

## **Agilant Solutions, Inc. Consent & Amendment Resolution**

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the Theodore Roosevelt Executive & Legislative Building, Legislative Chambers, 1550 Franklin Avenue, Mineola, Nassau County, New York, on October 15, 2024, at 6:45 p.m., local time.

The meeting was called to order by the Chair, upon roll being called, the following members of the Agency were:

**PRESENT:**

William H. Rockensies	Chair
John Coumatos	Asst. Treasurer
Reginald A. Spinello	Member
Marco Troiano	Member
Marissa Brown	Member

**NOT PRESENT:**

Raymond Pinto	Secretary
Joseph Manzella	Member

**THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:**

Sheldon L. Shrenkel	Chief Executive Officer/Executive Director
Anne LaMorte	Chief Financial Officer
Colleen Pereira	Administrative Director
Stephanie Alfano	Temporary Administrative Assistant
Anthony Marano	Agency Counsel
Paul O'Brien	Bond/Transaction Counsel

The attached resolution no. 2024-60 was offered by M. Brown, seconded by M. Troiano.

Resolution No. 2024 – 60

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING CERTAIN MATTERS IN CONNECTION WITH ITS STRAIGHT-LEASE TRANSACTION WITH AGILANT SOLUTIONS, INC.

WHEREAS, the Nassau County Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, AGILANT SOLUTIONS, INC., a corporation organized and existing under the laws of the State of New York (the “Applicant”), previously presented an application for financial assistance (the “Application”) to the Agency, which Application requested that the Agency consider consenting to the Applicant assuming an existing Agency project (the “New Project”) consisting of the following: (A)(1) the acquisition of an interest in a certain parcel of land located at 3 Seaview Boulevard, Port Washington, Town of North Hempstead, County of Nassau, New York (Section: 6; Block: 89; Lots: 12, 13 and 61) (the “Land”), (2) the renovation of an existing approximately 72,500 square foot warehouse/office building on the Land (the “Building”), together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the “Equipment”), all of the foregoing for use by the Applicant and its affiliates as a warehouse and office facility (collectively, the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing (collectively, the “Financial Assistance”); (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and (D) the sublease thereof to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on November 16, 2017 (the “Authorizing Resolution”), the Agency determined to proceed with the New Project, to grant the Financial Assistance and to enter into the “straight lease transaction” (as such quoted term is defined in the Act) contemplated by the Authorizing Resolution; and

WHEREAS, the Applicant is the tenant under an amended and restated lease dated as of March 1, 2018 between HJJ Seaview Realty, LLC, as landlord (the “Overlandlord”), and the

Applicant, as tenant, pursuant to which the Applicant leases, inter alia, the Land and the Building (collectively, the “Premises”) from the Overlandlord (the “Overlease”); and

WHEREAS, the Applicant subleased its interest in the Project Facility to the Agency pursuant to the terms and conditions set forth in the Company Lease Agreement dated as of March 1, 2018 between the Applicant and the Agency (as amended to date, the “Company Lease”); and

WHEREAS, the Agency appointed the Applicant as agent of the Agency to undertake the acquisition, renovation, installation and equipping of the Project Facility and the Agency has sub-leased the Project Facility to the Applicant, all pursuant to the terms and conditions set forth in the Amended and Restated Sublease Agreement (Uniform Project Agreement) dated as of March 1, 2018 between the Applicant and the Agency (as amended to date, the “Lease”), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, the Applicant is not in compliance with its obligations under the Lease and the other Transaction Documents and a default has occurred as a result of the failure to maintain the Minimum Employment Requirement (as defined in the Lease) required as of December 31, 2022 and December 31, 2023, as evidenced by the jobs report delivered to the Agency on February 17, 2023 and the jobs report delivered to the Agency on February 23, 2024, respectively (collectively, the “Defaults”); and

WHEREAS, such Defaults also constitute Recapture Events (as defined in the Lease) pursuant to Section 11.4(C)(7) of the Lease; and

