

BOARD OF COUNTY COMMISSIONERS

Lackawanna County, Pennsylvania

ORDINANCE

No. #35Enacted: September, 10, 1985

DECLARING THE EXTENSION OF THE COUNTY'S GUARANTY OF UP TO 75% OF THE PAYMENT OBLIGATIONS OF LACKAWANNA COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY UNDER A CERTAIN CREDIT AGREEMENT DATED AS OF JULY 1, 1983 AMONG LACKAWANNA COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, MONTAGE, INC., NORTHEASTERN BANK OF PENNSYLVANIA, THE THIRD NATIONAL BANK AND TRUST COMPANY OF SCRANTON, FIRST EASTERN BANK, N.A., PENN SECURITY BANK AND TRUST COMPANY, FIRST NATIONAL BANK OF JERMYN, AND UNITED PENN BANK TO BE A PROJECT OF THE COUNTY FOR WHICH LEASE RENTAL DEBT IS TO BE INCURRED: STATING THE ESTIMATED REALISTIC USEFUL LIFE OF THE FACILITIES INVOLVED IN SAID PROJECT; DETERMINING TO INCUR LEASE RENTAL DEBT IN THE AMOUNT OF \$5,625,000. IN RESPECT OF SAID PROJECT, SUCH DEBT TO BE EVIDENCED BY THE COUNTY'S AMENDED AND RESTATED GUARANTY AGREEMENT IN CONNECTION WITH THE AUTHORITY'S SPORTS FACILITY REVENUE BONDS (MONTAGE PROJECT), SERIES 1983 BOOK ENTRY CITIZEN BONDS AND THE AUTHORITY'S SPORTS FACILITY REVENUE BONDS (MONTAGE PROJECT), SERIES 1985, AUTHORIZING CERTAIN COUNTY OFFICERS TO PREPARE, CERTIFY AND FILE WITH THE DEPARTMENT OF COMMUNITY AFFAIRS THE DEBT STATEMENT REQUIRED BY SECTION 410 OF THE LOCAL GOVERNMENT UNIT DEBT ACT AND ANY STATEMENTS REQUIRED BY SECTION 206 OF SUCH DEBT ACT TO QUALIFY THE DEBT INCURRED AS SELF-LIQUIDATING DEBT, AND AUTHORIZING THE PREPARATION OF A BORROWING BASE CERTIFICATE; APPROVING THE FORM OF, AND AUTHORIZING, SUBJECT TO CERTAIN CONDITIONS, EXECUTION AND DELIVERY OF THE AFORESAID GUARANTY; REPEALING INCONSISTENT PRIOR ORDINANCES; SETTING FORTH CERTAIN CONDITIONS TO EXECUTION AND DELIVERY OF THE AFORESAID GUARANTY; AND AUTHORIZING CERTAIN INCIDENTAL ACTION, INCLUDING THE EXECUTION AND DELIVERY OF A CERTAIN SUBORDINATION AGREEMENT, A CERTAIN MORTGAGE AND SECURITY AGREEMENT FOR 1985 CREDITORS, AND A CERTAIN SUPPLEMENTAL REPAYMENTAL AGREEMENT.

WHEREAS, the Lackawanna County Industrial Development Authority (the "Authority") was organized on June 25, 1969 by the Board of Commissioners (the "Board") of the County of Lackawanna, Pennsylvania (the "County") under provisions of the Pennsylvania Industrial and Commercial Development Authority Law, Act of 1967, P.L. 251, as amended; and

WHEREAS, the Authority is undertaking a project to accomplish the public purposes of the Pennsylvania Industrial and Commercial Development Authority Law by the financing of a portion of certain commercial facilities comprising a winter ski area and summer recreation center at Scranton, Pennsylvania (the "Project"); and

WHEREAS, the Authority has financed a portion of the costs of the Project by the issuance of its Sports Facility Revenue Bonds (Montage Project), Series 1983 Book Entry CITIZENS BONDS (the "Series 1983 Bonds") in the aggregate principal amount of \$7,500,000 and intends to finance a portion of the costs of the completion of the Project by the issuance of its Sports Facility Revenue Bonds (Montage Project), Series 1985 (the "Series 1985 Bonds") in the aggregate principal amount of \$2,120,000 (the Series 1983 Bonds and the Series 1985 Bonds are sometimes referred to hereafter collectively as the "Bonds"); and

