

AGENDA

April 21, 2021

1. Call to Order.
2. Roll Call
3. Pledge of Allegiance
4. Accept the minutes from the IDA/IDC Board Meeting of March 24, 2021.
5. Accept the minutes from the Public Hearing held April 20, 2021 for Lush Essence Corp.
6. Resolution of the Town of Babylon Industrial Development Agency approving the acquisition, renovation and equipping of a certain facility for Lush Essence Corp. and A&M Hudson LLC and approving the form, substance and execution of related documents and determining other matters in connection therewith.
7. Chief Executive Officer's report
8. Old Business
9. New Business
10. Adjournment

BABYLON INDUSTRIAL DEVELOPMENT AGENCY

IDA/IDC MEETING MINUTES

March 24, 2021

Present: Tom Gaulrapp, Chairman
Justin Belkin, Vice Chairman
Paulette Moses, Secretary
William Bogardt
Rosemarie Dearing
William Celona
Marcus Duffin
Carol Quirk (ALT.)

Also Present: Thomas Dolan, Chief Executive Officer
Frank Dolan, Chief Operations Officer
David Batkiewicz, Special Projects Manager
Joseph Ninomiya, Special Projects Manager
Kevin Bonner, TOB Communications Director
Antonio Martinez, Deputy Supervisor
William Wexler, Agency Counsel
Matthew McDonough, Agency Counsel

A quorum being present, the meeting was called to order at 8:00 A.M.

Motion was made by Rosemarie Dearing and seconded by William Bogardt to accept the minutes from the IDA/IDC Board Meeting of February 24, 2021. All in favor, motion carries.

A motion was made by William Celona and seconded by Marcus Duffin in favor of a resolution of the Town of Babylon Industrial Development Agency authorizing the Chief Executive Officer to hold a public hearing regarding a proposed Project to be undertaken for the benefit of Lush Essence Corp. and entities formed or to be formed on behalf of the foregoing. All in favor, motion carries.

A motion was made by Rosemarie Dearing and seconded by Paulette Moses in favor of a resolution permitting the termination of lease and authorizing the Chief Executive Officer to deliver a quit claim deed conveying the premises located at 61 Carolyn Blvd., Farmingdale, New York 11735 (SCTM# 0100 097.00 01.00 004.011), to 61 Carolyn Boulevard, LLC (Premier Rubber Company, Inc. Project). All in favor, motion carries.

CEO Report

Mr. Dolan informed the Board that the Agency had recently completed the 2020 fiscal year audit. Mr. Dolan verified that the Board had received communication from him containing the audit as well as several observations made by Mr. Dolan and Mrs. Hatalski. Mr. Dolan stated that 2020 was a very unique year however the IDA was able to finish the year maintaining a strong financial position. Mr. Dolan stated that a couple of projects that were expected to close in quarter four of 2020 would actually be closing in quarter one of 2021. Mr. Dolan said the Agency expects 2021 to be a very strong year. Mr. Dolan then asked the Board for their approval of the 2020 Audit.

A motion was made by Paulette Moses and seconded by William Bogardt to approve the 2020 audit by PKF O'Connor. All in favor, motion carries.

Mr. Dolan informed the Board that in the following week the Agency would be launching a new initiative, Mr. Dolan also thanked the staff for their hard work on this new initiative. Mr. Dolan stated that he was looking forward to the tour at the Wel in Lindenhurst with several of the board members that would be taking place later that same day.

Old Business

No old business.

New Business

No new business.

There being no further business to come before the board, a motion to close was made by William Bogardt and Seconded by Rosemarie Dearing. All in favor, motion carries.

Babylon Industrial Development Agency
Public Hearing for Lush Essence Corp. / A&M Hudson, LLC
April 20, 2021

Present: Thomas Dolan
Joseph Ninomiya
David Batkiewicz

Public hearing called to order at 1:04 P.M.

No one from the public was in attendance.

LEGAL NOTICE

Public Hearing

Notice is hereby given that a public hearing pursuant to Section 859-a(2) of the General Municipal Law of the State of New York (the "Act"), will be held by the Town of Babylon Industrial Development Agency (the "Agency"), on the 20th day of April, 2021 at 1:00 p.m., local time, in connection with the Project described below. Pursuant to Executive Order 202.1 (2020), issued and further extended by the Governor of the State of New York, the Agency will hold the public hearing remotely by a video/audio conference as described below.

