

ORDINANCE #67

FIRST READING - April 24, 1990
 SECOND READING - May 8, 1990

DECLARING THE COUNTY'S GUARANTY OF PRINCIPAL AND INTEREST ON \$4,000,000 OF SPORTS FACILITY REVENUE BONDS TO BE ISSUED BY THE LACKAWANNA COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY FOR THE BENEFIT OF MONTAGE, INC. 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 \$4,000,000 IN RESPECT OF SAID PROJECT, SUCH DEBT TO BE EVIDENCED BY THE COUNTY'S GUARANTY AGREEMENT; 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, AND AUTHORIZING EXECUTION AND DELIVERY OF THE AFORESAID GUARANTY; REPEALING INCONSISTENT PRIOR ORDINANCE; AND AUTHORIZING CERTAIN INCIDENTAL ACTION, INCLUDING THE EXECUTION AND DELIVERY OF A CERTAIN MORTGAGE AND SECURITY AGREEMENT AND A CERTAIN REPAYMENT 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 (the "IDA Law"); and

WHEREAS, the Authority has undertaken a project to accomplish the public purposes of the IDA 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 originally financed a portion of the costs of the Project by (a) the issuance of its Sports Facility Revenue Bonds (Montage Project), Series 1983 Book Entry CITIZEN BONDS (the "1983 Bonds") in the aggregate principal amount of \$7,500,000, and (b) the issuance of its Sports Facility Revenue Bonds (Montage Project), Series 1985 (the "1985 Bonds") in the aggregate principal amount of \$2,120,000, both of which were partially guaranteed by the County; and

WHEREAS, in furtherance of the Project, the Authority undertook an additional project (the "Refinancing Project") in which it (i) advance refunded the 1983 Bonds by funding an escrow for the payment of interest on, and the principal and redemption price of, the 1983 Bonds until their first optional redemption date of June 15, 1988, and (ii) refinanced the 1985 Bonds, both with proceeds from the issuance of its Sports Facility Revenue Refunding Bonds (Montage Project), Series of 1986 (the "1986 Bonds") issued under and pursuant to a Trust Indenture dated as of November 1, 1986 (the "Authority Indenture") by and between the Authority and Northeastern Bank of Pennsylvania, Scranton, Pennsylvania, as Trustee (the "Authority Trustee"), thereby releasing the County's outstanding guaranty respecting the 1983 Bonds and the 1985 Bonds; and

WHEREAS, the County guaranteed obligations of the Authority with respect to the 1986 Bonds limited in amount to the guaranteed amount on the 1983 and 1985 Bonds; and

WHEREAS, Montage, Inc. ("Montage") is 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; and

WHEREAS, Montage now desires to permanently finance the costs of the improvements to the North Slope and other costs authorized under the IDA Law (the "1990 Project"); and

WHEREAS, the Authority and Montage will enter into a supplemental Sports Facilities Agreement to be dated as of June 15, 1990 (the "Facilities Agreement") pursuant to which the Authority will agree to finance the 1990 Project by the issuance of Sports Facility Revenue Bonds (Montage Project), Series of 1990 (the "Authority Bonds") and Montage will agree to provide for the payment of the debt service on the Authority Bonds; and

WHEREAS, to secure the Authority Bonds and to satisfy its obligations under the Facilities Agreement, Montage will cause to be delivered to the Authority its Sports Facility First Mortgage Bonds, Series A of 1990 (the "Series A Mortgage Bonds") to be issued under and pursuant to a First Supplemental Mortgage and Trust Indenture to be dated as of June 15, 1990 (the "Mortgage Indenture") by and between Montage, as mortgagor, and Northeastern Bank of Pennsylvania,

Scranton, Pennsylvania, as trustee and mortgagee (the "Mortgage Trustee"), granting to the Mortgage Trustee a first mortgage on and security interest in the Project; 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 Authority Bonds; and

