 10. The Chairman of the Council, Sumter County Administrator and the Clerk, for and on behalf of Sumter County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Note Documents and such other instruments, agreements, and other documents as may be appropriate to effectuate the transactions contemplated hereby and the performance of all obligations of Sumter County under and pursuant thereto.

Section 11. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder. The captions, section headings, and table of contents are provided for convenience of reference and are not a part of this Ordinance.

Section 12. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval. Specifically, Ordinance Nos. 96-299 and 95-283, which relate to establishment of the Becton Dickinson Park and the Bosch Park, respectively, are hereby amended to the extent necessary to effectuate the pledge of the Pledged Revenues herein and in the Assignment made.

Section 13. This Ordinance shall be effective after a public hearing, and the third and final reading.

DONE, RATIFIED AND ADOPTED this 12th day of March, 2002.

SUMTER COUNTY, SOUTH CAROLINA

(SEAL)

By:

Frank E. Williams, Jr., Chairman, Sumter
County Council, Sumter County, South Carolina

By:

William T. Noonan, Administrator
Sumter County, South Carolina

ATTEST:

By:

Mary W. Blanding, Clerk to County Council
Sumter County, South Carolina

APPROVED AS TO FORM:

By:

Johnathan Bryan, Jr., County Attorney
Sumter County, South Carolina

First Reading: February 12, 2002
Second Reading: February 26, 2002
Public Hearing: February 26, 2002
Third Reading: March 12, 2002