

## ORDINANCE #32

FIRST READING: March 12, 1985  
ADOPTED: March 26, 1985

An ORDINANCE of the Board of County Commissioners of Lackawanna County (The "County") authorizing and approving a Guaranty Agreement between the County and the Third National Bank and Trust Company of Scranton (The "Bank") with respect to the acquisition by the Lackawanna County Railroad Authority (The "Authority") from the Delaware and Hudson Railway Company (The "D & H"), of certain real property, railroad tracks, buildings and other assets (collectively, the "Property"), and the guaranty by the County of the Authority's Note to the bank, such note being issued to provide financing for a portion of the purchase price of the property, describing the property, stating the estimated useful life thereof, stating the aggregate principal amount of the note, stating that the debt is to be incurred as lease rental debt, authoring and directing specified officers of the County to prepare, certify and file the Debt Statement required by Section 410 of the Pennsylvania Local Government Unit Debt Act, as amended (the "Act"), and to take certain other require action, authorizing the exclusion of a certain portion of the indebtedness as subsidized debt or self-liquidating debt, providing that the County shall include the amount payable in respect of its quaranty for each fiscal year in which such sums are payable in its budget for that year, providing that the County shall appropriate such amounts from its revenues for the Guaranty, providing that the County shall duly and punctually pay or cause to be paid from its revenues or funds the principal of an interest on the note to the extent of its obligations as provided in the guaranty, providing that, for such budgeting, appropriation and payment in respect of its guaranty of the note, the County is pledging its full faith, credit and taxing power, providing that these covenants are being made with the holder, from time to time, of the not making provision for separability within the ordinance and repealing inconsistent ordinances.

Section 1. The Guaranty Agreement with the Bank with respect to the guaranty by the County of the Authority's obligations (the "Guaranty"), in the form attached hereto, made a part hereof, and incorporated herein as Exhibit A, is hereby approved and shall be executed by the County Commissioners on behalf of the County, such Guaranty providing that the County shall guaranty the payment of the Authority's obligations under a note (the "Note") in the aggregate principal amount of One Million One Hundred Five Thousand Dollars (\$1,105,000) to be executed by the Authority in favor of the Bank, such Note being issued to provide financing for a portion of the purchase price of the Property. The form of the Note is attached hereto, made a part hereof, and incorporated herein as Exhibit B.

Section 2. The Board of County Commissioners (the "Governing Body") of the County does hereby confirm that the Note being guaranteed is being issued to provide financing for a portion of the total purchase price of \$1,260,000.00 being paid by the Authority to the D & H for the Property. The Property consists of a railroad line approximately 23 miles in length running from the Borough of Moosic to the Township of Fell in Lackawanna County, including real property and the railroad tracks thereon; certain building, including warehouses and offices located in the City of Scranton and elsewhere in Lackawanna County; and other assets, including license and lease agreements for use of the Property or a portion thereof by third parties. The realistic estimated useful life of the Property is twenty years and upwards prior to which time the Note shall mature. The aggregate principal amount of the Note is \$1,105,000.00. The County Commissioners and the Administrative Director, respectively of the County, which shall include their duly qualified successors in office, if applicable, are authorized and directed, as required, necessary and/or appropriate: (a) to prepare, certify, and file the debt statement required by Section 410 of the Act; (b) to prepare and file with the Pennsylvania Department of Community Affairs (the "Department") any statements

required by Article II of the Act which are necessary to qualify all or any portion of the debt of the County that is subject to exclusion as self-liquidating or subsidized debt for exclusion from the appropriate debt limit of the County as self-liquidating or subsidized debt; (c) to prepare and file the application with the Department, together with a complete and accurate transcript of the proceedings for the required approval relating to the debt; (d) to pay or to cause to be paid to the Department all proper filing fees required in connection with the foregoing; and (e) to take other required, necessary and/or appropriate action. The County covenants to and with the holder, from time to time, of the Note, that the County: (1) shall include the amount payable in respect of the Guaranty for each fiscal year in which such sums are payable in its budget for that fiscal year, (2) shall appropriate such amounts from its revenues for the payment of the Guaranty, and (3) shall duly and punctually pay or cause to be paid from its revenues or funds the principal of and interest on the Note, to the extent of its obligations as provided in the Guaranty Agreement, and, for such budgeting, appropriation and payment, the County shall and does pledge, irrevocably, its full faith, credit and taxing power. As provided in the Act, the foregoing covenants of the County shall be specifically enforceable.