WHEREAS, the County desires that the Authority issue the Authority Bonds and apply the proceeds as aforesaid and is willing to guarantee the Authority Bonds by entering into a Guaranty Agreement to be dated as of June 15, 1990 (the "Guaranty") in order to enhance the marketability of the Authority Bonds and thereby achieve interest cost and other savings with respect to the Project and as an inducement to the purchase of the Authority Bonds; and

WHEREAS, any payment made by the County under the Guaranty will obligate Montage and the Authority under a First Supplemental Repayment Agreement to be dated as of June 15, 1990 (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 to be secured by a Mortgage Modification Agreement to a mortgage of, and a lien on, the Project facility, granted pursuant to a Third Mortgage and Security Agreement dated as of November 1, 1986, between Montage, as mortgagor, and the County, as mortgagee; and

WHEREAS, the proceeds derived from the issuance of the Authority Bonds are to be applied to the costs of the 1990 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 lease rental debt in the form of the Guaranty previously recited to secure the payment of debt service on the Authority's Sports Facility Revenue Bonds (Montage Project) Series of 1990 (a copy of which has been presented at this meeting and filed with the County's Administrative Director) to be dated as of June 15, 1990. The County declares such guarantee to be a project of the County for which lease rental debt in the amount of \$4,000,000 is to be incurred.

Section 2. The realistic estimated useful life of the Project is hereby declared to be 33 years.

Section 3. The County hereby authorizes the incurring of lease rental debt in the form of the guaranty contained in the Guaranty to secure the payment of \$4,000,000 of the Authority Bonds.

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 Authority Bonds 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 8 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, the Guaranty in substantially the form approved in Section 8(b) hereof with such changes therein as counsel may advise and the officers executing the same may approve, their approval to be evidenced by their execution thereof and to take any other actions necessary to effectuate the 1990 Project.

Section 6. The officers of the County are hereby further authorized and directed to execute and deliver such other documents, including supplements and modifications to the Repayment Agreement and the Third Mortgage as aforesaid, 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 Repayment Agreement and the Third Mortgage and the performance of the County's obligations thereunder, all in accordance with the foregoing Sections hereof.

Section 7. This Ordinance shall become effective upon enactment. All prior ordinances or resolutions or parts thereof inconsistent herewith are hereby repealed.

Section 8. 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.

GUARANTY AGREEMENT

This Agreement (the "Agreement") made and entered into as of the 15th day of June, 1990 by and among the COUNTY OF LACKAWANNA, a County of the Third Class, being a political subdivision of the Commonwealth of Pennsylvania (the "County" or the "Guarantor") and NORTHEASTERN BANK OF PENNSYLVANIA, a bank and trust company organized and existing under the laws of the Commonwealth of Pennsylvania, as trustee under a Trust Indenture dated as of November 1, 1986, as supplemented by a First Supplemental Trust Indenture dated as of June 15, 1990 (the "Trustee");

WITNESSETH:

WHEREAS, Lackawanna County Industrial Development Authority (the "Authority") has previously issued its Sports Facility Revenue Bonds (Montage Project), Series 1983 Book Entry CITIZENS BONDS, dated July 1, 1983 (the "1983 Bonds") and its Sports Facility Revenue Bonds (Montage Project), Series 1985 (the "1985 Bonds"), both of which have been guaranteed in part by the County, to finance a portion of the cost of a project (the "Project") undertaken by the Authority to accomplish the public purposes of the Pennsylvania Industrial and Commercial Development Authority Law (the "IDA Law") by aiding in the financing of certain commercial facilities comprising a winter ski area and summer recreation center at Scranton, Pennsylvania; and **WHEREAS**, the Project is owned and operated by 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 for the purpose of owning and operating the Project; and

