



**RESOLUTION NO. 2020-002**

**Resolution Authorizing a Forgivable Loan**

**WHEREAS**, the Village of Montgomery has established the Montgomery Development Fund to provide financial support to new or expanding businesses within the Village, to encourage economic development by supporting projects that create or retain jobs, and to support projects and investments that protect and expand the tax base; and,

**WHEREAS**, John Bonk and Mary Ellen Bonk have applied for a \$10,000.00 forgivable loan to perform certain landscaping and ground improvements on their premises (JMB Investment Partners - 2000 and 2020 Albright Rd); and,

**WHEREAS**, the Village Board wishes to grant the aforesaid forgivable loan.

**NOW, THEREFORE, BE IT RESOLVED** by the Village President and the Board of Trustees of the Village of Montgomery as follows:

A \$10,000.00 forgivable loan shall be granted to John Bonk and Mary Ellen Bonk in accordance with the terms and conditions set forth in the Montgomery Development Fund Program Loan Agreement between Village of Montgomery and John Bonk and Mary Ellen Bonk. The Village President or his designee is hereby authorized to execute any and all necessary documents to effectuate this agreement.


**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, Illinois, this 27<sup>th</sup> day of January 2020.

Matthew Brolley,  
President of the Board of Trustees of the  
Village of Montgomery, Kane and Kendall  
Counties, Illinois

AYES: 6

NAYS: 0

ABSENT: 0

ATTEST:   
Penny FitzPatrick,  
Clerk, Village of Montgomery



**EXHIBIT A – LOAN AGREEMENT**

**MONTGOMERY DEVELOPMENT FUND PROGRAM  
LOAN AGREEMENT**

between

**VILLAGE OF MONTGOMERY**  
Kane/Kendall County, Illinois  
(an Illinois Municipal Corporation)

and

**JOHN BONK AND MARY ELLEN BONK**

**THIS LOAN AGREEMENT** ("Agreement") is made effective as of the \_\_ day of \_\_\_\_\_, 2020, by and between the Village of Montgomery, 200 North River Street, Montgomery, Illinois 60538 ("Lender") and JOHN BONK AND MARY ELLEN BONK, 7633 Sundown Lane, Oswego, IL 60543 ("Borrowers").

**WHEREAS**, the Montgomery Development Fund ("MDF") was established by Lender to provide financial support to new or expanding businesses within the Village, to encourage economic development by supporting projects that create or retain jobs, and to support projects and investments that protect and expand the tax base; and,

**WHEREAS**, pursuant to the foregoing, Borrowers have submitted a loan application for a forgivable loan in order to perform certain landscaping and ground improvements along a three hundred and fifty (350) foot strip adjacent to the Illinois Route 30 exit ramp, for the business located at 2000 and 2020 Albright Road, Montgomery, Illinois 60538; and,

**WHEREAS**, upon review of said loan application submitted by Borrowers, Lender finds that the above-stated activities constitute eligible work pursuant to MDF's forgivable loan program and so wishes to extend said loan to Borrowers pursuant to the program's terms and conditions.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

**I. GENERAL DEFINITIONS**

1.1 "Application" shall mean all materials submitted by Borrowers or their agents to Lender in connection with their request for financial assistance.

1.2 "Default" shall mean the occurrence or existence of any one or more of the events described in Section 6.1 of this Agreement.

1.3 "Default Rate" shall mean an Interest Rate of twelve percent (12%) per annum.

1.4 “Interest Rate” shall mean the rate of interest specified in the Note as the rate of interest payable with respect to the outstanding principal amount of the Loan.

1.5 “Loan” shall mean the loan or loans, or the advancement of funds, made or to be made by Lender to Borrowers under this Agreement.

1.6 “Note” shall mean the promissory note evidencing the Loan made pursuant to this Agreement and executed by Borrowers payable to the order of Lender, the form of which is attached hereto as **Exhibit A** and made a part hereof.