Section 3. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of this County that such remainder shall be and shall remain in full force and effect.

Section 4. All ordinances or parts of ordinances, insofar as the same shall be inconsistent herewith, shall be, and the same expressly are, repealed.

#### Exhibit A                      GUARANTY AGREEMENT

This Guaranty Agreement (the "Agreement"), made as of April 1985 by LACKAWANNA COUNTY, a body politic of the Commonwealth of Pennsylvania, with offices at 200 Adams Avenue, Scranton, Pennsylvania (the "Guarantor") and THE THIRD NATIONAL BANK AND TRUST COMPANY OF SCRANTON (the "Bank"), a national banking association, with offices in Scranton, Pennsylvania, pursuant to a Loan Agreement (the "Loan Agreement") of even date herewith, between the Lackawanna County Railroad Authority (the "Authority") and the Bank.

#### BACKGROUND

Pursuant to an Agreement of Sale, dated as of March 1985, the Authority has agreed to purchase from the Delaware and Hudson Railway Company (the "D&H"), certain real property, railroad tracks, buildings and other assets (collectively, the "Property"), for a total purchase price of One Million Two Hundred Sixty Thousand Dollars (\$1,260,000.00), payable at closing. Pursuant to the Loan Agreement, the Authority is issuing its note (the "Note") to the Bank, in the principal amount of One Million One Hundred Five Thousand Dollars (\$1,105,000.00), and the proceeds of such Note will be used by the Authority to pay a portion of the purchase price of the Property. As security for the performance of the Authority's obligations under the Note, the Guarantor has agreed to guarantee the payment by the Authority of the amounts due under the Note.

## GUARANTY

Section 1.01. In consideration of an in order to induce th Bank to purchase the Note at the interest rate provided for therein, in consideration of and to induce the Authority to issue the Note and to provide the financing thereby contemplated, in consideration of the benefits which will accrue to the Guarantor as a result of the purchase of the Property by the Authority, and intending to be legally bound, the Guarantor, subject to the provisions contained herein, hereby unconditionally guarantees all obligations of the Authority to the Bank with respect to the Note, including: (a) the full and prompt payment of the principal of the Note when and as the same shall become due, whether at the stated maturity thereof, at redemption prior to the maturity thereof of otherwise, and (b) the full and prompt payment of any interest on the Note when and as the same shall become due. The amounts specified in subparagraphs (a) and (b) above shall hereinafter be collectively called the "Indebtedness." All payments by the Guarantor shall be paid in lawful money of the United States of America. Each and every default in payment of the Indebtedness shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arised.

Section 1.02. Except as provided herein, the obligations of the Guarantor under this Agreement shall be independent, absolute and unconditional and shall remain in full force in effect until the Indebtedness shall have been paid in full, and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to, or the consent of, the Guarantor:

- (a) The failure by the Authority to continue operation of the Property or failure to otherwise perform any obligation contained in the Loan Agreement, or in any other agreement entered pursuant to the Note or the Loan Agreement, for any reason whatsoever, including, without limiting the generality of the foregoing, insufficiency of funds, negligence or willful misconduct on the part of the Authority, the Guarantor, or any other guarantor or surety, their agents, or independent contractors, legal action of any nature which prohibits or delays operation of the Property, labor disputes, war, insurrection, natural catastrophe or laws, rules or regulations of any body, governmental or otherwise;
- (b) the compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Authority under the Loas Agreement, whether or not pursuant to the terms thereof;
- (c) the failure to give notice to the Guarantor, of the occurrence of an event of default under the terms and provisions of this Agreement;
- (d) the assignment, pledge, mortgaging or purported assignment of all or any part of the interest of the Authority in the Property or any failure of title with respect to the Authority's interest in the Property;
- (e) the waiver of the payment, performance or observance by the Authority of any of the obligations and covenants of either of them contained in the Agreement of Sale, the Note or the Loan Agreement, or by the Guarantor of obligations and covenants contained in this Agreement;
- (f) the extension of the time for payment of the Indebtedness, or any part thereof, or of the time for performance of any other obligations, covenants or agreements under or arising out of any of the aforementioned documents or the extension or the renewal of any thereof;

