

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO 77 MARINE STREET LLC, 40 BANFI LLC AND WITH PRIDE AIR CONDITONING & HEATING INC. IN CONNECTION WITH THE ACQUISITION, RENOVATION AND EQUIPPING OF WAREHOUSE, DISTRIBUTION AND MANUFACTURING FACILITIES

WHEREAS, the Town of Babylon Industrial Development Agency (the “**Agency**”) is authorized under the laws of the State of New York (the “**State**”), and in particular under the provisions of the New York State Industrial Development Agency Act and the Agency’s enabling legislation, respectively constituting Article 18-A and Section 907-a of the General Municipal Law (Chapter 24 of the Consolidated Laws of New York), as amended (the “**Act**”), to assist in providing for manufacturing, warehousing, research, civic, commercial and industrial facilities in the Town of Babylon, New York (the “**Town**”); and

WHEREAS, representatives of With Pride Air Conditioning & Heating Inc., a New York corporation, on behalf of itself and/or the principals of With Pride Air Conditioning & Heating Inc. and/or any entity or entities formed on behalf of With Pride Air Conditioning & Heating Inc. or any of the foregoing (collectively, the “**Company**”), 77 Marine Street LLC, a New York limited liability company, on behalf of itself and/or the principals of 77 Marine Street LLC and/or any entity or entities formed on behalf of 77 Marine Street LLC, or any other real estate holding company created in connection with the foregoing or any of the foregoing (collectively, the “**77 Marine Street Owner**”) and 40 Banfi LLC, a New York limited liability company, on behalf of itself and/or the principals of 40 Banfi LLC and/or any entity or entities formed on behalf of 40 Banfi LLC, or any other real estate holding company created in connection with the foregoing or any of the foregoing (collectively, the “**40 Banfi Plaza Owner**” and, collectively with the 77 Marine Street Owner, the “**Owners**”) have filed or caused to be filed an application with the Town of Babylon Industrial Development Agency (the “**Agency**”) concerning a project (the “**Project**”) consisting of (i) the renovation and equipping of an approximately 12,600 square foot industrial building located on that certain approximately .56 acre lot, piece or parcel of land located at 77 Marine Street in Farmingdale, New York (the “**77 Marine Street Facility**”) and (ii) the acquisition, renovation and equipping of an approximately 24,730 square foot industrial building located on that certain approximately 1.4 acre lot, piece or parcel of land located at 40 Banfi Plaza in Farmingdale, New York (the “**40 Banfi Plaza Facility**” and, together with the 77 Marine Street Facility, the “**Facilities**”), all for use by the Company in its business of warehousing and distribution of HVAC equipment and the manufacturing of ductwork; and

WHEREAS, in order to induce the Owner and the Company to retain and grow additional jobs in the Town, it appears necessary for the Agency to assist the Owners and the Company by taking leasehold title to or undertaking control of the Facilities so as to afford the Owners and the Company of certain relief from real property taxation, sales and use taxation and mortgage recording taxation with respect to the Facilities; and

WHEREAS, it is contemplated that the 40 Banfi Plaza Owner will cause the transfer or lease of the 40 Banfi Plaza Facility to the Agency pursuant to a Company Lease Agreement (the “**40 Banfi Plaza Company Lease**”), the Agency will assist the 40 Banfi Plaza Owner and the Company to undertake the Project and will lease or sublease the 40 Banfi Plaza Facility to the 40 Banfi Plaza Owner pursuant to a Lease and Project Agreement (the “**40 Banfi Plaza Lease Agreement**”), by and between the 40 Banfi Plaza Owner and the Agency pursuant to which the 40 Banfi Plaza Owner agrees, among other things, to make lease payments in such amounts as specified in the 40 Banfi Plaza Lease Agreement; and

WHEREAS, it is further contemplated that the 40 Banfi Plaza Owner will sublease the 40 Banfi Plaza Facility to the Company pursuant to a Sublease Agreement (the “**40 Banfi Plaza Sublease Agreement**”) by and between the 40 Banfi Plaza Owner and the Company pursuant to which the Company agrees, among other things, to make sublease payments in such amounts as equal to lease rentals as specified in the 40 Banfi Plaza Lease Agreement; and

WHEREAS, it is contemplated that the 77 Marine Street Owner will cause the transfer or lease of the 77 Marine Street Facility to the Agency pursuant to a Company Lease Agreement (the “**77 Marine Street Company Lease**” and, together with the 40 Banfi Plaza Company Lease, the “**Company Lease**”), the Agency will assist the 77 Marine Street Owner and the Company to undertake the Project and will lease or sublease the 77 Marine Street Facility to the 77 Marine Street Owner pursuant to a Lease and Project Agreement (the “**77 Marine Street Lease Agreement**” and, together with the 40 Banfi Plaza Lease Agreement, the “**Lease Agreement**”), by and between the 77 Marine Street Owner and the Agency pursuant to which the 77 Marine Street Owner agrees, among other things, to make lease payments in such amounts as specified in the 77 Marine Street Lease Agreement; and

