

ORDINANCE NO. 02-459
SUMTER COUNTY

AN ORDINANCE AUTHORIZING (1) THE ISSUANCE AND SALE OF A NOT EXCEEDING **[\$4,500,000]** 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 THE COUNTY; AND (3) OTHER MATTERS RELATING THERETO.

WHEREAS, Sumter County, South Carolina (the "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 through the date hereof (the "Code"), particularly Title 4, Chapters 1 and 29 of the Code (the "Multi-County Park Act") and as to Section 4-1-175 in conjunction with Section 4-29-68 thereof, (the "SSRB Act") (collectively, the "Act"): (i) to acquire, or cause to be acquired, certain industrial and commercial properties and to enter into agreements with certain investors to construct, operate, maintain, and improve such 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 a special source revenue Note, the proceeds of which will be used to pay for infrastructure serving the County and improved or unimproved real estate used in the operation of manufacturing or commercial enterprise in order to enhance the economic development of the County; and (iii) to create, in conjunction with one or more other counties, a multi-county industrial 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 approved by County Council on August 28, 2001, between the County and Biopure Corporation, a Delaware corporation ("Biopure") and Sumter Realty Group, LLC, a South Carolina limited liability company ("Sumter Realty") (collectively, the "Companies"), the County has agreed to issue a special source revenue note secured by and payable from all or a part of the revenues it receives from fees in lieu of taxes generated with respect to property located in the Park for the purpose of paying for certain infrastructure serving the County and any improved or unimproved real property used by the Companies to locate certain facilities in the County to be used primarily to manufacture oxygen therapeutic Hemopure® (the "Project"), which facilities will be owned by Sumter Realty and leased to and operated by Biopure; and

WHEREAS, in order to promote the economic welfare of the citizens of the Counties by providing employment and other benefits to the citizens of the Counties, the County proposes to enter into an agreement with Clarendon County to develop jointly a Park as provided by Article VIII, Section 13 of the Constitution of the State in accordance with the Code, particularly Section 4-1-170 thereof. that includes the Project; and

WHEREAS, in consideration of such funding and of the establishment of the Project

within the Park, the County has agreed to issue its not exceeding [\$4,500,000] principal amount Sumter County, South Carolina Special Source Revenue Note (Biopure Corporation Project) (the "Note"), for the purpose of defraying the costs of the acquisition of certain real and personal property to be used in connection with the Project; and

WHEREAS, the Counties will agree to specific terms and conditions in a Multi-County Park Agreement between the Counties to be dated as of **March 1, 2002** or such other date as the parties may agree, which will be in substantially the form presented to this meeting and filed with the Clerk to Council; and

WHEREAS, it appears that the draft multi-county park agreement and the Note are in appropriate form and are appropriate instruments to be executed and delivered by the County for the purposes intended; and

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

**ARTICLE I
MULTI-COUNTY PARK**

Section 1. The County is hereby authorized to execute and deliver a written agreement to develop jointly a Park (the "Agreement") with Clarendon County. The Park is to be located both within the boundaries of the County and Clarendon County. The provisions, terms, and conditions of the Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated by reference as if the Agreement were set out in this Ordinance in its entirety. The Chairman of Council is hereby authorized, empowered, and directed to execute the Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized, empowered, and directed to attest the same; and the Chairman of the Council is hereby further authorized, empowered and directed to deliver the Agreement to Clarendon County. The Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Agreement now before this meeting.

Section 2. The Chairman of the Council and the Clerk to the Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the execution and delivery of the Agreement, the performance of all obligations of the County under and pursuant to the Agreement, and to carry out the transactions contemplated by this Ordinance.

Section 3. Any business enterprise locating in the Park shall pay a fee-in-lieu of *ad valorem* taxes as provided for in the Agreement, Article VIII Section 13 of the Constitution of the State of South Carolina, and the Act. The fee paid in lieu of *ad valorem* taxes shall be paid to the treasurer of the respective County where the premises comprising the Park are located. The Counties, acting by and through the tax collector of the respective Counties, shall maintain all liens and rights to foreclose upon liens provided for counties in the collection of *ad valorem* taxes.

Section 4. The administration, development, promotion, and operation of the Park shall be the responsibility of both the County and Clarendon County, and the respective rights and obligations of each County shall be as set forth in the Agreement.