WHEREAS, the Bonds have been and are being issued under and pursuant to a Mortgage and Trust Indenture dated as of July 1, 1983, as amended by a First Supplemental Mortgage and Trust Indenture to be dated as of September 15, 1985, (together,

the "Indenture") by and between the Authority and Northeastern Bank of Pennsylvania, Scranton, Pennsylvania, as Trustee (the "Trustee"); and

WHEREAS, the Authority and Montage, Inc., ("Montage") a Pennsylvania not-for-profit corporation sponsored by the County, the Greater Scranton Chamber of Commerce, Lackawanna Industrial Fund Enterprises and the Scranton-Lackawanna Industrial Building Company, formed for the purpose of owning and operating the Project have entered into an Installment Sale Agreement dated as of July 1, 1983, as amended by a First Modification of Installment Sale Agreement dated as of September 15, 1985, (together, the "Installment Sale Agreement") pursuant to which the Authority is using the proceeds of the Bonds to finance the Project and is selling it to Montage; and

WHEREAS, under the Installment Sale Agreement, Montage has agreed to make purchase payments for the Project in installments equal in time and amount to the payments of principal and interest on the Bonds and has secured its obligations under the Installment Sale Agreement by a pledge of gross revenue from the Project; and

WHEREAS, the Authority has assigned its interest in the Installment Sale Agreement to the Trustee, as security for all bonds issued and outstanding under the Indenture; and

WHEREAS, The Bonds are also secured by a first mortgage on and security interest in the facilities comprising the Project granted by the Authority to the Trustee pursuant to the Indenture with the Series 1983, Bondholders and the Series 1985 Bondholders occupying the same mortgage lien position pursuant to the Subordination Agreement dated as of September 15, 1985, (the "Subordination Agreement") and signed by Montage, Lackawanna County Industrial Development Authority, Northeastern Bank of Pennsylvania, The Third National Bank and Trust Company of Scranton, First State Bank, First Eastern Bank, N.A. (successor in interest to Scranton National Bank), Penn Security Bank and Trust Company of Scranton, First National Bank of Jermyn, United Penn Bank and the County; and

WHEREAS, Montage has caused to be delivered to the Trustee a Letter of Credit (the "Pittsburgh Letter of Credit") issued by Pittsburgh National Bank ("Pittsburgh"), to provide for the payment of principal of, and 228 days' interest on, the Series 1983 Bonds to the extent that moneys are not available therefore under the Indenture; and

WHEREAS, a consortium of banks consisting of Northeastern Bank of Pennsylvania, The Third National Bank and Trust Company of Scranton, First State Bank, Scranton National Bank, (predecessor in interest to First Eastern Bank, N.A.) and Penn Security Bank and Trust Company (collectively, the 1983 Creditors") have agreed to reimburse Pittsburgh for all amounts that are drawn under the Pittsburgh Letter of Credit, together with interest on all such amounts pursuant to the terms of a Reimbursement Agreement dated as of July 1, 1983 among the 1983 Creditors and Pittsburgh (the "Reimbursement Agreement"); and

WHEREAS, Montage and the Authority have entered into a Credit Agreement with the 1983 Creditors dated as of July 1, 1983, as amended by a First Modification of Credit Agreement dated September 15, 1985 (together, the "1983 Credit Agreement"), pursuant to which Montage and the Authority have agreed to reimburse the 1983 Creditors for all amounts paid by the 1983 Creditors pursuant to the Reimbursement Agreement; and

WHEREAS, the obligations of Montage and the Authority under the 1983 Credit Agreement are secured by a Mortgage and Security Agreement to the 1983 Creditors dated as of July 1, 1983 from Montage and the Authority, as mortgagors, to the 1983 Creditors, as mortgagees; and

WHEREAS, Montage has caused to be delivered to the Trustee additional Letters of Credit (the "1985 Letters of Credit") issued by Northeastern Bank of Pennsylvania, The Third National Bank and Trust Company of Scranton, First National Bank of Jermyn, and United Penn Bank (the "1985 Creditors") (the 1983 Creditors are sometimes referred to hereafter collectively as the "Creditors"), to provide for the payment of principal of, and 228 days' interest on, the Series 1985 Bonds to the extent that moneys are not available therefore under the Indenture; and

