

ORDINANCE NO. 02-458

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN SUMTER COUNTY AS LESSOR AND BIOPURE CORPORATION AND SUMTER REALTY GROUP, LLC AS LESSEES, AND AUTHORIZING OTHER MATTERS RELATING TO THE LEASE AGREEMENT INCLUDING, WITHOUT LIMITATION, PAYMENT TO SUMTER COUNTY OF A FEE IN LIEU OF TAXES.

WHEREAS, Sumter County, South Carolina (the "County"), acting by and through its County Council (the "County Council"), is empowered by the provisions of the South Carolina Constitution (the "Constitution"), the South Carolina Code of Laws, as amended (the "Code"), and the case law of the Courts of the State of South Carolina to offer and provide certain privileges, benefits, and incentives to prospective industries as inducements for economic development within the County; and,

WHEREAS, the County is authorized and empowered by the provisions of Title 4, Chapter 12 of the Code, (the "Act") in conjunction with other portions and provisions of Title 4 of the Code, including but not limited to Chapters 9 and 29, to acquire or cause to be acquired properties constituting "projects" as defined in the Act; and,

WHEREAS, the County is empowered by the Act and the Code to enter into agreements with any industry to construct, operate, maintain, and improve such projects, to enter into or allow financing agreements for such projects, and to accept any grants for such projects; and,

WHEREAS, through employment of the powers granted by the Act, the County will promote the economic and industrial development of the State of South Carolina (the "State") and develop its trade by inducing manufacturing and commercial enterprises to locate and remain in the State, where they will use and employ the manpower, agricultural products, and natural resources of the State and, further, will benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; and,

WHEREAS, the County is authorized by the Act to execute one or more lease agreement with respect to such projects; and,

WHEREAS, the County and Clarendon County have established or will establish a multi-county industrial park (the "Park"); and,

WHEREAS, Biopure Corporation, a corporation duly organized and existing under the laws of the State of Delaware and Sumter Realty Group, LLC, a South Carolina limited liability company (collectively the "Companies"), have requested the County to provide certain development incentives to the Company by executing an Inducement Agreement and Millage Rate Agreement pursuant to the Act for the purpose of constructing and operating facilities for the manufacture of medical agents (in particular, without limitation, the therapeutic oxygen Hemopure®) (the "Project") involving an anticipated investment of at least \$85,000,000 in taxable property and the creation of 185 new full-time jobs with an average annual compensation of at least \$35,000, plus health and retirement benefits; and

WHEREAS, the County has determined that the Project will directly and substantially benefit the general public welfare of Sumter County by increasing the ad valorem tax base and by providing services, employment, recreation, or other public benefits not otherwise provided locally; and,

WHEREAS, the County has determined that the Project will neither give rise to a pecuniary liability of the County or incorporated municipality, nor result in a charge against the County's general credit or taxing power; and,

WHEREAS, the County has determined that the purposes to be accomplished by the Project--i.e., economic development, creation or retention of jobs, and addition to the tax base of the County--are proper governmental and public purposes; and,

WHEREAS, the County has determined that inducement of the location of the Project within the Park and in the County and State is of paramount importance to the County and that the benefits of the Project to the County will be greater than the costs; and,

WHEREAS, the County has determined on the basis of the information supplied to it by the Companies that the Project will be a "project" as that term is defined in the Act and that the Project will subserve the purposes of the Act; and,

WHEREAS, the County Council has determined to enter into a Lease Agreement by and between the County and the Companies under the provisions of the Act and with the assistance and advice of the South Carolina Department of Revenue or the South Carolina Board of Economic Advisors pursuant to the Act; and,

WHEREAS, the County Council has caused to be prepared and presented to this meeting the following document which the County proposes to execute and deliver:

The form of the Lease Agreement by and between the County and the Companies which includes an Agreement by the Companies for payments in lieu of taxes; and,

WHEREAS, it appears that the Lease Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended;

NOW, THEREFORE, BE IT ORDAINED by the County Council of Sumter County, South Carolina, as follows:

Section 1. Findings and Determinations. It is hereby declared that the facts set forth in the recitals to this Ordinance are true and correct in all respects. It further is found, determined, and declared by the County Council, as follows:

(a) The Project will constitute a "project" as defined in the Act, and the County's actions with respect to the Project will subserve the purposes of and conform to the Act;

(b) It is anticipated that the Project will benefit the general public welfare of Sumter County by increasing the County's tax base and providing services, employment, recreation, or other public benefits not otherwise provided locally;

(c) The Project neither gives rise to a pecuniary liability of the County or incorporated municipality, nor results in a charge against the County's general credit or taxing power;

(d) The proposed form of Lease Agreement requires the Companies to maintain the Project and carry all proper insurance with respect thereto at its own cost and expense;

(e) The purposes to be accomplished by the Project include economic development, jobs creation, and expansion of the County's tax base.