WHEREAS, it is further contemplated that the 77 Marine Street Owner will sublease the 77 Marine Street Facility to the Company pursuant to a Sublease Agreement (the “**77 Marine Street Sublease Agreement**” and, together with the 40 Banfi Plaza Sublease Agreement, the “**Sublease Agreement**”) by and between the 77 Marine Street Owner and the Company pursuant to which the Company agrees, among other things, to make sublease payments in such amounts as equal to lease rentals as specified in the 77 Marine Street Lease Agreement; and

WHEREAS, pursuant to each Lease Agreement each respective Owner has agreed to make certain payments in lieu of real property taxes, with respect to each respective Facility, to the Agency; and

WHEREAS, in connection with the Agency’s evaluation of the Project for the provision of financial assistance, the Agency has (i) assessed all material information relating to the project included in the Company and Owners’ project application (the “**Project Application**”) in order to afford a reasonable basis for the decision of the Agency to provide financial assistance to the Project; (ii) reviewed the Agency’s written cost benefit analysis for the Project which identifies the extent to which (A) the Project

will create or retain permanent, private sector jobs; (B) the estimated value of any tax exemption to be provided to the Project, (C) the amount of private sector investment generated or likely to be generated by the Project; (D) reviewed the likelihood of accomplishing the proposed project in a timely fashion; and (E) considered the extent to which the Project will provide additional sources of revenue for the Town and the school district where the Facilities are located; and

WHEREAS, in connection with the adoption of this resolution the Agency has reviewed the Project Application and the Company and Owners have confirmed in such Project Application that as of the date of the Project Application, as amended, the Company and the Owners are in substantial compliance with the Act; and

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Owners and the Company in connection with the Project and the Facilities including exemption from State and local sales and use taxes, mortgage recording taxes and real property taxes.

NOW, THEREFORE, BE IT DETERMINED, APPROVED AND RESOLVED by the Agency as follows:

Section 1. With respect to the Agency's evaluation criteria for Manufacturing/Warehousing/Distribution Projects the Agency makes the following determinations:

(a) It has reviewed the information in the Cost Benefit Analysis with respect to the Project.

(b) The Company proposes a capital investment in the land, building, machinery and equipment and capital improvements in the Facilities of approximately \$10,039,000.

(c) The wage rates for the approximately one hundred and twenty-five (125) full-time employees at the Facilities average \$125,000 – 200,000 per year for management positions, \$65,000 - 80,000 per year for administrative positions, \$70,000 - 90,000 per year for production positions, \$110,000 per year for supervisor positions and \$60,000 - 70,000 per year for laborer positions.

(d) The Project will not have significant impact from local labor construction in the Town.

(e) The Project will not have a significant effect on in-region purchases or research and development.

(f) The Project will not have a significant effect on energy efficiency.

(g) The Project will not affect existing land use or zoning.

(h) Project is important to the retention of an employer of the Town. The Company currently employs one hundred and twenty-five (125) full-time employees. If the Company does not receive financial assistance from the Agency the Company is considering relocating its current operations in the Town to facilities outside the Town, which would achieve substantial costs savings for the Company.

Section 2. Based on the evaluation of the foregoing evaluation criteria, (a) The Agency hereby finds and determines that (i) the Project constitutes a "Project" within the meaning of the Act; (ii) the Project is necessary for the Company to maintain its competitive position in its industry and to prevent the Company from relocating its facilities outside of New York State; and (iii) the granting of real property tax abatements, sales and use tax abatements and mortgage recording tax abatements (collectively, the "**Financial Assistance**") by the Agency with respect to the Facilities pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

(b) It is desirable and in the public interest for the Agency to grant the Financial Assistance to the Owners and the Company with respect to the Facilities.

(c) The Agency shall grant Financial Assistance to the Company and the Owners in the form of New York State and local Sales and Use Tax abatements in a maximum amount not to exceed in the aggregate \$153,300 as provided in Section 5.2 of the Lease Agreement and in the event of the occurrence of a recapture event under the Lease Agreement the Agency will pursue recapture of the Financial Assistance as provided in Section 5.4 of the Lease Agreement.