Lush Essence Corp. (the "Operating Company") and A&M Hudson LLC (the "Real Estate Holding Company"), on behalf of themselves and/or entities formed or to be formed on behalf of the foregoing, have presented an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in approximately 1.21 acres of real estate located at 90 Hudson Street, Copiague (tax map no. 0100-201.00-03.00-019.002) in the Town of Babylon, Suffolk County, New York (the "Land"), the renovation of an existing approximately 26,000 square foot building located on the Land (the "Improvements"), and the acquisition and installation therein and thereon of certain equipment and personal property not part of the Equipment (as such term is defined herein) (the "Facility Equipment"; and, together with the Land and the Improvements, the "Company Facility"), which Company Facility is to be leased and subleased by the Agency to the Real Estate Holding Company and further subleased by the Real Estate Holding Company to the Operating Company; and (2) the acquisition and installation of certain equipment and personal property (the "Equipment", and together with the Company Facility, the "Facility"), which Facility will be used by the Operating Company as a warehouse and distribution facility and related uses for its business as an online and wholesale retailer of professional high-end skin care and hair care brands.

The Real Estate Holding Company will be the initial owner of the Company Facility and the Operating Company will be the initial operator of the Facility.

In connection with the Project, the Agency will (A) lease the Company Facility from the Real Estate Holding Company and will sublease the Company Facility back to the Real Estate Holding Company; and (B) obtain an interest in the Equipment from the Operating Company and lease the Equipment back to the Operating Company. The Agency contemplates that it will provide financial assistance to the Real Estate Holding Company and the Operating Company in the form of exemptions from sales and uses taxes,

mortgage recording taxes, if a mortgage is required, transfer taxes and abatements of real property taxes consistent with the policies of the Agency. A representative of the Agency will at the above-stated time and place to hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Real Estate Holding Company and the Operating Company or the location or nature of the Facility.

Interested members of the public are invited to submit their comments for the public hearing by emailing info@babylonida.org before 4:30 p.m. on April 19, 2021. Video conference link and/or call-in number will be provided by email for interested members of the public to be able to listen and participate in the proceedings. If you do not want to participate in the hearing, but would like to watch or listen to the proceeding, you may view a livestream of the meeting. Interested parties may view a livestream of the meeting online on the Town of Babylon IDA's YouTube channel. To access the YouTube channel go to the Town of Babylon IDA's website at www.babylonida.org/documents. The second item on the documents page is titled "Meeting Videos and Livestream", click this tab and follow the link provided. If you would like to access the IDA YouTube page directly from your browser you may insert the following World Wide Web address: (https://www.youtube.com/channel/UCqq5ixdV_-nmsmvSOsD4KnA).

For those members of the public desiring to review project applications and cost benefit analyses before the date of the hearing, copies of these materials will be made available at www.babylonida.org/documents. Click on the tab titled "Project Applications." Under the year 2021 you will find the application for "Lush Essence Corp." Be advised that it is possible that certain of the aforementioned proposed transactions may be removed from the hearing agenda prior to the hearing date. Information regarding such removals will be available on the Agency's website www.babylonida.org/calendar at on or about 12:00 P.M. of the day prior to the hearing.

The public hearing was closed by Tom Dolan at 1:07 P.M.

RESOLUTION OF THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, RENOVATION AND EQUIPPING OF A CERTAIN FACILITY FOR LUSH ESSENCE CORP. AND A&M HUDSON LLC AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Town of Babylon Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 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 177 of the Laws of 1973 of New York, as amended, constituting Section 907-a 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, renovating, improving, maintaining, equipping and furnishing of, among others, manufacturing, warehousing, research, commercial or industrial facilities, 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, pursuant to an application (the "Application") submitted to the Agency by Lush Essence Corp. (the "Operating Company") and A&M Hudson LLC (the "Real Estate Holding Company"), on behalf of themselves and/or entities formed or to be formed on behalf of the foregoing, the Operating Company and the Real Estate Holding Company have requested that the Agency undertake a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in approximately 1.21 acres of real estate located at 90 Hudson Street, Copiague (tax map no. 0100-201.00-03.00-019.002) in the Town of Babylon, Suffolk County, New York (the "Land"), the renovation of an existing approximately 26,000 square foot building located on the Land (the "Improvements"), and the acquisition and installation therein and thereon of certain equipment and personal property not part of the Equipment (as such term is defined herein) (the "Facility Equipment"; and, together with the Land and the Improvements, the "Company Facility"), which Company Facility is to be leased and subleased by the Agency to the Real Estate Holding Company and further subleased by the Real Estate Holding Company to the Operating Company; and (2) the acquisition and installation of certain equipment and personal property (the "Equipment", and together with the Company Facility, the "Facility"), which Facility will be used by the Operating Company as a warehouse and distribution facility and related uses for its business as an online and wholesale retailer of professional high-end skin care and hair care brands; (B) the granting of certain "financial assistance" (within the meaning of section 854(14) of the Act) with respect to the foregoing limited to potential exemptions from certain sales and use taxes, transfer taxes, mortgage recording taxes (except as limited by Section 874 of the Act) and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Company Facility to the Real Estate Holding Company or such other person as may be designated by the Real Estate Holding Company and agreed upon by the Agency and the lease (with an obligation

to purchase) or sale of the Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency; and

