

RESOLUTION NO. 2020-014

A Resolution Authorizing the Execution of a Promissory Note to Borrow \$100,000 from the Kendall County Revolving Loan Fund to Secure Emergency Working Capital Grant Funding, Under the Downstate Small Business Stabilization Program, For Local Businesses Facing Hardship Due to the COVID-19 Pandemic

WHEREAS, the Village of Montgomery (“Village”) is an Illinois municipal corporation operating pursuant to the provisions of the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and,

WHEREAS, Kendall County (“County”) is an Illinois county operating pursuant to the provisions of the Illinois Counties Code, 55 ILCS 5/et seq.; and,

WHEREAS, the Village and the County each recognize the extreme hardship the COVID-19 Pandemic has caused for local businesses; and,

WHEREAS, the State of Illinois (“State”) is currently offering grant funding to units of local government to be distributed to local businesses (“Benefitting Businesses”) as working capital through the Downstate Small Business Stabilization Program (“DSBSP”) to assist these Benefitting Businesses in weathering the economic hardships of COVID-19; and,

WHEREAS, the Village has been advised that it is eligible to participate in the Downstate Small Business Stabilization Program (“Program”), which provides certain grant funding for eligible small businesses located in Kendall County impacted by the COVID-19 pandemic; and,

WHEREAS, under the DSBSP, the Village applies for the grant, and, if approved, receives the funds, which it then distributes to the Benefitting Business pursuant to an agreement between the Village and the Benefitting Business (“Participation Agreement”); and

WHEREAS, under the DSBSP, if the Benefitting Business does not comply with the grant requirements and the Participation Agreement the State may require repayment of grant funds from the Village, and the Village may then seek to recover the full amount from the Benefitting Business; and,

WHEREAS, the County has agreed to serve as the grantor of any amounts which must be repaid in the event of a default of any Benefitting Business of the Village which has received funds from DSBSP on the condition that the Village assigns its rights under the Participation Agreement, authorizing Kendall County to undertake any action required for repayment of funds received by a defaulting Benefitting Business of the Village, as set forth in the Promissory Note set forth in **Exhibit A** and fully incorporated herein by reference.

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

The Village President and Village Board of Trustees of the Village of Montgomery hereby approve the attached **Exhibit A**, the *Promissory Note for Montgomery, Illinois, to borrow \$100,000 from the Kendall County Revolving Loan Fund to Secure Emergency Working Capital*


Grant Funding, under the Downstate Small Business Stabilization Program, for Local Businesses facing Hardship due to the COVID-19 Pandemic.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, this 22nd day of June, 2020.



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



ATTEST: 
Clerk, Village of Montgomery

	Aye	Nay	Absent	Abstain
Trustee Tom Betsinger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Dan Gier	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Steve Jungermann	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Denny Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Doug Marecek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Theresa Sperling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Village President Matthew Brolley	<u>No vote cast</u>			

EXHIBIT A

PROMISSORY NOTE FOR MONTGOMERY, ILLINOIS, TO BORROW \$100,000 FROM THE KENDALL COUNTY REVOLVING LOAN FUND TO SECURE EMERGENCY WORKING CAPITAL GRANT FUNDING, UNDER THE DOWNSTATE SMALL BUSINESS STABILIZATION PROGRAM, FOR LOCAL BUSINESSES FACING HARDSHIP DUE TO THE COVID-19 PANDEMIC

Montgomery, Illinois, (“Borrower”) will borrow a total amount of \$100,000 (“Loan Amount”) from the Kendall County Revolving Loan Fund, held and managed by Kendall County, Illinois, (“Lender”) for the sole purpose of repaying Downstate Small Business Stabilization Program (“DSBSP”) Grant Funds to the State of Illinois (“State”). This loan is subject to the following terms and conditions contained in this Promissory Note (“Note”):

1. **INCORPORATION:** Kendall County Resolution 20-__ and the recitals set forth therein are incorporated as if fully set forth herein.
2. **HOLDING OF LOAN AMOUNT:** Within 7 calendar days of receiving the Loan Amount, Borrower shall place the Loan Amount in a separate, interest-bearing account with an FDIC-insured commercial banking institution. No other funds shall be placed in the account holding the Loan Amount, and the Loan Amount shall not be intermingled with any others funds owned, controlled, or distributed by Borrower. All interest that accrues on the Loan Amount shall be paid to the Lender; Borrower shall not use said interest to repay DSBSP grant funds to the State or for any other purpose.
3. **PROMISE TO PAY:** In return for receiving the Loan Amount, Borrower agrees to the following repayment terms:
 - 3.1 **Early Repayment of Unused Amount:** Within 30 calendar days of, (1) receiving notice that the State will not be distributing any additional funds under the DSBSP or (2) Borrower’s determination that it will no longer seek additional grant funds on behalf of Benefitting Businesses, whichever is sooner, Borrower shall notify Lender of same and must return any portion of the Loan Amount, in addition to any interest accrued thereon, which exceeds the total amount of grant funding secured by the Borrower on behalf of Benefitting Businesses.
 - 3.2 **Repayment Due Date:** The Borrower shall return the full remaining Loan Amount, in addition to any interest accrued, less any amount paid to the State under the DSBSP, to Lender within 30 calendar days of the last day the State can assert its right to have the DSBSP grant funding repaid by Borrower (“Repayment Due Date”).
 - 3.3 **Recovery of Amounts Paid to State:** If Lender is unable, after reasonable efforts, to recover any portion of the Loan Amount paid to the State on behalf of a Benefitting Business (“DSBSP Repayment”) from that Benefitting Business on whose behalf that payment was made to the State, Borrower shall not be required to reimburse Lender for the DSBSP Repayment. Lender need not pursue collection efforts against a Benefitting Business that is dissolved, insolvent, in receivership, or the subject of proceeding under Title 11 of the United States Code