Section 3. To accomplish the purposes of the Act, the Agency shall take leasehold title to each Facility pursuant to each respective Company Lease, assist each Owner to undertake the Project, sublease each Facility to each respective Owner pursuant to each respective Lease Agreement and each respective Owner will further sub-sublease each respective Facility to the Company pursuant to each respective Sublease Agreement.

Section 4. Pursuant to each Lease Agreement, each respective Owner will make certain payments in lieu of real property taxes ("**Pilots**") which would be otherwise due and payable with respect to each respective Facility.

Section 5. In order to provide the Owners and the Company with Financial Assistance with respect to exemption from New York State and local Sales and Use Taxes with respect to the Project the Agency may issue one or more Sales Tax Agent Authorization Letters ("**Sales Tax Authorization Letters**") which shall be used pursuant to the terms contained therein and in each Lease Agreement.

Section 6. In order to secure amounts to be loaned by a mortgage lender acceptable to the Chief Executive Officer ("**CEO**") or the Chief Financial Officer ("**CFO**") of the Agency to the Company with respect to the financing or refinancing of the Project and the Facilities, the Agency hereby authorizes the execution of one or more

mortgages (collectively, the “**Mortgages**”) granted at the initial closing of the “straight lease” transaction or any time thereafter during the term of the respective Lease Agreement, from the Agency and the respective Owner to any mortgage lender acceptable to the CEO or the CFO of the Agency or any other authorized representative, in form acceptable to the CEO or CFO of the Agency or any other authorized representative and counsel to the Agency.

Section 7. The form and substance of the Company Lease in substantially the form previously executed for other “straight lease” transactions is hereby approved.

Section 8. The form and substance of the Lease Agreement in substantially the form previously executed for other “straight lease” transactions is hereby approved.

Section 9. The form and substance of the Sublease Agreement in substantially the form previously approved by the Agency for other “straight lease” transactions is hereby approved.

Section 10. Thomas E. Dolan, as CEO or any successor CEO or any other Authorized Representative, is hereby authorized, is hereby authorized, on behalf of the Agency, to execute and deliver final forms of the Company Lease, Lease Agreement, Mortgages, Sales Tax Agent Authorization Letters, and any other agreements or certificates consistent herewith (hereinafter collectively called the “**Agency Documents**”), all in substantially the forms previously executed by the Agency for other “straight lease” transactions acceptable to Agency Counsel, with such changes, variations, omissions and insertions in the Agency Documents as the CEO or any other Authorized Representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO or any other Authorized Representative of the Agency shall constitute conclusive evidence of such approval.

The CEO or the Chief Financial Officer (“**CFO**”) of the Agency or any other authorized representative are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives including the Chairman, the Secretary or Assistant Secretary of the Agency, to execute any Agency Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Agency Documents.

The Secretary, Assistant Secretary or Counsel to the Agency is hereby authorized to attest to the CEO’s, the CFO’s or any other authorized representative’s signature on the foregoing documents and to impress or affix the seal or facsimile seal of the Agency thereto.

Section 11. The CEO of the Agency, the CFO of the Agency or any other authorized representative including the Chairman or the Secretary and any member of the Agency (as used in this resolution, the “**Authorized Representatives**”) are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to cause the transactions as described in the Company Lease, the Lease Agreement and the Sublease Agreement to be undertaken and in relation thereto, to

execute and deliver any and all papers, instruments, agreements, opinions, certificates, affidavits and other documents, and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, and the Agency Documents including such changes or revisions in the forms of such documents as may be requested by counsel to the Agency.

Section 12. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments, agreements and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary, or in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 13. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution, and the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this resolution, and the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

Section 14. No covenant, stipulation, obligation or agreement contained in this resolution, or the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency or the Town in his or their individual capacity and neither the members of the Agency nor any officer shall be liable personally on the Agency Documents or be subject to any personal liability or accountability by reason of the execution thereof.

Section 15. The law firm Katten Muchin Rosenman LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 16. Notwithstanding the foregoing, the Agency will not grant any Financial Assistance to be granted hereunder in excess of \$100,000 to the Owner or the Company until the Agency has held a public hearing with respect to the grant of financial assistance in accordance with the provisions of the Act.

Section 17. In accordance with the State Environmental Quality Review Act and pursuant to Title 6 NYCRR Part 617, it is determined by the Agency that the Project, a proposed action, be classified as an Unlisted Action. The proposed action does not appear

to exceed any of the criteria outlined in Title 6 NYCRR Part 617.7 which sets forth thresholds for determining significant effects on the environment. Therefore, based on the information contained within the Environmental Assessment Form filed with the Project Application and associated Project documentation, the Agency makes a determination of non-significance with respect to the Project.

Section 18. This resolution shall take effect immediately.