WHEREAS, representatives of the Real Estate Holding Company and the Operating Company have indicated that the Project will result in the growth of permanent full time jobs within the Town of Babylon (the "Town"); and

WHEREAS, in order to induce the Real Estate Holding Company and the Operating Company to proceed with the Project within the Town it appears necessary for the Agency to assist the Real Estate Holding Company and the Operating Company by taking a leasehold interest in the Facility so as to afford the Real Estate Holding Company and the Operating Company certain relief from mortgage recording taxation (to the extent requested), relief from real property taxation and relief from sales and use taxation for a limited period; and

WHEREAS, the Agency (A) caused notice of public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on April 9, 2021 to the chief executive officers of the County of Suffolk, the Town of Babylon, the Copiague School District and the Copiague Public Library (collectively, the "Affected Tax Jurisdictions"), (B) caused notice of the Public Hearing to be published on April 10, 2021 in Newsday, a newspaper of general circulation available to the residents of the Town of Babylon, New York, (C) conducted the Public Hearing on April 20, 2021 at 1:00 p.m. remotely by a video/audio conference pursuant to Executive Order 202.1 (2020), issued and further extended by the Governor of the State of New York, and (D) prepared a report of the Public Hearing (the "Report") that fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, the Agency caused to be mailed on April 16, 2021 a letter to Nassau County and the Town of Oyster Bay (the "Current Municipalities") notifying the Current Municipalities that the Operating Company currently leases 100 Charlotte Avenue, Hicksville, New York 11801 (the "Current Facility") and that the Operating Company has informed the Agency that the Operating Company will "abandon" (as such term is used in Section 859-a(5)(d)) the Current Facility upon completion of the Project; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents: (A) a company lease (and a memorandum thereof) (the "Company Lease") by and between the Real Estate Holding Company and the Agency, pursuant to which, among other things, the Agency will acquire a leasehold interest in the Land and the improvements now or hereafter located on the Land from the Real Estate Holding Company; (B) a lease and project agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Real Estate Holding Company, and agreed to and accepted by the Operating Company, pursuant to which, among other things, the Real Estate Holding Company agrees to undertake and complete the Project as agent of the Agency and the Real Estate Holding Company further agrees to lease the Company Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to

the Project and to pay all expenses incurred by the Agency with respect to the Project; (C) an agency compliance agreement (the "Agency Compliance Agreement") by and between the Agency and the Operating Company, pursuant to which the Operating Company will agree to lease that Equipment from the Agency; and (D) various other documents and certificates relating to the Project (the "Other Documents" and, collectively with the Company Lease, the Lease Agreement and the Agency Compliance Agreement, the "Agency Documents"); and

WHEREAS, in connection with the Project, (A) the Real Estate Holding Company will execute and deliver to the Agency a bill of sale (the "Bill of Sale to Agency"), which conveys from the Real Estate Holding Company to the Agency all right, title and interest of the Real Estate Holding Company in the Facility Equipment; and (B) the Operating Company will execute and deliver to the Agency a bill of sale (the "Operating Company Bill of Sale to Agency"), which conveys from the Operating Company to the Agency all right, title and interest of the Operating Company in the Equipment; and

WHEREAS, as security for the Loan (as such term is defined in the Lease Agreement), the Agency and the Real Estate Holding Company will execute and deliver to a lender or lenders to be determined (the "Lender"), one or more mortgages, assignments of leases and rents and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined (collectively, the "Loan Documents") in connection with the financing, refinancing or permanent financing of the costs of acquiring, renovating, reconstructing and equipping of the Facility; and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Facility under Section 412-a of the Real Property Tax Law) (a "Real Property Tax Exemption Form") relating to the Project; and

WHEREAS, simultaneously with the execution of the Agency Documents, the Agency will file with the New York State Department of Taxation and Finance one or more forms entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Forms"); and

WHEREAS, for purposes of exemption from New York State (the "State") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight; and

WHEREAS, a preliminary agreement (the "Preliminary Agreement") relative to the undertaking of the Project by the Agency, to be executed prior to the execution and delivery of the Agency Documents, has been presented for approval by the Agency; and

WHEREAS, pursuant to 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 (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency must determine the potential environmental significance of the Project; and

WHEREAS, to aid the Agency in determining whether the action described above may have a significant adverse impact upon the environment, the Company prepared an Environmental Assessment Form (the "EAF"), a copy of which is on file at the office of the Agency; and

WHEREAS, the Agency has examined and reviewed the EAF in order to classify the action and make a determination as to the potential significance of the action pursuant to SEQRA;

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

Section 1. Based upon an examination of the EAF, the criteria contained in 6 NYCRR § 617.7(c), and based further upon the Agency's knowledge of the action and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations pursuant to SEQRA:

(i) The action consists of the components described above in the second WHEREAS clause of this resolution; and

(ii) The action constitutes a "Type II Action" (as said quoted term is defined in SEQRA) and therefore no further environmental review is required under SEQRA.