4. **METHOD OF PAYMENT:** All payments shall be sent to Lender in accordance with the Notice provision of this Note.
5. **PREPAYMENT:** Borrower has the right to repay the Loan Amount, or any portion thereof, at any time prior to the Repayment Due Date, without charge or penalty, except that Lender is entitled to any interest amount accrued at the time of prepayment.
6. **INTEREST:** Borrower shall not be required to pay interest on the Loan Amount, beyond any interest incidentally accrued, until the Repayment Due Date has passed. After that date, Borrower will be required to pay interest at a rate of 0.25% per year on any amount not returned to Lender.
7. **LIMITED USE:** Borrower may use the Loan Amount for the sole purpose of paying to the State any 2020 DSBSP grant funds the State demands be repaid as a result of a Benefitting Business's failure to comply with the conditions of the DSBSP. Borrower is prohibited from using any of the Loan Amount for any purpose other than repayment of any 2020 DSBSP grant funds the State demands be repaid to the State as result of a Benefitting Business failing to comply with the conditions of the DSBSP. Further, Borrower shall only use the Loan Amount in relation to Benefitting Business within Kendall County. Any contract, note, obligation, loan, or other appropriation to utilize the Loan Amount for any other purpose is and shall be void. Any attempt by Borrower to use any of the Loan Amount for any purpose beyond repayment of any 2020 DSBSP grant funds to the State shall be a default under this Note and shall entitle Lender to demand the immediate return of the entire Loan Amount from Borrower.
8. **RECORD KEEPING AND REPORTING:**
 - 8.1 **Notice of DSBSP Grant Funds Obtained:** Within 7 calendar days of obtaining DSBSP grant funds on behalf of a Benefitting Business, Borrower shall provide Lender a copy of the Participation Agreement with the Benefitting Business, and documentation identifying the last date upon which the State can seek return of the DSBSP grant funds.
 - 8.2 **Quarterly Reporting:** Borrower shall provide quarterly reports to Lender which must include, (1) a complete account statement for the Loan Amount, showing interest earned and any transactions, (2) an updated list of all Benefitting Businesses that have received DSBSP grant funds through Borrower, including the last date upon which the State can seek return of the DSBSP grant funds for each Benefitting Business, and (3) a list of any DSBSP Repayments made to the State, identifying the Benefitting Business on behalf of which it was paid.
 - 8.3 **Notice of Demand from State:** Within 7 calendar days of receiving notice from the State that it is seeking return of any DSBSP grant funds, Borrower must forward a copy of that notice to Lender.
9. **PURSUIT OF DSBSP REPAYMENT FROM BENEFITTING BUSINESS:**
 - 9.1 **Assignment of Rights:** Borrower must include language in all Participation Agreements with Benefitting Businesses preserving its authority to assign its rights under the Participation Agreement to Lender. By executing this Note, Borrower assigns to Lender Borrower's rights under all of Borrower's Participation Agreements with Benefitting Businesses located within Kendall County to recover any amounts, including any DSBSP Repayment paid to the State, from the

Benefitting Business in default under the Participation Agreement, attorney fees and court costs.

- 9.2 ***Assist in Recovery of DSBSBSP Repayment:*** Borrower must take all necessary and appropriate action to assist Lender in recovering the DSBSBSP Repayment from the Benefitting Businesses. This includes all actions permitted by law and as set forth in the DSBSBSP and the Participation Agreements with the Benefitting Businesses. Any amount recovered from the Benefitting Businesses shall be retained by the Lender.
10. **DEFAULT:** If Borrower defaults by failing to comply with the terms of this Note, Lender may, to the extent permitted by law, demand immediate return of the full Loan Amount, including interest accrued thereon, or pursue any other lawful remedies.
11. **REMEDIES:** In any action with respect to this Note, the parties are free to pursue any legal remedies at law or in equity. If Lender is required to take legal action to enforce performance of any of the terms, provisions, covenants and conditions of this Note, including payment of the Loan Amount, Lender shall be entitled to reasonable attorneys' fees, court costs, expenses and expert witness fees incurred by Lender pertaining thereto and in enforcement of any remedy, including costs and fees relating to any appeal.
12. **WAIVERS:** Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor, "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid. Lender's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.
13. **SEVERABILITY:** This Note shall be construed in accordance with the law and Constitution of the State of Illinois and if any provision is invalid for any reason such invalidations shall not render invalid other provisions which can be given effect without the invalid provision.
14. **NOTICE:** Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by fax, certified mail, or courier service and received, at the addresses set forth below or such other address as the party to be served may from time to time designate in a Notice to the other party.

If to the Lender:

Kendall County
Attn: County Administrator
111 W. Fox Street
Yorkville, IL 60560

With Copy to:

Kendall County State's Attorney's Office
807 W. John Street
Yorkville, IL 60560

If to the Borrower:

200 N. River Street
Montgomery, IL 60538

15. **NON-DISCRIMINATION:** Borrower, its officers, employees, and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations.
16. **AUTHORITY TO EXECUTE AGREEMENT:** Borrower hereby warrants and represents that its signature set forth below has been and is on the date of this Note duly authorized by all necessary and appropriate governmental action to execute this Note.

Montgomery, Illinois, hereby accepts and agrees to the terms and conditions set forth herein, and this Promissory Note is approved and adopted this ___ day of _____, 2020.

Village of Montgomery, Illinois:

Attest:

Village President

Village Clerk