1.7 “Person” shall mean any individual or individuals, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, limited liability company, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

1.8 “Premises” shall mean 2000 and 2020 Albright Road, Montgomery, Illinois 60538.

1.9 “Project” shall mean the project described on **Exhibit B** attached and made a part hereof, which project is to be financed in whole or part by Loan proceeds.

Any accounting terms used in this Agreement which are not specifically defined shall have the meanings customarily given them in accordance with generally accepted accounting principles.

## **II. THE LOAN**

2.1 Agreement to Lend. Lender agrees, on the terms and conditions set forth in this Agreement, to lend to Borrowers, in one single advance a sum in the principal amount of Ten Thousand (\$10,000.00) Dollars (“Maximum Amount”).

2.2 Term of Loan. Borrowers agree to undertake and complete the improvements set forth in **Exhibit B** within six (6) months of the date of this Agreement (“Completion Date”), subject to any extensions granted to Borrowers by Lender, and to use the proceeds of the Loan solely in connection therewith.

The Loan shall be evidenced by the Note, due in three (3) years after the date of the Loan, with interest on all principal outstanding from time to time at the rate of  $\frac{3}{4}$  of the prime rate as set forth by the Wall Street Journal, which Note is substantially in the form attached hereto and incorporated herein as **Exhibit A**, and shall be repayable in accordance with the terms thereof, subject to the forgiveness provisions set forth in the Note and Section 2.3.

2.3 Loan Forgiveness. The Loan shall be forgivable, in full, contingent upon Borrowers’ fulfillment of all of the following conditions: (a) Borrowers must continue operating within the Village for at least three (3) years from the date of Project approval or the term of the loan; whichever is less; any failure to remain operational shall be cause for a pro-rate repayment of funds; (b) Borrowers must remain current on any and all tax and mortgage payments and (c) funds must be used exclusively for the Project evidenced in **Exhibit B** and completed within the timeframe so identified therein.

### **III. CONDITIONS TO LOANS**

The obligation of Lender to make advances with respect to the Loan is subject to the satisfaction of the following conditions:

3.1 Representations and Warranties. On and as of the date the advance by Lender with respect to the Loan is made, the representations and warranties set forth in Article IV shall be true.

3.2 No Default. On and as of the date the advance by Lender with respect to the Loan is made, no Default shall exist and be continuing.

3.3 Note. On or prior to the date of the advance with respect to the Loan, the Note shall have been executed and delivered to Lender.

3.4 Intentionally Left Blank.

3.5 Legal Matters. On or prior to the date of any advance with respect to the Loan, all legal matters incident to this Agreement and the transactions contemplated hereby shall be satisfactory to Lender.

3.6 Continuing Operations. Borrowers shall be required to continue business operations on the Premises for at least three (3) years from the date of Project approval or the term of the loan, whichever is less.

3.7 Project Financing. To the satisfaction of the Director of Finance and/or Director of Community Development, Borrowers shall provide evidence of other financial commitments necessary for the Project.

3.8 Other Payments. Premises must remain current on any and all tax and mortgage payments

3.9 Certifications. Work involving structural members may, at the discretion of the Village Code Enforcement Officer require the certificate of a registered architect or engineer.

3.10 Building Permits. Borrowers shall obtain building permits as required per Village Code.



#### IV. REPRESENTATIONS AND WARRANTIES

Borrowers represent and warrant that:

4.1 Intentionally Left Blank.

4.2 Capacity to Execute Agreement. The execution, delivery and performance by Borrowers of this Agreement, the Note and all other related documentation are within Borrowers' legal capacity and authority.

4.3 Binding Effect. This Agreement, the Note and all other related documentation constitute valid and binding agreements of Borrowers.

4.4 Accuracy of Application. The Application is in all respects true and accurate except as modified by **Exhibit B** and there are no omissions or other facts or circumstances which may be material to the Project except as disclosed on the Application or on **Exhibit B**.