WHEREAS, Montage and the Authority have entered into a Credit Agreement with the 1985 Creditors dated as of September 15, 1985 (the "1985 Credit Agreement"), pursuant to which Montage and the Authority have agreed to reimburse the 1985 Creditors for all amounts paid by the 1985 Creditors pursuant to the 1985 Letters of Credit (the 1983 Credit Agreement and the 1985 Credit Agreement are hereinafter sometimes collectively referred to as the "Credit Agreements"); and

WHEREAS, the obligations of Montage and the Authority under the 1985 Credit Agreement are secured by a Mortgage and Security Agreement to the 1985 Creditors dated as of September 15, 1985 (the "1985 Creditor's Mortgage") from Montage and the Authority, as mortgagors, to the 1985 Creditors, as mortgagees, with the 1985 Creditors occupying the same mortgage lien position as the 1983 Creditors pursuant to the Subordination Agreement; and

WHEREAS, under authority of the Local Government Unit Debt Act, Act 52 of the 1978 General Assembly of the Commonwealth of Pennsylvania (the "Debt Act"), the County has the power to guarantee the obligations of the Authority to the Creditors under the Credit Agreement; and

WHEREAS, the County desires that the Authority issue the Series 1985 Bonds and apply the proceeds as aforesaid and is willing to enter into an Amended and Restated Guaranty Agreement (the "Guaranty") in order to enhance the marketability of the Series 1985 Bonds and thereby achieve interest cost and other savings with respect to the winter ski area and summer recreation center and as an inducement to the purchase of the Bonds; and

WHEREAS, the obligation of the County under the Guaranty constitutes lease rental debt under the Debt Act; and

WHEREAS, the Debt Act requires certain actions as a prerequisite to incurring lease rental debt; and

WHEREAS, any payment made by the County under the Guaranty will obligate Montage and the Authority under a Repayment Agreement dated as of July 1, 1983, as amended by an Amended and Restated Repayment Agreement dated September 15, 1985, (together, the "Repayment Agreement") to reimburse the County for all amounts so paid; and

WHEREAS, the obligations of Montage and the Authority under the Repayment Agreement are secured by a Mortgage and Security Agreement to Lackawanna County dated as of July 1, 1983, (the "Mortgage") from Montage and the Authority, as mortgagors, to the County, as mortgagee, with the mortgagee's position as lienholder subordinated pursuant to the Subordinated Agreement; and

WHEREAS, the proceeds derived from the issuance of the Bonds are to be applied to the costs of the Project which will benefit the County and promote the general welfare of the residents thereof;

NOW THEREFORE, the Board of County Commissioners of the County of Lackawanna, Pennsylvania, hereby **ORDAINS** and **ENACTS** that:

Section 1. The County hereby authorizes the incurring of nonelectoral debt in the form of the extension of the guaranty contained in the Amended and Restated Guaranty Agreement hereinafter recited to secure a portion of the payment obligation of the Authority under (i) a certain Credit Agreement (a copy of which has been presented at this meeting and filed with the County's Administrative Director) dated as of July 1, 1983 among the Authority, Montage, Northeastern Bank of Pennsylvania, The Third National Bank and Trust Company of Scranton, First State Bank, Scranton National Bank (predecessor in interest to First Eastern Bank, N.A) and Penn Security Bank and Trust Company and a portion of the payment obligation of the Authority; and (ii) a certain Credit Agreement (a copy of which has been presented at this meeting and filed with the County's Administrative Director) dated as of September 15, 1985, among the Authority, Montage, Northeastern Bank of Pennsylvania, The Third National Bank and Trust Company of Scranton, First Eastern Bank, N.A., Penn Security Bank and Trust Company, First National Bank of Jermyn and United Penn Bank. The County declares such guarantee to be a project of the County for which lease rental debt in the amount of \$5,625,000. is to be incurred.

Section 2. The realistic estimated useful life of the Project is hereby declared to be 40 years.

Section 3. The County hereby authorizes the incurring of lease rental debt in the form of the guaranty contained in the Amended and Restated Guaranty Agreement hereinafter recited to secure the payment of up to \$5,625,000 of the payment obligations of the Lackawanna County Industrial Development Authority under the above-referenced Credit Agreements.

