

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** ("Agreement" or "Loan Agreement") is entered into September \_\_\_\_, 2020 by City of Yonkers Industrial Development Agency, a New York public benefit corporation (the "Lender"), and Promax Plumbing Corp., a New York corporation, ("Borrower"). The Lender and the Borrower agree as follows:

1. **Loan Terms.** The Lender agrees, subject to the conditions set forth below, to lend the Borrower the principal amount of \$25,000.00 ("Loan"), under the terms and conditions set forth in this Loan Agreement, such loan shall be evidenced by a Note, between the Lender and the Borrower, for that same amount and dated this same date ("Note"). The terms and conditions of the Note are incorporated into this Loan Agreement by reference.
2. **Definitions.** The following are defined terms used in this Agreement.

**Application** means, collectively, the application for the Westchester County Emergency Disaster Relief Program, completed by Borrower and submitted to the Lender, including any documents, instruments or information related thereto, as supplemented, amended, or restated from time to time.

**Authorized Purpose** means the purposes for which the Indebtedness may be used under Chapter 109 of the Laws of 2020.

**Borrower** shall have the meaning ascribed to such term in the first paragraph of this Agreement.

**Borrower's Address** shall mean

**Grace Period** shall mean the sixty (60) day period after the State disaster emergency ends.

**Guarantor** shall have the meaning ascribed to such term in Section 5.

**Indebtedness** means all obligations due by Borrower to the Lender, as nominee and on behalf of the Lender, whether now existing or hereafter incurred, without regard to kind and character, whether direct or indirect, whether advanced by the Lender for taxes, assessments, insurance and other charges and expenses contemplated herein, and whether any such indebtedness is from time to time reduced and thereafter increased, or entirely extinguished and thereafter reincurred.

**Loan** shall mean a principal sum not to exceed Twenty-Five Thousand Dollars (\$25,000.00).

**Loan Documents** shall mean all certificates, instruments, agreements, affidavits, and

documents executed and delivered by Borrower and the Lender in connection with the Loan, and such definition includes, but is not limited to, the Application, this Loan Agreement, the Personal Guaranty, and the Note.

**Material Adverse Change** shall have the meaning ascribed to such term in Section 7(c).

**Note** shall have the meaning ascribed to such term in Section 1.

**Personal Guaranty** shall have the meaning ascribed to such term in Section 6(j).

**Recaptured Benefits** shall mean 100% of the Indebtedness, or \$25,000.00.

**Recapture Event** shall mean any of the following events: (x) Borrower fails to use the Indebtedness for an Authorized Purpose or (y) Borrower accepts a loan or grant from another Industrial Development Agency in the State of New York.

**State disaster emergency** means the period in which the executive order two hundred two of two thousand twenty, as amended, is in effect to address the outbreak of novel coronavirus, COVID-19.

3. **Disbursement.** The Borrower agrees that the Lender will disburse the Loan proceeds according to the Loan Disbursement Schedule attached as Exhibit A.
4. **Use of Proceeds.** The Borrower shall use the loan solely for the Authorized Purpose.
5. **Guaranty.** The Borrower agrees that payment of the obligations under this Loan Agreement will be guaranteed by Maxwell Montemagno Jr. and Virginia Montemagno (individually and collectively, as the circumstances may require, the "Guarantor"), as a primary obligor and not merely a surety.
6. **Loan Conditions.** The Lender's obligations hereunder are subject to each of the following conditions being satisfied in form and substance satisfactory to the Lender:
  - a. The Borrower shall provide the Lender with financial information of each of the Borrower and the Guarantor and meet with the Lender according to the schedule attached as Exhibit B.
  - b. The Borrower is an Eligible Entity.
  - c. The Borrower shall use the funds for the Authorized Purpose.
  - d. The Borrower agrees to repay the Loan within a year of the expiration of the Grace Period in twelve equal monthly payments of \$2,083.33.
  - e. Intentionally Omitted.