WHEREAS, by letter dated September 23, 2024, the Applicant provided an explanation of the reasons for the Defaults and, pursuant to discussions between representatives of the Applicant and the CEO/Executive Director of the Agency, the Applicant is requesting a forbearance on enforcement of the Agency’s rights and remedies through December 31, 2024 to allow the Applicant to hire sufficient employees to meet the Minimum Employment Requirement as of such date (the “Proposed Forbearance”); and

WHEREAS, in addition to and unrelated to the foregoing, the Overlandlord has requested by letter dated September 26, 2024 that the Agency consent to (a) the transfer of the Overlandlord’s right, title and interest in the Premises to VK 3 Seaview, LLC (the “Assignee”), and (b) the release of the Overlandlord and of Ivy Enterprises, Inc., Hee Ja Chang, Yong (John) Jin Chang, the Young Jin Chang Family 2007 Trust FBO John Chang, the Yong Jin Chang Family 2007 Trust FBO Joseph Chang, the Yong Jin Chang Family 2007 Trust FBO Hae Jin Chang and the John Chang 2004 Irrevocable Trust (collectively, the “Original Guarantors”) from their respective obligations to the Agency with respect to the Project Facility and the substitution of VK Industrial VII Holdings, LLC as guarantor(s) with respect to such obligations in place of the Original Guarantors (collectively, the “Proposed Assignment”); and

WHEREAS, the Proposed Assignment, if undertaken without the consent of the Agency, would constitute an Event of Default under the Lease and the other Transaction Documents; and

WHEREAS, no additional Financial Assistance is being requested by the Applicant or the Overlandlord with respect to the Proposed Forbearance or the Proposed Assignment and, therefore, no public hearing of the Agency is required pursuant to Section 859-a of the Act; and

WHEREAS, the Agency is willing to consent to the Proposed Forbearance and the Proposed Assignment, subject to the terms of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Transaction Documents.

Section 2. The Agency hereby ratifies, confirms and approves actions heretofore taken by the CEO/Executive Director and the staff of the Agency with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with the requirements of the Act, Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations" and collectively with the SEQR Act, "SEQRA"), and all other Applicable Laws that relate hereto.

Section 3. The Agency hereby determines that the Proposed Forbearance and the Proposed Assignment with respect to previously approved and unchanged project is a Type II Action pursuant to SEQRA involving "continuing agency administration" which does not involve "new programs or major reordering of priorities that may affect the environment" (6 NYCRR §617.5(c)(20)) and therefore no Findings or determination of significance are required under SEQRA.

Section 4. No additional Financial Assistance is being requested by the Applicant, the Overlandlord or the Assignee with respect to the Proposed Forbearance or the Proposed Assignment, and, therefore, no public hearing of the Agency is required pursuant to Section 859-a of the Act.

Section 5. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the requested consents.

Section 6. The Agency has considered the requests made by the Applicant and the Overlandlord and hereby finds and determines that the requested consents will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Nassau County, New York, and improve their standard of living, and thereby serve the public purposes of the Act. Accordingly, the Agency hereby approves the Proposed Forbearance and the Proposed Assignment, subject to the provisions of this Resolution.

Section 7. The execution and delivery of the documents, instruments and agreements required to effectuate the Proposed Forbearance and the Proposed Assignment (collectively, the "Amendment Documents"), being substantially in the forms used for prior similar transactions, are hereby authorized and approved. The Chair, Vice Chair, Chief Executive Officer/Executive Director and Administrative Director of the Agency are each hereby authorized, acting individually or jointly, to execute, acknowledge and deliver the Amendment Documents. The execution and delivery of the Amendment Documents by any one of said officers shall be conclusive evidence of due authorization and approval.