4.5 Financials. The financial statements delivered to Lender pursuant to the Application and Section 5.3 fully and accurately present the financial condition of Borrowers. No material adverse change in the condition, financial or otherwise, of Borrowers have occurred since the date of the financial statements most recently delivered to Lender.

4.6 No Default. Borrowers are not, and will not be, as a result of the execution, delivery and performance of this Agreement, in default in the performance, observation or fulfillment of any covenant or obligation contained in any material agreement or other instrument to which Borrowers are a party.

4.7 Litigation. There are no actions or proceedings which are pending or, to the best of Borrowers' knowledge, threatened against Borrowers or any other Person which might result in

any material adverse change in Borrower's financial condition or materially and adversely affect Borrowers operations, their assets, or the collateral, as the case may be.

4.8 ERISA. Borrowers have received no notice to the effect that they are not in full compliance with any of the requirements of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") and the regulations promulgated thereunder and, to the best of their knowledge there exists no event described in Section 4043 of ERISA, excluding subsections 4043(b)(2) and 4043(b)(3) thereof.

4.9 Taxes. Borrowers have filed all federal, state and local tax returns and other reports which Borrowers are required by law to file and all charges that are due and payable have been paid.

4.10 Intellectual Property. Borrowers have appropriate licenses, patents, patent applications, copyrights, trademarks and trade names to conduct its business, to undertake and complete the Project and to protect its proprietary information.

4.11 Bribery. Neither Borrowers nor, to the best of Borrowers' knowledge, any of Borrowers' employees has been convicted of bribing or attempting to bribe an officer or employee of any unit of government, nor have the Borrowers made an admission of guilt of such conduct which is a matter of record.

4.12 Good Standing. JMB Investment Partners, LP, as listed by Borrowers' on their Forgivable Loan Application, shall maintain a status of good standing with the Illinois Secretary of State.

## V. COVENANTS AND CONTINUING AGREEMENTS

Borrowers agree that so long as any amount of the Loan remains unpaid:

5.1 Project. Borrowers shall at all times perform the Project in accordance with the description on **Exhibit B** and will use all proceeds of the Loan to finance the Project.

5.2 Audit. Borrowers shall keep detailed records of the Project and the use of Loan proceeds.

5.3 Financial Statements. Borrowers shall furnish to Lender:

a) As soon as available, but not later than 120 days after the end of each fiscal year, such financial statements of Borrower as at the end of such year were prepared by and/or examined by public accountants certified by the State of Illinois and satisfactory to Lender containing the unqualified opinion of such public accountants with respect to the financial statements and a certificate of the aforesaid public accountants certifying to Lender that they are not aware of the occurrence or existence of any condition or event which constitutes a Default under the term of this Loan Agreement.

b) Intentionally Left Blank

5.4 Intentionally Left Blank

5.5 Taxes, Etc. Borrowers shall pay and discharge all taxes and governmental charges imposed upon them and shall maintain such workmen's compensation insurance, unemployment insurance, retirement benefits and health benefits as may be required by law.

5.6 Insurance.

a) Borrowers shall keep and maintain their Premises insured for its full insurable value against loss or damage by fire, theft, explosion, sprinklers and all other hazards

and risks ordinarily insured against by other owners or users of such properties in similar businesses.

b) If Borrowers' Premises is located in an area designated as a flood hazard area, Borrowers shall maintain federal flood insurance if such coverage is available.

c) All insurance policies shall be in form, substance and amount satisfactory to Lender, and shall contain an endorsement showing loss payable to Lender, as its interest shall appear.

d) Such endorsement shall provide that each insurance company shall give Lender at least thirty (30) days' prior written notice before any such policy shall be altered or cancelled and that no act or default of Borrower or any other person shall affect the right of Lender to recover under such policy in case of loss or damage.

e) Borrowers hereby direct all insurers under such policies to pay all proceeds payable thereunder directly to Lender.