Section 2. Construction of Project. In order to promote industry, develop trade, and use and employ the manpower, agricultural products, and natural resources of the State by assisting the Companies in constructing and equipping facilities for the manufacture of medical agents (in particular, without limitation, the therapeutic oxygen Hemopure®), the County authorizes, ratifies, and approves the acquisition by the County and the subsequent lease to the Companies of certain property and various equipment, all as a part of the Project, which is anticipated to result in an investment of at least \$85,000,000 in taxable property in the County and the creation of 185 new full-time jobs in the County with an average annual compensation of at least \$35,000, plus health and retirement benefits.

Section 3. Approval of Lease Agreement. The Lease Agreement is approved as follows:

(a) The form, terms, and provisions of the Lease Agreement presented to this meeting and filed with the Clerk of the County Council (the "Clerk") are approved and all of the terms, provisions, and conditions of the Lease Agreement are incorporated by reference. The Chairman of the County Council (the "Chairman") and the Clerk are authorized, empowered, and directed to execute, acknowledge, and deliver the Lease Agreement in the name of the County. The Chairman and the Clerk are further authorized, empowered, and directed to cause the Lease Agreement to be delivered to the Companies and cause the Lease Agreement or memoranda of the Lease Agreement recorded in the office of the Clerk of Court or the Registrar of Mesne Conveyances for Sumter County, as appropriate.

(b) The Lease Agreement to be executed on behalf of the County shall be in substantially the form now before the County Council, and shall include only changes that are approved by the County Officials executing the Lease Agreement. The County Officials shall consult the County Attorney with respect to any changes to the Lease Agreement. The execution of the Lease Agreement by County Officials shall constitute conclusive evidence that they have approved all changes to or revisions of the Lease Agreement now before this meeting.

(c) If under the Lease Agreement any future actions of the Companies (including, without limitation, the supplementation of *Exhibit A*) require the approval of the County, such approval can be given on behalf of the County by the County officials executing the Lease Agreement or their successors in office without further action of the County Council unless stated otherwise in the Lease Agreement. The County officials shall consult the County Attorney with respect to such approval. In any event, the execution of a written approval by County Officials shall constitute conclusive evidence that the County has approved the respective actions of the Companies.

Section 4. Special Source Revenue Bonds. In connection with the execution of the Lease Agreement, the County will issue Special Source Revenue Bonds as authorized by Section 4-29-68 of the Code as provided for by separate ordinance and acquire with the proceeds of the Special Source Revenue Bonds certain infrastructure and real estate that is part of the Project and use certain portions of the fee-in-lieu-of-tax payments received by the County under the Lease Agreement, as described in more detail in the Lease Agreement, to service such Special Source Revenue Bonds.

Section 5. Re-conveyance of Project. The County Council hereby approves the conveyance of the Project to the Companies or parts of the Project to either one of the Companies, under such terms and conditions provided for in the Lease Agreement.

Section 6. Execution of Documents. The Chairman, the County Administrator, the Clerk, and the County Attorney are each authorized and directed to do all things necessary to effect the execution and delivery of the Lease Agreement and any other concurrent or future documents contemplated by the Lease Agreement and the County's performance of its obligations under the Lease Agreement.

Section 7. Severability. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 8. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 9. Effective Date. This Ordinance shall take effect upon the date of enactment.

Enacted this ____ day of _____, 2002.

SUMTER COUNTY, SOUTH CAROLINA

By: _____
Frank E. Williams, Jr., Chairman, Sumter County
Council

By: _____
William T. Noonan, Administrator, Sumter
County, South Carolina

(SEAL)

ATTEST:

By: _____
Mary W. Blanding, Clerk, Sumter
County Council

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