Section 8. The Chair, Vice Chair, Chief Executive Officer/Executive Director and Administrative Director of the Agency are each hereby designated an Authorized Representative of the Agency and each of them is hereby authorized and directed, acting individually or jointly, to execute and deliver any and all consents, agreements, amendments, papers, instruments, opinions, certificates, affidavits and other documents required in connection with the Amendment Documents (collectively, the "Consent Documents"), and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, including, without limitation, taking any necessary action to obtain consent of any other person or party necessary with respect to execution, delivery and approval of the Consent Documents, The execution and delivery of the Consent Documents by any one of said officers shall be conclusive evidence of due authorization and approval.

Section 9. The authorizations set forth in this Resolution are subject to the conditions that (i) the Agency is not consenting herein to the undertaking of any construction, renovation, installation or equipping of the Project Facility except as contemplated by the Transaction Documents or to the construction of any other structures or improvements on the Land other than as contemplated by the Transaction Documents; (ii) all necessary due diligence will be conducted as to the Assignee and its principals and the results of same shall be satisfactory to Staff of the Agency; and (iii) the Applicant, the Overlandlord or the Assignee shall reimburse the Agency for all costs and expenses incurred by the Agency in connection with the transactions contemplated herein, including, without limitation, the Agency's consent and amendment fees and all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Phillips Lytle LLP.

Section 10. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Amendment Documents and the Consent 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; provided, however, that no covenants, stipulations, obligations or agreements of the Agency contained in this Resolution, any Amendment Document or any Consent Document shall give rise to any pecuniary liability of the Agency or a charge against its general credit or shall obligate the Agency in any way except to the extent that the same can be paid or recovered from the Project Facility or the sale or liquidation of the Project Facility or revenues therefrom.

No covenant, stipulation, obligation or agreement herein contained or contained in any Amendment Document or any Consent Document shall be deemed to be a covenant, stipulation,

obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Amendment Document or any Consent Document shall be liable personally on the Amendment Documents or the Consent Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 11. The Chair, Vice Chair and Chief Executive Officer/Executive Director of the Agency, acting individually or jointly, are hereby authorized to approve modifications to the terms approved herein which are not inconsistent with the intent and substance of this Resolution, such approval to be evidenced by the execution by such officer of the Amendment Documents and/or the Consent Documents containing such modifications.

Section 12. Notwithstanding any provision in the Transaction Documents to the contrary, the Agency's consent does not and shall not be construed to mean that there are no defaults, Events of Default or Recapture Events under the Lease or any other Transaction Document (other than the Defaults and the resulting Recapture Events) or that any such defaults, Events of Default or Recapture Events have been or shall be waived by the Agency.

Section 13. The Chair, Vice Chair, Chief Executive Officer/Executive Director and Administrative Director of the Agency, acting individually or jointly, are hereby authorized and directed to distribute copies of this Resolution to the Applicant, the Overlandlord, the Assignee and such other parties as any such officer may determine.

Section 14. It is expressly understood that no provision of this Resolution shall be interpreted as permitting the waiver of any default by the Assignee occurring on or after the effective date of the proposed transaction.

Section 15. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

William H. Rockensies	VOTING	Aye
John Coumatos	VOTING	Aye
Raymond Pinto	EXCUSED	
Reginald A. Spinello	VOTING	Aye
Marco Troiano	EXCUSED	Aye
Marissa Brown	VOTING	Aye
Joseph Manzella	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK

) SS.:

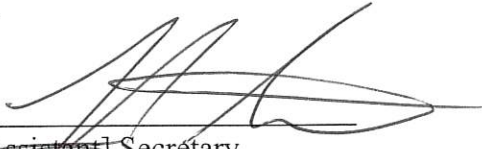
COUNTY OF NASSAU


We, the undersigned ~~[Vice]~~ Chair and ~~[Assistant]~~ Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on October 15, 2024 with the original thereof on file in our office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our respective hands and affixed the seal of the Agency this 15<sup>th</sup> day of October, 2024.

  
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~~[Assistant]~~ Secretary

  
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~~[Vice]~~ Chair

(SEAL)