- f. The Borrower shall give the Lender prompt notice of any pending or threatened action, suit or proceeding against each of the Borrower and the Guarantor in any court, governmental commission or regulatory body.
  - g. The Borrower shall allow the Lender to automatically deduct loan payments from Borrower's checking and/or savings account (ACH).
  - h. Upon the Lender's request the Borrower and the Guarantor shall consult with recommended small business credit counselors.
  - i. The Borrower acknowledges and authorizes the Lender to provide information to credit reporting agencies about the Borrower's repayment history, collateral, and the Borrower's business affairs, or to obtain any information the Lender requires relating to the Borrower's credit worthiness from any source, including a credit reporting agency, any time during the loan or while any balance is outstanding including such information related to the Guarantor.
  - j. The Guarantor shall have executed and provided to the Lender the guaranty, dated this same date (the "Personal Guaranty").
  - k. The Borrower shall provide the Lender with such other information and documents as the Lender may reasonably request.
  - l. There shall not have occurred an Event of Default, or an event which, but for the passage of time, would be an Event of Default.
7. Borrower's Representations or Warranties. The Borrower represents and warrants to the Lender that the following are true as of this date and promises that they shall remain true so long as the Lender has any commitment to lend or any amount is still outstanding under the Loan Documents.
- a. No Default. Neither the Borrower's nor the Guarantor's execution and performance of the Loan Documents, as applicable, will violate any agreement or instrument by which the Borrower or the Guarantor are bound, nor will it result in a default under any such agreement or in the imposition of any lien or encumbrance upon any of Borrower's or the Guarantor's assets, other than as contemplated by the Loan Documents. Neither the Borrower nor the Guarantor is currently in default under any judgment, order, writ, injunction, decree, lease, contract, agreement, commitment, instrument, or obligation under which it is bound.
  - b. Licensing. The Borrower and the Guarantor have each obtained and shall maintain any registrations, licenses, consents, and filings, with any other party or any public authority, required in connection with the Guarantor's ownership of the Borrower and its operation of its business or with the execution and performance of the Loan Documents, and each of the Borrower and the Guarantor is in compliance with all applicable laws and regulations.
  - c. Adverse Changes. There has been no material adverse change in the business, operations, assets, prospects or financial condition of Borrower or the Guarantor, (a "Material Adverse

Change”) including (without limitation), material decline in revenue or income, material property damage to place of business, termination of material contracts, fraud, loss of job, reduction in hours, illness, etc., since the date the Borrower applied to the Lender for the Loan, or from the date of the latest financial information which the Borrower provided to the Lender.

- d. Accuracy. All information previously or hereafter furnished to the Lender in connection with this Loan Agreement is accurate and complete and does not omit any facts necessary to make the statements not misleading.
8. Affirmative and Negative Covenants. The Borrower covenants and agrees that, as long as the Note is in effect or any portion of the Loan is owed by Borrower to the Lender:
- a. Credit Reporting. The Borrower agrees to cooperate with the Lender in providing the credit reporting agencies with any information or documentation that the reporting agencies may request with respect to the Borrower or Guarantor.
  - b. Financial Information. The Borrower agrees to provide to the Lender all information required by and in accordance with Exhibit B to this Loan Agreement, including information relating to the Guarantor and any other information or documents the Lender may reasonably request.
  - c. Intentionally Omitted.
  - d. Advice of Change or Default. The Borrower shall promptly advise the Lender of any material adverse change in its or the Guarantor’s financial condition, i.e. material decline in revenue or income, material property damage to place of business, termination of material contracts, fraud, loss of job, reduction in hours, illness, etc., or of any Event of Default.
  - e. Intentionally Omitted.
  - f. Incurrence of Debt. The Borrower shall not incur any indebtedness (other than the Indebtedness) in excess of \$2,500 without the prior written consent of the Lender.
9. Events of Default. If any of the following events occur without the Lender’s prior written consent, it shall constitute an “Event of Default”:
- a. Performance. The Borrower or the Guarantor fails to make any required payment when due, or to punctually comply with any of the Borrower’s or Guarantor’s obligations, under the Note and this Loan Agreement, any Loan Document or on any other obligation which the Borrower owes to the Lender.
  - b. Ineligible Entity. Borrower ceases to be an Eligible Entity.
  - c. Representations and Warranties. Any representation or warranty made by or on behalf of Borrower in connection with the Loan, this Loan Agreement, the Application, or any Loan Document was incorrect when made.