(g) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the aforementioned documents except as expressly permitted by and in accordance with the provisions thereof;

(h) the taking or the omission of any of the actions referred to in the aforementioned documents including this Agreement;

(i) any failure, omission, delay or lack on the part of the Lender to enforce, assert or exercise any right, power or remedy conferred on the Lender in the aforementioned documents, or any other act or acts on the part of the Authority or the Lender, either directly or by or through their duly authorized representatives;

(j) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Lender, the Guarantor or the Authority or any of the assets of any of them or any allegation or contest of the validity of this Agreement in any such proceeding; or

(k) to the extent permitted by law, the release or discharge of the Guarantor from the performance or observance of any obligation, covenant, or agreement contained in this Agreement by operation of law;

(l) the default or failure of the Guarantor fully to perform any of the obligations set forth in this Agreement; or

(m) the damage or partial or total destruction of the Property, or the taking of title to or the temporary use of the Property by any lawful authority.

Provided, however, that from and after the date upon which the Indebtedness shall no longer be outstanding, the obligations of the Guarantor hereunder shall cease to have effect.

Section 1.03. No set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature which the Guarantor have or may come to have against the Authority or the Bank shall be available hereunder to the Guarantor; provided that nothing contained herein shall prohibit the Guarantor from asserting any claim against the Authority or the Bank in a separate proceeding, which proceeding shall in no way delay the prompt performance by the Guarantor of its obligations hereunder.

Section 1.04. In the event of a default in the payment of the Indebtedness when and as the same shall become due, and the expiration of any curative period provided therefor, (a) the Bank may exercise its rights and remedies under this Agreement to the extent of the amounts in default, without any acceleration of amounts due under the Note or this Agreement; and (b) if, after the expiration of not less than 60 days from the date of the Bank's exercise of its rights and remedies under this Agreement, as provided in subsection (a) of this Section, the Authority remains in default, the Guarantor shall forthwith, upon demand by the Bank, pay, on behalf of the Authority, the full amount of the Indebtedness, including any amounts due by reason of acceleration of the Authority's obligations under the Note.

Section 1.05. The obligation of the Guarantor under this Agreement shall constitute a guaranty as defined in Section 102 (c) (7.1) of the Pennsylvania Local Government Unit Debt Act (the "Act"), 53 P.S. §6780-2(7.1), and shall be subject to the provisions for enforcement of such a guaranty, as provided in the Act, including, but not limited to, the provisions of Section 1201 thereof. The Guarantor hereby covenants with the holder of the Note that it will:

- (a) Include the amounts payable for the benefit of the holder of the Note pursuant to this Agreement in its budget for the applicable fiscal year or years of the Guarantor;
- (b) Appropriate such amounts from its revenues for the payment of such amounts pursuant to this Agreement; and
- (c) Duly and promptly pay or cause to be paid such amounts, in accordance with this Agreement.

The Guarantor hereby pledges its full faith, credit and taxing power in support of the covenants contained in this Section.

Section 1.06. Anything contained in this Agreement to the contrary notwithstanding, except as provided herein with respect to expenses incurred in connection with the enforcement hereof, the obligations of the Guarantor hereunder shall be satisfied in full and discharged when the Indebtedness has been paid in full.

MISCELLANEOUS

Section 2.01. The Guarantor covenants that while the Indebtedness, or any portion thereof, remains unpaid, it will not dissolve or otherwise dispose of all or substantially all of its assets without the consent of the Bank.

Section 2.02. No remedy herein conferred upon or reserved to the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice to the Guarantor, prior to the demand for payment other than the notice provided for in Section 2.03 hereof. In the event any provision contained in this Agreement should be breached by the Guarantor and thereafter duly waived by the Bank, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of any of the terms of this Agreement shall be established by conduct, custom or course of dealing.

Section 2.03. In the event of a default under the terms and provisions of the Loan Agreement or the Note, the Lender shall have all the rights and remedies provided in this Agreement.

Section 2.04. The invalidity or unenforceability of anyone or mor provisions in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof.