WHEREAS, in furtherance of the Project, the Authority undertook an additional project (the "Refinancing Project") in which it (i) advance refunded the 1983 Bonds by funding an escrow for the payment of interest on, and the principal and redemption price of, the 1983 Bonds until their first optional redemption date of June 15, 1988, and (ii) refinanced the 1985 Bonds, both with proceeds from the issuance of its Sports Facility Revenue Refunding Bonds (Montage Project), Series 1986, in the aggregate principal amount of \$9,500,000 (the "1986 Authority Bonds") issued under and pursuant to a Trust Indenture dated as of November 1, 1986 (the "Authority Indenture") by and between the Authority and the Trustee, thereby releasing or satisfying the County's outstanding guaranty respecting the 1983 Bonds and the 1985 Bonds; and

WHEREAS, the Authority and Montage entered into a Sports Facilities Agreement dated as of November 1, 1986 (the "Facilities Agreement") pursuant to which the Authority agreed to finance the Refinancing Project by the issuance of the 1986 Authority Bonds and to transfer title to the Project to Montage, and Montage agreed to provide for the payment of the principal amount of the Authority Bonds; and

WHEREAS, to secure the Authority Bonds and to satisfy its obligation under the Facilities Agreement, Montage caused to be delivered to the Authority its Sports Facility First Mortgage Bond, Series A of 1986 (the "Series A Mortgage Bond") issued under and pursuant to a Mortgage and Trust Indenture dated as of November 1, 1986 (the "Mortgage Indenture") by and between Montage, as mortgagor, and Northeastern Bank of Pennsylvania, as Trustee and mortgagee (the "Mortgage Trustee"), granting to the Mortgage Trustee a first mortgage on and security interest in the Project; and

WHEREAS, the Authority and Montage caused to be delivered to the Mortgage Trustee a Letter of Credit (the "Series A Letter of Credit") issued by Northeastern Bank of Pennsylvania, Scranton, Pennsylvania ("Northeastern"), to provide for the payment of principal of, and 228 days' interest on, the Series A Mortgage Bond to the extent that moneys are not available therefor under the Mortgage Indenture; and

WHEREAS, Montage and the Authority entered into a Reimbursement Agreement with Northeastern dated as of November 1, 1986 (the "Series A Reimbursement Agreement") pursuant to which Montage and the Authority have agreed to reimburse Northeastern for all amounts paid by Northeastern pursuant to the Series A Letter of Credit; and

WHEREAS, the obligations of Montage and the Authority under the Series A Reimbursement Agreement are secured by a second mortgage of, and a lien on, the Project, granted pursuant to a Second Mortgage and Security Agreement dated as of November 1, 1986, between Montage, as mortgagor, and Northeastern, as mortgagee; 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 guaranteed a portion of the obligations of the Authority to Northeastern under the Series A Reimbursement Agreement pursuant to a Guaranty Agreement dated as of November 1, 1986; and

WHEREAS, Montage desires to permanently finance the costs of the North Slope project and other project costs authorized under the IDA Law (the "1990 Project") and has requested the Authority to issue its Sports Facility Revenue Bonds (Montage Project), Series of 1990 (the "1990 Authority Bonds"), in the amount of \$4,000,000 as a supplemental issue of bonds under the Authority Indenture, secured pursuant to a supplement to the Facilities Agreement by the issue of an additional Mortgage Bond under Montage's Mortgage Indenture; and

WHEREAS, the County desires that the Authority issue the 1990 Authority Bonds and apply the proceeds as aforesaid and is willing to enter into this Agreement in order to enhance the marketability of the Authority Bonds and thereby achieve interest cost and other savings with respect to the Project and as an inducement to the purchase of the Authority Bonds; and

WHEREAS, the County has approved and authorized the execution and delivery of this Agreement by Ordinance of the County enacted pursuant to the Debt Act on May 8, 1990, and the Pennsylvania Department of Community Affairs has approved the incurring of lease rental debt by the County pursuant to this Agreement, and exclusion of such lease rental debt from the net lease rental debt of the County, as evidenced by its certificate dated _____, 1990; and

