



RESOLUTION NO. 2021-006

**A RESOLUTION AUTHORIZING AN AGREEMENT BY AND BETWEEN THE VILLAGE OF MONTGOMERY
AND JB COMMODITIES, LLC
REGARDING TREE PRESERVATION REQUIREMENTS IN THE MONTGOMERY BUSINESS CENTER**

WHEREAS, the Village of Montgomery is not a home rule municipality within Article VII, Section 6A of the 1970 Constitution of the State of Illinois, and therefore, acts pursuant to those powers granted to it under 65 ILCS 6/1-1 *et seq.*; and,

WHEREAS, JB Commodities, LLC, (“Owner”) owns certain parcels of property within the corporate limits of the Village, generally located within the Montgomery Business Center, which are subject to the general zoning regulations of the Village; and,

WHEREAS, the Village’s Zoning Ordinance contains a certain Section 12A.00 – *Tree Preservation and Landscaping Requirements*, which establishes a fee-in-lieu program for instances where the planting of replacement trees is not practical or prudent; and,

WHEREAS, Owner currently faces a situation in which the planting of replacement trees is not practical or prudent and therefore wishes to take advantage of said fee-in-lieu program; and,

WHEREAS, the Village is currently in the process of reviewing and implementing a certain Unified Development Ordinance (“UDO”), through which process many of the provisions of the Village’s Zoning Ordinance will change, including those concerning tree preservation and landscaping and the fee-in-lieu program; and,

WHEREAS, Owner is currently in the process of amending its existing Planned Unit Development (“PUD”), but said amendment is not expected to be finalized prior to the Village’s implementation of the UDO; and,

WHEREAS, in order to provide a greater level of certainty, the Parties hereto find it mutually beneficial and advantageous to allow Owner to pre-pay its fee-in-lieu obligation for tree preservation pursuant to the Village’s current Section 12A.00; and,

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

That the Village President, or his designee, is authorized and directed to sign, and the Village Clerk is authorized and directed to attest, on behalf of the Village, AN AGREEMENT BETWEEN THE VILLAGE OF MONTGOMERY AND JB COMMODITIES, LLC WITH REGARD TO

TREE PRESERVATION REQUIREMENTS IN THE MONTGOMERY BUSINESS CENTER, attached hereto as **EXHIBIT A**.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, Illinois, this 8 day of March 2021.

Matthew Brolley,
President of the Board of Trustees of the Village of Montgomery

ATTEST:

Penny Fitzpatrick,
Clerk of the Village of Montgomery



	Aye	Nay	Absent	Abstain
Trustee Tom Betsinger	✓	—	—	—
Trustee Dan Gier	✓	—	—	—
Trustee Steve Jungermann	✓	—	—	—
Trustee Denny Lee	✓	—	—	—
Trustee Doug Marecek	✓	—	—	—
Trustee Theresa Sperling	✓	—	—	—
Village President Matthew Brolley	No vote cast	—	—	—

**AGREEMENT BETWEEN THE VILLAGE OF MONTGOMERY AND JB COMMODITIES, LLC WITH REGARD TO
TREE PRESERVATION REQUIREMENTS IN THE MONTGOMERY BUSINESS CENTER**

THIS AGREEMENT ("Agreement") is entered into as of this ___ day of _____, 2021, by and between the VILLAGE OF MONTGOMERY ("Village"), an Illinois municipal corporation, and JB COMMODITIES, LLC ("Owner"), an Illinois limited liability company.

WHEREAS, the Village of Montgomery is an Illinois municipal corporation, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and,

WHEREAS, Owner owns certain parcels of property within the corporate limits of the Village, generally located within the Montgomery Business Center, which are subject to the general zoning regulations of the Village; and,

WHEREAS, the Village's Zoning Ordinance contains a certain Section 12A.00 – *Tree Preservation and Landscaping Requirements*, which establishes a fee-in-lieu program for instances where the planting of replacement trees is not practical or prudent; and,

WHEREAS, Owner currently faces a situation in which the planting of replacement trees is not practical or prudent and therefore wishes to take advantage of said fee-in-lieu program; and,

WHEREAS, the Village is currently in the process of reviewing and implementing a certain Unified Development Ordinance ("UDO"), through which process many of the provisions of the Village's Zoning Ordinance will change, including those concerning tree preservation and landscaping and the fee-in-lieu program; and,

WHEREAS, Owner is currently in the process of amending its existing Planned Unit Development ("PUD"), but said amendment is not expected to be finalized prior to the Village's implementation of the UDO; and,

WHEREAS, in order to provide a greater level of certainty, the Parties hereto find it mutually beneficial and advantageous to allow Owner to pre-pay its fee-in-lieu obligation for tree preservation pursuant to the Village's current Section 12A.00; and,

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **RECITALS**. The Recitals hereto are incorporated herein by reference to the same extent and with the same force and effect as if fully set forth herein.
2. **OWNER OBLIGATIONS AND ACKNOWLEDGEMENTS**
 - a. **PUD AMENDMENT**. Owner shall file with the Village an application to amend its existing PUD for the Property ("PUD Amendment") no later than 30 days from the date of this Agreement.

- b. **PAYMENT OF FEE.** Concurrent with its application for the aforementioned PUD Amendment, or anytime thereafter, Owner may tender advanced payment for its fee-in-lieu obligation for tree preservation ("Payment") pursuant to the calculations set forth in Section 12A.00 of the Village Zoning Ordinance, and more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference.
- c. **AT RISK.** Owner understands and acknowledges that the pre-payment of the fee-in-lieu obligation for tree preservation is contingent upon the Village Board's approval of the PUD Amendment. If Owner fails to pursue the PUD Amendment after its initial submittal and/or the Village Board fails to approve the PUD Amendment, then the Village may elect to refund the Payment and the Property shall then be subject to whatever tree preservation requirements are then in effect.
- d. **APPROVAL.** Owner understands and acknowledges that the Village's acceptance of the Payment does not constitute approval of the proposed PUD Amendment, nor does it obligate the Village Board to so approve.

3. MISCELLANEOUS PROVISIONS

- a. **GOVERNING LAW AND VENUE.** This Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of Illinois. Proper venue shall be in the Sixteenth Judicial Circuit, Kane County, Illinois.
- b. **SEVERABILITY.** If any provision of this Agreement shall be held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction having authority, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- c. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the Village and Owner with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect to such subject matter.
- d. **WAIVER.** The Parties agree that the waiver of, or failure to enforce, any breach of this Agreement by the remaining Party shall not be construed, or otherwise operate, as a waiver of any future breach of this Agreement. Further, the failure to enforce any particular breach shall not bar or prevent the remaining Party from enforcing this Agreement with respect to a different breach.
- e. **MODIFICATION OF AGREEMENT.** Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in a writing signed by each Party or an authorized representative of each Party.

IN WITNESS WHEREOF, the Village and the Owner have signed this Agreement in duplicate, each executed copy hereof to be considered an original, on the day and year first written herein.

VILLAGE OF MONTGOMERY

By: _____

Its: _____

JB COMMODITIES, LLC

By: _____

Its: _____

EXHIBIT A

CALCULATION OF PAYMENT BASED ON ACREAGE

18.5 acres x 2 trees/acre = 37 trees

37 trees x \$300/tree = \$11,100.00 fee in lieu payment

EXHIBIT B

MAP OF TREE MITIGATION ACREAGE