f) From and after a default, Borrowers irrevocably make, constitute and appoint Lender as Borrower's attorney (and agent-in-fact) for the purpose of making, settling and adjusting claims under such policies (provided that Lender shall consult with Borrowers prior to finally making, settling and adjusting claims under such policies) endorsing the name of Borrowers on any check, draft, instrument or other item of payment for the proceeds of such policies and for making all determinations and decisions with respect to such policies.

g) If Borrowers shall fail to obtain or maintain any of the policies required by this Section 5.6 or to pay any premium relating thereto, then Lender, without waiving or releasing any obligation or default by Borrowers hereunder, may (but shall be under no obligation to do so)

obtain and maintain such policies of insurance and pay such premium, add the cost thereof to the balance of principal due under the terms of this Loan Agreement, and take any other action with respect thereto which Lender deems advisable.

5.7 Reorganization. Borrowers shall not, without Lender's prior written consent, sell or distribute a substantial portion of their assets or acquire capital stock or assets of any Person.

5.8 Compliance with Law. Borrowers shall comply with all applicable state and federal law and regulations promulgated thereunder. Borrowers shall comply with all applicable laws and regulations prohibiting discrimination on the basis of race, sex, religion, national origin, age or handicap, including but not limited to the Illinois Human Rights Act, as now or hereafter amended, and the Equal Employment Opportunity Clause promulgated pursuant thereto.

## **VI. DEFAULTS**

6.1 Defaults. If one or more of the following events ("Defaults") shall have occurred and be continuing, then Lender may declare the Loan to be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrowers:

(a) Borrowers shall fail to pay, within ten (10) business days after the due date, any amount due under the Note or other amount payable to Lender under this Agreement;

(b) Borrowers shall fail to observe or perform any covenant or agreement contained in this Agreement, including the Exhibits hereto, for thirty (30) days after written notice thereof has been given to Borrowers by Lender; provided, however, if it is impossible to cure such default within said thirty (30) days, Borrowers shall not have committed a Default hereunder

should they diligently work to cure such Default and thereafter cure such Default not later than sixty (60) days after such notice.

(c) Any material representation, warranty, certificate or statement made by Borrowers in this Agreement, including the Exhibits hereto, or in any certificate, report, financial statement or other document delivered pursuant to this Agreement shall prove to have been incorrect, in any material respect, when made;

(d) A default shall occur with respect to any other indebtedness of Borrowers for borrowed money or with respect to any material agreement or instrument to which Borrowers are a party, and such default has not been cured within any applicable grace period;

(e) Borrowers shall fail to observe or perform any material covenant or agreement contained in any loan document or a material default shall occur under any loan document and such failure or default has not been cured within any applicable grace period;

(f) Borrowers shall commence a voluntary case or other proceeding seeking relief with respect to themselves or their debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official; or shall consent to any such relief or to the appointment of such official, or taking possession of any substantial part of their property by any such official, in an involuntary case or other proceeding commenced against them; or shall make a general assignment for the benefit of creditors; or shall fail generally to pay their debts as they become due; or shall take any official action to authorize any of the foregoing;

(g) An involuntary case or other proceeding shall be commenced against Borrowers seeking relief with respect to them or their debts under any bankruptcy, insolvency or

other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official or any substantial part of their property, and such involuntary case or other proceedings shall remain not dismissed and any stay not lifted for a period of sixty (60) days; or an order for relief shall be entered against Borrowers under the federal bankruptcy laws as now or hereafter in effect;

(h) There shall be entered against Borrowers one or more judgments or decrees in excess of \$10,000 in the aggregate at any time outstanding; excluding any judgment or decree which has been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from entry thereof, and any judgment to the extent same is covered by insurance;

(i) Intentionally Left Blank

(j) Borrowers cease the conduct of active trade or business on the Premises for any reason except where the same is caused by a matter beyond the control of Borrowers such as fire or other casualty;

(k) Borrowers fail to complete the Project as identified in **Exhibit B**.

6.2 Interest Upon Default. During such period as a Default shall have occurred and be continuing, interest on the Loan shall accrue and be payable at Default Rate.