Section 5. Should any section of this Ordinance be, for any reason, held void or invalid, it shall not affect the validity of any other section hereof which is not itself void or invalid.

Section 6. The Agreement may not be terminated except by ordinances of both the Council and Clarendon County Council. This Ordinance shall expire 20 years from the date of its execution by both parties.

Section 7. The County hereby specifies that the distribution of the fees in lieu of *ad valorem* taxes pursuant to the Agreement received by the County be paid to each of the taxing entities in the County which levy an *ad valorem* property tax in any of the areas comprising the Park premises within the County in the same percentage as is equal to that taxing entity's percentage of the millage rate being levied in the then current tax year for property tax purposes, provided that the County may, from time to time, by ordinance, amend the distribution of the fees in lieu of tax payments to all taxing entities. A portion of the fee-in-lieu of *ad valorem* taxes the County receives pursuant to this Agreement for property located in the Park may be, from time to time and by ordinance of the Council, designated for the payment of special source revenue bonds or for other expenses of the County in connection with establishment, maintenance, and operation of the Park and the improvements therein, and, in such event, distribution of the fees in lieu of *ad valorem* taxes to the other taxing entities as described in the preceding sentences of this Section 7 shall be net of costs associated with such bonds or expenses.

ARTICLE II SSRB'S

Section 1. Pursuant to the authority of the Act and for the purpose of defraying the cost of the constructing, improving or expanding the infrastructure serving the County, there are hereby authorized to be issued, and shall be issued, Bonds of the County in the principal amount of not exceeding **[\$4,500,000]** to be designated "Sumter County, South Carolina, Special Source Revenue Bonds (Biopure Corporation Project)" with such further and other designation as is deemed appropriate therefor. The Bonds shall be payable as to principal and interest in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts.

Section 2. The Bonds shall be payable by the County solely from the revenues derived from the Project for up to ten years, net of the revenues used by the county to pay the multi-county park fee to Clarendon County; provided, however, that the total amount of such revenues pledged to repayment of principal and interest on the Bonds shall not exceed (i) **[\$4,500,000]** or (ii) the amount necessary to provide for payments of debt service on the Bonds, whichever is smaller (the "Pledged Revenues").

Section 3.

(a) The Bonds shall be limited obligations of the County and are payable by the County solely out of the Pledged Revenues. The Bonds do not and shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and do not and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers. The County represents that it has not heretofore pledged nor will it hereinafter pledge the Pledged Revenues except as provided herein.

(b) Nothing in this Ordinance, the Bonds, or the Park Agreement shall be construed as an obligation or commitment by the County to expend any of its funds other than (i) the proceeds of the Bonds and (ii) the Pledged Revenues.

Section 4. The Bonds shall be executed in the name of the County with the manual or facsimile signature of the County Manager (the "County Manager"), shall be attested by the manual or facsimile signature of the Clerk to County Council, and shall have the seal of the County Council impressed or imprinted thereon.

Section 5. The Bonds 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 the County as may be approved by the County Manager, his execution of the Bonds to be conclusive evidence of their approval of any and all changes or revisions therein from the forms of Bonds now before this meeting.

Section 6. The Bonds shall be issued in compliance with and under authority of the provisions of the Act and this Ordinance.

Section 7. The County Council hereby affirms the findings heretofore made with respect to the Project, the Bonds and related documentation, to wit:

(a) the Project 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 the County by providing services, employment and other public benefits not otherwise provided locally.

(c) neither the Project nor any documents or agreements entered into by the County in connection therewith will constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power, except the Bonds 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 Bonds by the County in the aggregate principal amount of not exceeding **[\$4,500,000]** will be required to defray that portion of the cost of certain infrastructure to be funded by the County in support of the Project.

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

(f) inasmuch as the County and the Company both have established credit, the establishment of reserve funds in connection, respectively, with the retirement of the Bonds and the maintenance of the Project is deemed unnecessary.

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

Section 8. The Bonds are hereby authorized to be delivered to the Company as reimbursement for the costs of the above-described improvements or payment of costs of issuance related to the Bonds.

Section 9. The Chairman of County Council and the County Clerk, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Bonds, upon compliance with all prerequisites established by the Act and the performance of all obligations of the County under and pursuant to the Bonds. The Company will be responsible for submitting all documents and applications required by the Act, at its own expense.

Section 10. 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 11. 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.

Section 12. 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

ATTEST:

By: _____
Mary L. 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