Section 2.05. This Agreement shall not be amended by the parties heretoexcept in writing signed by all the parties hereto.

Section 2.06. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Guarantor has caused this Agreement to be executed and delivered in their respective names and behalf and this Agreement has been accepted by Bank.

Exhibit B

PROMISSORY NOTE  
OF THE  
LACKAWANNA COUNTY RAILROAD AUTHORITY

\$1,105,000

April 1985

LACKAWANNA COUNTY RAILROAD AUTHORITY, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in the City of Scranton, Lackawanna County, Pennsylvania (hereinafter called "Maker") does hereby promise to pay to the order of the THIRD NATIONAL BANK AND TRUST COMPANY OF SCRANTON, a national banking association, (hereinafter called "Bank") at the principal office of Bank in Scranton, Pennsylvania, or at such other place as the holder hereof may, from time to time, direct Maker in writing, the sum of One Million One Hundred Five Thousand Dollars (\$1,105,000) lawful money of the United States of America, together with interest on the unpaid principal balance thereof outstanding from time to time at the rate provided herein.

Principal and interest at the following rates shall be paid in 10 consecutive yearly installments, the first such installment to be paid on April , 1986 and one such installment to be paid on April , of each year thereafter, as follows:

(a) 9 consecutive yearly installments of principal and interest, each in the amount of (or such other amount as would fully amortize the actual amount of the loan in equal yearly installments at interest on the basis of a ten-year term); and

(b) a final installment, on April 1995, in an amount sufficient to pay, in full, the entire outstanding principal balance, together with all interest due, at the aforementioned rates.

The Maker shall have the privilege of prepaying without premium or penalty the principal balance of this Note in whole or in part at any time and without notice, together with accrued interest to the date of prepayment.

The loan evidenced by this Note has been disbursed by the Bank in accordance with the terms of a Loan Agreement of even date herewith between the Bank and the Authority, and all such disbursements shall be considered as the principal due under this Note and shall be payable in accordance with the terms hereof.

This Note is secured, inter alia, by the following collateral (hereinafter called the "Collateral"):

The guaranty (the "Guaranty") of the County of Lackawanna, a Pennsylvania body politic (the "County").

Bank shall have a first lien upon and security interest in the Collateral to secure payment of this Note and any renewals, extensions and modifications hereof and any and all other sums due or to become due under this Note, the Collateral and the Loan Agreement (said sums due being hereinafter sometimes collectively referred to as the "Liabilities"). No failure by Bank to comply with the request of the Maker respecting preservation of the Collateral shall of itself be deemed a failure to exercise reasonable care.

In addition to all other rights possessed by it, Bank shall have the following rights, which may be exercised at any time:

(i) to notify the persons obligated on any of the Collateral to

make payment to Bank of any amounts due or to become due thereon; and (ii) to apply any proceeds of the Collateral against the Liabilities in such manner and in such order as Bank may elect.

Bank shall not assign, transfer or pledge this Note or any portion thereof, without the written consent of the Authority and the County first had and obtained.

If Maker shall fail to observe or perform any of the agreements and covenants of Maker contained herein or in the Collateral, Bank may, in its discretion, but without any duty to do so, and without waiving any default, perform any of such terms, covenants and conditions, in part or in whole, and any money advanced or expended by Bank in or toward the fulfillment of such terms, covenants and conditions, shall be due on demand and become a part of and added to the indebtedness due under this Note and secured by the Collateral with interest thereon at a rate equal to the interest rate on the principal of this Note, from the date of the respective advance or expenditure.

Maker shall be in default hereunder upon: (i) the nonpayment after the same is due of any of the Liabilities, (ii) a default under any of the Collateral which is not corrected within the applicable period therein specified, if any, or (iii) a default under the aforementioned Loan Agreement.