## **VII. MISCELLANEOUS**

7.1 Notices. Notice required hereunder shall be in writing and shall be deemed to have been validly served, given or delivered one business day after deposit in the United States mails, overnight delivery, postage prepaid, at the address set forth on the signature page hereof or to such other address as each party may specify for itself by like notice from time to time.

7.2 General Indemnification. Borrowers shall fully and completely indemnify, defend and hold harmless Lender, its officers, trustees, employees and agents against any liability, judgment, loss, cost, claim, damage (including consequential damage) or reasonable expense (including attorney's fees and disbursements, settlement costs, consultant fees, investigation and laboratory fees) to which any of them may become subject insofar as they may arise out of or are based upon this Agreement, any agreement or document executed by Borrowers or Lender as part of the transaction described herein or Borrowers' use of the proceeds of the Loan,.

7.3 Right of Inspection; Reporting. Lender shall have the right of access, at all reasonable hours, to the Premises and to any books and records for purposes of inspection of the collateral, if any, and determining compliance with this Agreement. In addition to the reporting specifically required hereunder, Borrowers shall furnish to Lender such information as Lender may reasonably request with respect to this Agreement or the Project.

7.4 Expenses. Borrowers shall pay on demand all out-of-pocket expenses incurred by Lender in connection with the execution of this Agreement or the perfection of Lender's rights in the collateral, if any (including recording and filing fees, UCC lien searches, mortgage taxes, title insurance, survey costs, documentary stamp and other taxes, and attorney's fees) and the enforcement of the rights of Lender in connection with this Agreement or with the Loan contemplated hereunder.

7.5 Survivals. All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making of the Loan herein contemplated and shall continue in full force and effect so long as any portion of the Loan shall be outstanding and unpaid.



7.6 No Waivers. No failure or delay by Lender in exercising any right, power or privilege hereunder or under any loan document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

7.7 Severability. Where possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision shall be invalid under applicable law, such provision shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of the Agreement.

7.8 Integration. This Agreement represents the full and complete agreement between the parties with respect to the matters addressed herein and there are no oral agreements or understandings between the parties.

7.9 Illinois Law. This Agreement shall be construed in accordance with and governed by the law of the State of Illinois.

7.10 Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

7.11 Amendments. No modification of or waiver of any provision of this Agreement, the Note or any of the loan documents shall be effective unless the same shall be in writing and signed by the parties hereto.

7.12 Bid Rigging or Bid Rotating. The Borrowers certify that they have not been barred from bidding on or receiving State contracts as a result of a violation of Section 33E or 33E-4 of

the Criminal Code of 1961 (bid rigging or bid rotating, respectively) [720 ILCS 5/33E-3, 5/33E-4].

7.13 Bribery Clause. The Borrowers certify that they are not barred from being awarded a contract or subcontract under Section 10.1 of the Illinois Purchasing Act.

7.14 Prevailing Wage. The Borrowers acknowledge that, to the extent any contract of Borrowers could be considered public works, receipt of funds under this agreement may require compliance with the Illinois Prevailing Wage Act [820 ILCS 130/0.01 *et. seq.*]. Persons willfully failing to comply with or violating this Act may be in violation of the Illinois Criminal Code. Questions concerning compliance with the Illinois Prevailing Wage Act should be directed to the Illinois Department of Labor.

7.15 Joint and Several Liability of the Borrowers. Each Borrower hereby irrevocably and unconditionally agrees that they are jointly and severally liable for all of the liabilities, obligations, covenants, and agreements of the Borrowers hereunder and under the other loan documents and/or Note, whether now or hereafter existing.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