WHEREAS, any payment made by the County under this Agreement will obligate Montage and the Authority under a supplement to the Repayment Agreement dated as of November 1, 1986 (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 third mortgage of, and a lien on, the Project, granted pursuant to a Third Mortgage and Security Agreement dated as of November 1, 1986, as modified to secure the repayment of amounts paid in respect of the 1990 Authority Bonds, between Montage, as mortgagor, and the County, as mortgagee; and

WHEREAS, the proceeds derived from the issuance of the Authority bonds are to be applied to the costs of the 1990 Project which will benefit the County and promote the general welfare of the residents thereof;

NOW, THEREFORE, in consideration of the premises, the Guarantor does hereby covenant and agree with Northeastern as follows:

Section 1. Pursuant to the provisions of the Debt Act and this Guaranty, the County hereby unconditionally guarantees the payment, as and when due, of the full amount of each and every payment of the principal of, and interest on, the 1990 Authority Bonds.

Section 2. In order to carry out the provisions of Section 1 hereof, the County covenants with the Trustee, the Authority and the registered owners of the 1990 Authority Bonds that it shall (i) include amounts payable hereunder for each fiscal year in which such sums are payable in its budget for such year, (ii) appropriate such amounts from its general revenues, for the payment of the amounts payable hereunder, and (iii) duly and punctually pay or cause to be paid from such revenues, to the extent of its obligations hereunder, the amounts payable in respect hereof, at the dates and places and in the manner stated in Section 4 hereof, according to the true intent and meaning thereof. For such budgeting, appropriation and payment, the County hereby pledges its full faith, credit and taxing power. This covenant shall be specifically enforceable, subject, as to insolvency, moratorium or other laws or equitable principals affecting the enforcement of creditors' rights generally. Nothing in this Section shall be construed to give the County any taxing power not granted by another provision of law. The County agrees that this covenant may be enforced against it by the Bondholders, as defined in the Authority Indenture, or the Trustee on behalf of the Bondholders as provided in the Debt Act.

Section 3. The Trustee agrees to cause all sums received pursuant to this Guaranty to be initially deposited into the Bond Fund, as defined and created in the Authority Indenture, to be applied as therein and herein provided.

Section 4. It is intended by the parties hereto that the County shall be required to pay to the Trustee only that portion of the principal of, and interest on, the 1990 Authority Bonds due in any fiscal year as cannot be paid from funds applicable thereto held by the Trustee. The County shall thereupon be entitled, under this Guaranty, in each fiscal year, to a total credit equal to the aggregate amount of moneys available to the Trustee for transfer to and deposit in the Bond Fund for application to payment of principal of, and interest on, the 1990 Authority Bonds then due, pursuant to the terms of the Authority Indenture.

Section 5. In order for the County to anticipate and to provide in its budget for payments due pursuant to this Guaranty, the Authority shall, at least 30 days before the beginning of each County fiscal year, beginning with the fiscal year commencing January 1, 1991, cause Montage to deliver to the County estimates of the moneys estimated to be received by the Authority from Montage which are anticipated to be available for payment of principal of and/or interest on the 1990 Authority Bonds on each payment date in such fiscal year and of any other moneys available to the Trustee for such purpose.

Section 6. The obligations of the County hereunder are absolute and unconditional and shall remain in full force and effect until the Authority shall have fully and satisfactorily discharged all of its obligations under the 1990 Authority Bonds and the Indenture, irrespective of the genuineness, validity, regularity, or enforceability of the Authority Indenture or of any termination thereof, and shall not be affected or impaired in any way by reason of (a) any failure of the Authority or the Trustee to retain or preserve any rights against any person (including in the case of the Trustee, the Authority) or in any property, the inaccuracy of any estimates delivered by Montage or of the calculation of the principal of, and interest on, the 1990 Bonds, (b) the invalidity of any such rights which the Authority or the Trustee may attempt to obtain, (c) the lack of prior enforcement by the Authority or the Trustee of any rights against any person (including, in the case of the Trustee, the Authority) or in any property, or (d) the dissolution of Montage, the Authority or of the Trustee; nor shall the obligation of the County hereunder be affected in any way by any compromise, settlement, release, revival, extension, indulgence, change in or modification of any of the obligations or liabilities of the Authority under the Indenture (including, but not limited to, any modification, limitation, or discharge arising out of or by virtue of any bankruptcy, arrangement, reorganization or similar proceeding for relief of debts under federal or state law hereinafter initiated by or against the Authority or Montage), or any redelivery, repossession, surrender or destruction of the 1990 Project Facilities, in whole or in part. The County hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the County the right to require, any such prior enforcement as referred to in (c) above, and the County agrees that any