- d. Insolvency. Voluntarily or involuntarily: (i) the Borrower or the Guarantor assign or establish a trust for the benefit of creditors, (ii) the Borrower, the Guarantor or any other person petition or apply for appointment of a liquidator, receiver or the like, for the Borrower's or the Guarantor's assets, (iii) either the Borrower or the Guarantor commence or acquiesce to the commencement of any proceeding under bankruptcy, insolvency or similar law, or (iv) either the Borrower or the Guarantor admit in writing their inability to pay their debts as they mature.
  - e. Financial Condition. Any statement of either the Borrower's or the Guarantor's financial condition contains information or qualifications, or the Lender becomes aware of any other information, which, in the Lender's reasonable opinion, reflect a Material Adverse Change.
  - f. Unauthorized Purpose. Borrower fails to use the Indebtedness for an Authorized Purpose or Borrower accepts a loan or grant from another Industrial Development Agency in the State of New York.
  - g. Death or Incapacity. The Guarantor dies or becomes incapacitated.
  - h. Failure to Retain Jobs. The Borrower fails to use commercially reasonable efforts to maintain or retain one (1) full time equivalent job during the State disaster emergency.
10. The Lender's Remedies in Event of Default. If any Event of Default occurs, the Lender may exercise any or all of the remedies available to it under the Note, this Loan Agreement or by law. The Lender's remedies after the occurrence of an Event of Default include, but are not limited to, the following:
- a. Acceleration. The Lender may declare all unpaid principal and accrued interest and late fees due under the Note to be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which the Borrower expressly waives.
  - b. Legal Actions. The Lender may protect and enforce its rights by any available judicial proceedings, including actions for specific performance or other equitable remedy. In addition, the Borrower hereby acknowledges that on the date hereof it has executed an affidavit pursuant to which it has confessed judgment and authorized entry of judgment in favor of the Lender in the sum of the principal balance, plus all accrued interest due under the Loan, plus all costs of collection, including attorneys' fees plus interest on the unpaid principal amount of the obligations, from the date of any default to the date of entry of judgment at the rate set forth in the Note.
  - c. Recapture Benefits. Notwithstanding any provision to the contrary, it is understood and agreed that the Lender is entering into this Agreement in order to provide the Loan to the Lender and accomplish the public purposes of Chapter 109 of the Laws of 2020. In consideration therefor, the Borrower hereby agrees that if there shall occur a Recapture Event after the date hereof, the Borrower shall pay to the Lender one hundred percent (100%) of the Recaptured Benefits. The Recaptured Benefits shall be paid to the Lender within ten (10)

days after notice of a Recapture Event has been served, in accordance with Section 13 of this Agreement, on the Borrower.

- d. Technical Assistance. At the request of the Lender, the Borrower shall engage, at Borrower's expense, technical assistance providers reasonably satisfactory to Lender.
11. No Waiver. The Lender's failure to take any of the actions available to it after the occurrence of an Event of Default shall not affect the Lender's right to later pursue any or all of its remedies against the Borrower with regard to that Event of Default. The Lender's waiver of its rights in regard to one Event of Default shall not affect the Lender's rights or remedies upon the occurrence of any later or other Event of Default.
12. Indemnification. The Borrower agrees to indemnify and hold the Lender harmless from and against any and all claims, demands, losses, judgments and liabilities (including penalties) of every kind or nature ("Claims") arising from or related to the Loan. The Borrower will reimburse the Lender for all costs and attorney fees incurred in relation to such Claims. The Lender shall not be liable for anything in connection with the Loan, the Note or this Loan Agreement except to the extent of monies which the Lender actually receives from the Borrower under the terms of this Loan Agreement.
13. Notices. Any notices required by the Note or this Loan Agreement shall be in writing, and shall be hand delivered, emailed or sent by United States mail to the Lender at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 and to the Borrower at Borrower's Address or the email provided by Borrower. All such notices shall be deemed received on the day the notice is hand delivered or emailed to the other party, or three days after mailing.
14. Other Documents. The Borrower shall execute any other documents, and take such further action, as the Lender shall reasonably request, from time to time, in relation to this Loan Agreement or the Note.
15. Entire Agreement. This Loan Documents contain, as of the date hereof, the Borrower's and the Lender's entire agreement with respect to the loan.
16. Other Parties. Nothing in this Loan Agreement shall be construed as giving any person, firm, corporation or other entity other than the Borrower, the Guarantor or the Lender any right, remedy or claim under or in relation to the Note or this Loan Agreement.
17. Survival. All representations, warranties, and agreements contained in this Loan Agreement shall survive until all amounts due under the Note and this Loan Agreement are paid in full.
18. Validity. If a court of competent jurisdiction determines that any portion of this Loan Agreement is invalid or unenforceable, that determination shall not affect the validity or enforceability of the remaining provisions of this Loan Agreement.