Section 4. The Chairman and Administrative Director of the Board, or any duly appointed successors, are hereby authorized and directed to prepare, certify and file with the Department of Community Affairs, in accordance with the Debt Act, a debt statement required by Section 410 thereof, and are further hereby authorized and directed to file with the Department of Community Affairs a report, to be prepared by Montage, required by Section 206, of the Debt Act which is necessary to qualify that portion of the gross lease rental debt of the County securing the payment of principal and interest on the Bonds of the Authority which may be excluded from such gross lease rental debt as self-liquidating debt for the purposes of establishing the net lease rental debt of the County and determining its debt limit; and the Chairman and Administrative Director are hereby authorized and directed to prepare and execute a certificate stating the County's borrowing base, as such term is defined in the Debt Act, for submission to the Department of Community Affairs.

Section 5. Subject to Section 9 hereof, the Chairman of the Board of Commissioners, the Controller and the Treasurer are hereby authorized and directed to execute, acknowledge and deliver, and the Administrative Director is hereby authorized and directed to affix and attest the corporate seal of the County to a Guaranty in substantially the form approved in Section 9(b) hereof with such changes therein as counsel may advise and the officers executing the same approve, their approval to be evidenced by their execution thereof and to take any other actions necessary to effectuate the Project.

Section 6. The County hereby approves the forms of the Subordination Agreement, the 1985 Creditors' Mortgage and the Repayment Agreement presented at this meeting and filed with its Administrative Director. The Officers of the County are hereby further authorized and directed to execute and deliver such other documents, including the 1985 Creditors' Mortgage, with such changes therein as counsel shall advise, and to take such other action as may be necessary or appropriate in order to effectuate the execution and delivery of the Guaranty, the Subordination

Agreement, the 1985 Creditors' Mortgage, with such changes therein as counsel shall advise, and to take such other action as may be necessary or appropriate in order to effectuate the execution and delivery of the Guaranty, the Subordination Agreement, the 1985 Creditors' Mortgage and the Repayment Agreement, and the performance of the County's obligations thereunder, all in accordance with the foregoing Section hereof.

Section 7. This Ordinance shall become effective September 10, 1985.

Section 8. All prior ordinances or resolutions or parts thereof inconsistent herewith are hereby repealed.

Section 9. The Guaranty shall be executed and delivered as provided in Section 5 hereof only after the following conditions have been met:

(a) The Department of Community Affairs shall have approved the execution of the Guaranty pursuant to the Debt Act and shall have approved the exclusion of lease rental debt thereby to be incurred as self-liquidating pursuant to the Debt Act;

(b) the Guaranty shall be in substantially the following form, with such changes as counsel may advise, the terms and provisions thereof being in all respects adopted fully herein, [and the form of the Authority Bonds in substantially the following form as hereby approved.]

COUNTY OF LACKAWANNA
Pennsylvania

ORDINANCE CERTIFICATION

I, the undersigned officer of the Board of County Commissioners of Lackawanna County, Pennsylvania, hereby certify that I am an official keeper of the Seal and Records of said County; that attached hereto is a true, correct and complete copy of an Ordinance of said County, which was duly enacted by the Board of County Commissioners at a public meeting held on September 10, 1985 entitled:

DECLARING THE EXTENSION OF THE COUNTY'S GUARANTY OF UP TO 75% OF THE PAYMENT OBLIGATIONS OF LACKAWANNA COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY UNDER A CERTAIN CREDIT AGREEMENT DATED AS OF JULY 1, 1983 AMONG LACKAWANNA COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, MONTAGE, INC., NORTHEASTERN BANK OF PENNSYLVANIA, THE THIRD NATIONAL BANK AND TRUST COMPANY OF SCRANTON, FIRST STATE BANK, SCRANTON NATIONAL BANK AND PENN SECURITY BANK AND TRUST COMPANY OF SCRANTON TO COVER OBLIGATIONS UNDER A CERTAIN CREDIT AGREEMENT TO BE EXECUTED AMONG LACKAWANNA COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, MONTAGE, INC., NORTHEASTERN BANK OF PENNSYLVANIA, THE THIRD NATIONAL BANK AND TRUST COMPANY OF SCRANTON, FIRST EASTERN BANK, N.A., PENN SECURITY BANK AND TRUST COMPANY, FIRST NATIONAL BANK OF JERMYN, AND UNITED PENN BANK. TO BE A PROJECT OF THE COUNTY FOR WHICH LEASE RENTAL DEBT IS TO BE INCURRED: STATING THE ESTIMATED REALISTIC USEFUL LIFE OF THE FACILITIES INVOLVED IN SAID PROJECT; DETERMINING TO INCUR LEASE RENTAL DEBT IN THE AMOUNT OF \$5,625,000 IN RESPECT OF SAID PROJECT, SUCH DEBT TO BE EVIDENCED BY THE COUNTY'S AMENDED AND RESTATED GUARANTY AGREEMENT IN CONNECTION WITH THE AUTHORITY'S SPORTS FACILITY REVENUE BONDS (MONTAGE PROJECT), SERIES 1983 BOOK ENTRY CITIZEN BONDSTM AND THE AUTHORITY'S SPORTS FACILITY REVENUE BONDS (MONTAGE PROJECT), SERIES 1985; AUTHORIZING CERTAIN COUNTY OFFICERS TO PREPARE, CERTIFY AND FILE WITH THE DEPARTMENT

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on 195

OF COMMUNITY AFFAIRS THE DEBT STATEMENT REQUIRED BY SECTION 410 OF THE LOCAL GOVERNMENT UNIT DEBT ACT AND ANY STATEMENTS REQUIRED BY SECTION 206 OF SUCH DEBT ACT TO QUALIFY THE DEBT INCURRED AS SELF-LIQUIDATING DEBT, AND AUTHORIZING THE PREPARATION OF A BORROWING BASE CERTIFICATE; APPROVING THE FORM OF, AND AUTHORIZING, SUBJECT TO CERTAIN CONDITIONS, EXECUTION AND DELIVERY OF THE AFORESAID GUARANTY: REPEALING INCONSISTENT PRIOR ORDINANCES; SETTING FORTH CERTAIN CONDITIONS TO EXECUTION AND DELIVERY OF THE AFORESAID GUARANTY; AND AUTHORIZING CERTAIN INCIDENTAL ACTION INCLUDING THE EXECUTION AND DELIVERY OF A CERTAIN SUBORDINATION AGREEMENT, A CERTAIN MORTGAGE AND SECURITY AGREEMENT FOR 1985 CREDITORS AND A CERTAIN SUPPLEMENTAL REPAYMENT AGREEMENT.

that proper notice of said meeting was duly given to each member of the Board of County Commissioners; that public notice of said meeting was duly given by posting and by publication in a newspaper of general circulation within said County in accordance with the Act of June 21, 1957, P.L. 392, as amended, and Act No. 175 of the 1974 Pennsylvania General Assembly, as amended; that said meeting was open to the public at all times and was not adjourned, begun, recessed or interrupted in any way for the purpose of an executive session within the meaning of said Act No. 175; that a quorum was present at said meeting and acted throughout; that said Ordinance was duly enacted by the affirmative vote of a majority of the members of the Board of County Commissioners then holding office and of a majority of all the members of the Board of County Commissioners; that proper notice of the proposed enactment of said Ordinance was duly published in accordance with the Local Government Unit Debt Act, Act No. 185 of the 1972 General Assembly of the Commonwealth of Pennsylvania, as amended and reenacted by Act No. 52 of the 1978 General Assembly, in a newspaper of general circulation within the County; that public notice of the final enactment of said Ordinance was duly given, by similar publication, in accordance with the Local Government Unit Debt Act; that Minutes of said meeting of said Board of County Commissioners were taken and promptly recorded and are available as public records under the Act of June 21, 1957, P.L. 390; that the vote of each member of the Board of County Commissioners attending said meeting upon said Ordinance has been duly recorded as required by law; and that said Ordinance has not been amended or rescinded as of the date hereof.

LACKAWANNA COUNTY

Joseph J. Corcoran

Joseph J. Corcoran

Ray A. Alberigi

Ray A. Alberigi

Charles Luger

Charles Luger

ATTEST:

Gerald L. Stanvitch

Gerald L. Stanvitch