delay in enforcing or failure to enforce any such rights shall not in any way affect its liability hereunder; and the County hereby waives all rights and benefits which might accrue to it by reason of any of the aforesaid bankruptcy, arrangement, reorganization, or similar proceedings and agrees that its liabilities hereunder for the obligations of the Authority under the 1990 Authority Bonds shall not be affected by any modification, limitation or discharge of the liabilities of the Authority that may result from any such proceedings.

Section 7. The County further agrees to pay to the Trustee, and to any trustee appointed by registered owners of the 1990 Authority Bonds as provided in the Authority Indenture, on demand, all costs and expenses, legal or otherwise (including counsel fees), which may be incurred in the enforcement of the 1990 Authority Bonds or the liability of the County hereunder. No delay in making demand on the County for performance of any obligation hereunder shall prejudice the right to enforce such performance.

Section 8. It is understood and agreed that the obligations of the County to make payments hereunder shall be absolute and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach of the Authority or Montage of any obligation to it whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to it by the Authority.

Section 9. This Guaranty shall inure to the benefit of and shall be binding upon the Authority and the Trustee and their respective successors and assigns, and the Trustee, or any trustee appointed under the Authority Indenture by the registered owners of the 1990 Authority Bonds, shall have the right to enforce this Guaranty as provided in law or in equity for the equal and ratable benefit of the registered owners of the 1990 Authority Bonds.

Section 10. Except as otherwise provided in the Authority Indenture, subsequent to the initial issuance of the 1990 Authority Bonds and prior to payment or provision for payment of the same in full (including interest and premium, if any, thereon), this Guaranty may not be amended, changed, modified, altered or terminated so as to adversely affect the interest of the registered owners of the 1990 Authority Bonds without prior written consent of the registered owners of all of the 1990 Authority Bonds then outstanding.

Section 11. This Guaranty Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Guaranty.

Section 12. If any clause, provision or section of this Guaranty be held illegal or valid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections thereof, and this Guaranty shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein. In case any agreement or obligation contained in this Guaranty is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the parties, as the case may be, to the full extent permitted by law.

Section 13. The laws of the Commonwealth of Pennsylvania shall govern the construction of this Guaranty.

IN WITNESS WHEREOF, the Guarantor, intending to be legally bound hereby, has caused this Agreement to be duly executed in its name and its corporate seal to be affixed hereto and attested by its duly authorized officers as the date first above written.

SCHEDULE A

\$4,000,000 Lackawanna County Industrial Development
Authority Sports Facility Revenue Bonds
(Montage Project), Series of 1990
10.75% Interest Per Annum, Payable Quarterly
Debt Service Schedule

<u>Year</u>	<u>Principal</u> (<u>June 15</u>)	<u>Interest</u> (<u>September 15, December 15</u> <u>March 15, June 15</u>)	<u>Debt Service</u>
1990		\$215,000	\$ 215,000
1991		430,000	430,000
1992		430,000	430,000
1993		430,000	430,000
1994		430,000	430,000
1995		430,000	430,000
1996		430,000	430,000
1997	\$4,000,000	215,000	4,215,000

COUNTY OF LACKAWANNA

Ray A. Alberigi
RAY A. ALBERIGI

Joseph J. Corcoran
JOSEPH J. CORCORAN

John Senio
JOHN SENIO

ATTEST:

Gerald L. Stanvitch
GERALD L. STANVITCH,
ADMINISTRATIVE DIRECTOR