19. Applicable Law, Jurisdiction; Venue. This Loan Agreement shall be governed by, construed, and enforced under the laws of the state of New York. The Borrower submit to the jurisdiction and venue of any court located in Westchester County, New York.
20. Attorney Fees and Costs. The Borrower agrees to pay all of the Lender's reasonable costs incurred in collecting the sums due under the Note and this Loan Agreement, including attorney fees and costs.
21. Successors. This Loan Agreement is binding upon and shall inure to the benefit of the Borrower and the Lender, and their respective transferees, successors, assigns, heirs, and legal representatives.
22. Assignments. The Lender may assign all or part of the Note and this Loan Agreement to any person without notifying the Borrower and without affecting the Borrower's liability under the Note and this Loan Agreement. The Borrower shall not assign the Note, this Loan Agreement or any other Loan Document to any person without the Lender's prior written consent.
23. No Oral Agreements. No oral agreement to waive or modify any term of the Note or this Loan Agreement will be effective. Any such waiver or modification must be in writing signed by the Lender.
24. Special Provisions. Notwithstanding any provision to the contrary, Borrower shall not be required to pay the Loan during the Grace Period.
25. Tax Disclosure. THE BORROWER HEREBY ACKNOWLEDGES THAT THERE MAY BE FEDERAL TAX CONSEQUENCES TO ACCEPTING THE LOAN AND INCURRING THE INDEBTEDNESS.
26. Intentionally Omitted.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENTS OF A DEBT ARE NOT ENFORCEABLE UNDER NEW YORK LAW.

**Borrower:**

**Promax Plumbing Corp.  
28 Davenport Road  
Yonkers, New York 10710**

\_\_\_\_\_  
**Signature of Borrower**

**Borrower Tax-ID#: 20-3456534**

\_\_\_\_\_  
**Signature of the Lender**

**Sworn to me this \_\_\_\_ day of September, 2020**

\_\_\_\_\_  
**Notary Public**



**Exhibit A**

**Loan Disbursement Schedule**

Section 1.1

\$25,000.00 to be disbursed at closing as follows:

\$25,000.00 to Promax Plumbing Corp.

Section 1.2      *Notwithstanding, any provision of the Loan Agreement, the Lender shall not be obligated to make any Loans after September \_\_\_\_, 2020.*

## **Exhibit B**

### **Financial Information:**

The Lender may request quarterly business financial information. If so the Borrower must submit a Profit & Loss Statement and Balance Sheet within 10 days of the request. Failure to submit the information is considered a violation of the terms of this Loan Agreement and may result in the Lender exercising its right to Acceleration (declaring all or part of the unpaid principal and interest immediately due and payable).

### **Tax Returns:**

At the close of each tax year, the Borrower shall submit the business income tax returns and all Guarantors shall submit personal income tax returns. These shall be submitted to the Lender by **May 15<sup>th</sup> following the close of the tax year** throughout the life of the loan. If an extension is filed, you must provide proof of such to the Lender before the May 15<sup>th</sup> deadline. Failure to provide these tax returns is considered a violation and may result in the Lender exercising its right to Acceleration, as noted above.

### **Regular Contact:**

The Borrower and Guarantors shall have contact with the Lender every quarter; either in person, by telephone or email. The purpose of this contact is to discuss business progress, financials, technical support and training needs, loan impact and changes in Borrower or Guarantors income and well-being.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENTS OF A DEBT ARE NOT ENFORCEABLE UNDER NEW YORK LAW.

**Borrower:**

**Promax Plumbing Corp.**  
[REDACTED]

*[Handwritten Signature]*

\_\_\_\_\_  
Signature of Borrower

**Borrower Tax-ID#:** [REDACTED]

*[Handwritten Signature]*

\_\_\_\_\_  
Signature of the Lender

Sworn to me this 29 day of September, 2020

*[Handwritten Signature]*

\_\_\_\_\_  
Notary Public

OLGA CASARELLA  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01CA6023604  
Qualified in Westchester County  
Commission Expires April 26, 2023