**BORROWERS:**

**JOHN BONK**

\_\_\_\_\_

**MARY ELLEN BONK**

\_\_\_\_\_

Secretary

**LENDER:**

**VILLAGE OF MONTGOMERY**

By: \_\_\_\_\_  
Matthew Brolley, Village President

ATTEST: \_\_\_\_\_  
Penny FitzPatrick, Village Clerk

**EXHIBIT A**

to

Loan Agreement

between

**VILLAGE OF MONTGOMERY**

and

**JOHN BONK AND MARY ELLEN BONK**

Form of Promissory Note

\$10,000.00

Montgomery, Illinois  
\_\_\_\_\_, 2020

**FOR VALUE RECEIVED**, the undersigned, **JOHN BONK AND MARY ELLEN BONK**, (the "Borrowers"), hereby unconditionally promises to pay to the order of the **VILLAGE OF MONTGOMERY** (the "Lender") the principal sum of Ten Thousand Dollars and No Cents (\$10,000.00) advanced by Lender under the Loan Agreement dated \_\_\_\_\_ between Borrowers and Lender, together with interest on the unpaid principal balance thereof at an interest rate per annum equal to  $\frac{3}{4}$  the prime rate as established by the Wall Street Journal (prime rate being four and one quarter percent (4.25%) and  $\frac{3}{4}$  of such being three and one quarter percent (3.25%)). In the event of a "Default" as defined in the Loan Agreement, Borrowers shall pay interest from the date of Default until payment in full of all principal and interest due on the loan or cure satisfactory to Lender at a per annum rate of twelve percent (12%). Interest shall be computed on the basis of a 365-day year or 366-day year as applicable and actual days elapsed and shall be payable as hereinafter provided.

**Notwithstanding the foregoing and subject to the provisions of the Loan Agreement, Lender shall forgive said Loan, including any interest thereon, upon the completion of the Project set forth in Exhibit B and upon Borrowers' continued operation of their business on the Premises within the Village for three (3) years following the date of said Loan Agreement. For the purposes of this Agreement, continued operations shall mean that Borrowers maintains the same hours of operation and current staff levels throughout the entirety of the term.**

This Promissory Note is issued pursuant to the Loan Agreement and is subject to the terms thereof. Upon the happening of certain events described in the Loan Agreement, this Promissory Note may be declared by Lender to be immediately due and payable.

Should the indebtedness represented by this Promissory Note or any part thereof be collected at law or in equity or in bankruptcy, receivership or other court proceedings or this Promissory Note is placed in the hands of attorneys for collection after Default, Borrowers agree to pay, in addition to the principal and interest due and payable hereon, reasonable attorneys' fees, expenses, and costs of collection.

Borrowers and any endorser hereof hereby waive presentment for payment, notice of dishonor, protest and notice of protest and other notices of every kind, and, to the fullest extent permitted by law, all rights to plead any statute of limitations as a defense to any action hereunder. No delay on the part of the holder hereof in exercising any rights hereunder shall operate as a waiver of such rights.

This Promissory Note shall be governed by, and for all purposes construed in accordance with, the laws of the State of Illinois.

**JOHN BONK**

**MARY ELLEN BONK**

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**EXHIBIT B**

to

Loan Agreement

between

**VILLAGE OF MONTGOMERY**

and

**JOHN BONK AND MARY ELLEN BONK**

**[Estimate from Sinnott Landscape/Construction, dated 09/10/19]**

BONK

# Estimate

FROM: (SINNOTT LANDSCAPE/CONSTRUCTION)

1551 Cherry rd, OSWEGO, IL 60543

TO: (John Bonk) Clearing debris and grading black dirt turf area surrounding property as well planting trees

DATE: 9/10/19

Notes:

Description	Unit Price	Quantity	Amount
Remove concrete and blacktop and dispose			\$8,000.00
Take away 6" of garbage dirt and dispose			\$12,000.00
Grade out 12'x350' of black dirt along parkinglot for turf (final grade included)			\$14,000.00
Seed, blanket install 15 trees on constructed area of improvement			\$4,500.00

NOTES:

\*\*\*\*\*THANK YOU\*\*\*\*\*



<b>Subtotal</b>	\$38,500.00
<b>Total</b>	\$38,500.00
<b>Amount Paid</b>	\$0.00
<b>Balance Due</b>	\$38,500.00