In the event of such default hereunder, Bank shall have the following rights or remedies provided Bank gives written notice to Maker and the County of such default, and any default involving payment of money is not corrected within 60 days of such written notice and any default involving other obligations is not corrected within 60 days of such written notice or if, within such 60 day period, diligent effort is being made to cure such default, such longer period as may, in Bank's judgment, be required to cure said default with reasonable dispatch:

(a) Bank may exercise its rights under the Note and the Guaranty to the extent of the amounts due under the Note or the Guaranty, without any acceleration of amounts due under the Note; and

(b) If, after the expiration of not less than 60 days from the date of the Bank's exercise of its rights under the Guaranty, as provided in subparagraph (a) of this paragraph, the Maker remains in default hereunder, the Bank shall have the following additional remedies:

(i) Unless Bank elects otherwise, the entire unpaid amount of the Liabilities shall become immediately due and payable in full without notice to or demand on Maker of any kind and without presentation, demand or protest, all of which are hereby waived;

(ii) Bank may at its option exercise from time to time any and all rights and remedies available to it as to the Collateral, including, without limitation, its rights and remedies as a secured party under the Uniform Commercial Code as then enacted and construed, including the right to dispose of the Collateral at public or private sale(s), and may apply the proceeds of any such disposition to the Liabilities in such manner and in such order as Bank may elect; and

(iii) Maker does hereby authorize and empower any Attorney of any court of record in the event of a default hereunder to appear for and to confess judgment against Maker for the unpaid balance hereof with interest, together with any and all charges, taxes and liens paid by Bank, its successors or assigns, and in any manner affecting or chargeable against the Collateral, together with cost of suit, plus 5% of the amount then due hereunder but no less than \$750 as an

attorney's commission, with release of all procedural defects and errors, in the preparation and filing of all documents relating to, and in the conduct of such proceedings. If a true and correct copy hereof shall have been filed in said proceedings, it shall not be necessary to file the original as a warrant of attorney. Entry of judgment shall not be deemed to exhaust the warrant of attorney hereby granted and the same may be exercised by the holder hereof at any time. Entry of judgment shall not be deemed to restrict Bank's right to collect interest on the principal amount due and owing at the rate specified in this Note. Maker waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

Any failure of Bank to exercise any right or remedy hereunder shall not be construed as a waiver of the right to exercise the same or any other right or remedy at any other time.

All notices to be given by either party to the other hereunder shall be in writing and shall be sent by postpaid registered mail, return receipt requested and shall be effective upon receipt. Any such notice by Maker to Bank shall be addressed to:

Third National Bank and Trust Company  
of Scranton  
130 Wyoming Avenue  
Scranton, Pennsylvania 18503  
Attention: William W. Davis, Jr.

or to such other address and person as Bank may specify in a written notice to Maker. Any such notice by Bank to the Maker shall be addressed to:

Lackawanna County Railroad Authority  
Lackawanna County Administration Building  
200 Adams Avenue  
Scranton, Pennsylvania 18502  
Attention: Executive Director

with a copy to the County addressed to:

County of Lackawanna  
Lackawanna County Administration Building  
200 Adams Avenue  
Scranton, Pennsylvania 18503  
Attention: Administrative Director

or to such other address and person as the Maker or the County may specify in a written notice to Bank.

Maker intends this to be a sealed instrument and to be legally bound hereby.

Presentment, demand and protest are hereby waived by Maker.

All issues arising hereunder shall be governed by the laws of Pennsylvania.

This Note is not an obligation of the Commonwealth of Pennsylvania or any political subdivision thereof, other than Maker, nor shall said Commonwealth or any political subdivision thereof, other than Maker, be liable for payment of principal or interest hereon, except as provided herein. Maker has no taxing power.

IN WITNESS WHEREOF, the Maker has caused this instrument to be executed on its behalf by its duly authorized officer.

No Action Required At This Time.

ORDINANCE #32

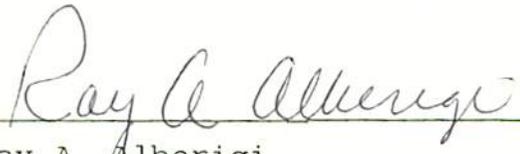
---

ADOPTED at a regular meeting of the Board of Commissioners held on March 26, 1985.

Approved as to form and legality.

LACKAWANNA COUNTY

  
\_\_\_\_\_  
Joseph J. Corcoran

  
\_\_\_\_\_  
Ray A. Alberigi

ATTEST:

  
\_\_\_\_\_  
Gerald L. Stanvitch  
Administrative Director

\_\_\_\_\_  
Charles Luger