Section 2. The Agency, based upon the representations made by the Real Estate Holding Company and the Operating Company to the Agency in the Application, hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The Project constitutes a "project", as such term is defined in the Act; and

(C) The acquisition, renovation and equipping of the Facility and the leasing of the Facility to the Real Estate Holding Company and the Operating Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Babylon and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(D) The acquisition, renovation and equipping of the Facility and the leasing of the Facility to the Real Estate Holding Company and the Operating Company is reasonably necessary to

induce the Real Estate Holding Company and the Operating Company to maintain and expand their business operations in the Town and in the State; and

(E) Based upon representations of the Real Estate Holding Company, the Operating Company and counsel to the Real Estate Holding Company and the Operating Company, the Facility conforms with the local zoning laws and planning regulations of the Town and all regional and local land use plans for the area in which the Facility is located; and

(F) Although the completion of the Facility will result in the removal of a plant or facility of the Operating Company or any other proposed occupant of the Facility from one area of the State to another area of the State or in the abandonment of a plant or facility of the Operating Company or of any proposed occupant of the Facility located in the State, the Project is reasonably necessary to discourage the Operating Company from removing such other plant or facility to a location outside the State of New York and is reasonably necessary to preserve the competitive position of the Operating Company in its respective industry; and

(G) The Project does not constitute a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost.

Section 3. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire (i) a leasehold interest in the Land and all improvements now or hereafter located on the Land from the Real Estate Holding Company pursuant to the Company Lease, (ii) title to the Facility Equipment pursuant to the Bill of Sale to Agency from the Real Estate Holding Company to the Agency, and (iii) title to the Equipment pursuant to the Operating Company Bill of Sale to Agency from of the Operating Company to the Agency; (C) lease the Company Facility to the Real Estate Holding Company pursuant to the Lease Agreement; (D) lease the Equipment to the Operating Company pursuant to the Agency Compliance Agreement; (E) acquire, construct, reconstruct and install the Project, or cause the Project to be acquired, constructed, reconstructed, and installed, as provided in the Lease Agreement; (F) grant to the Real Estate Holding Company exemptions from real estate taxes with respect to the Company Facility, provided that the Real Estate Holding Company executes and delivers to the Agency the Lease Agreement; (G) grant to the Lender such mortgage lien on and security interest in its interest in the Facility and assign to the Lender all leases and rents with respect to the Facility, in each case as required by the Lender and the Loan Documents; and (H) grant to the Real Estate Holding Company and the Operating Company the Financial Assistance with respect to the Project. In the event of the occurrence of a recapture event under the Lease Agreement, the Agency will pursue recapture of Financial Assistance as provided therein.

Section 4. The Agency is hereby authorized to acquire an interest in the Facility and to do all things necessary or appropriate for the accomplishment of the Project, and all acts heretofore taken by the Agency with respect to such Project are hereby approved, ratified and confirmed.

Section 5. (A) The Preliminary Agreement and the Agency Documents shall be in form and substance satisfactory to the Chief Executive Officer ("CEO") or the Chief Financial Officer ("CFO") and the Agency Counsel and shall be in substantially similar form to the documents used in

connection with prior Agency projects. The CEO, the CFO, the Chairman and the Secretary (each an "Authorized Representative") are each hereby authorized, on behalf of the Agency, to execute and deliver the Preliminary Agreement, the Agency Documents and the Loan Documents, and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same.

(B) The CEO, the CFO and any other Authorized Representatives are each hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives to execute any Agency Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Agency Documents.

Section 6. 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 and documents, to 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 7. The Agency hereby delegates to the Real Estate Holding Company and the Operating Company, as agents of the Agency, the authority to designate (following the execution and delivery of the Agency Documents), agents and sub-agents of the Agency (each, a "Sub-Agent") for purposes of utilizing the Agency sales and use tax exemption with respect to the acquisition, reconstruction and installation of the Facility; provided that any such sub-agency designation shall become effective only upon submission to the Agency within fifteen (15) days of such agency and sub-agency designation: (1) an executed sub-agent appointment agreement (in a form approved by the Agency) and (2) a completed Form ST-60 of the New York State Department of Taxation and Finance (IDA Appointment of Project Operator or Agent for Sales Tax Purposes). Such agents and sub-agents may include contractors and subcontractors involved in the acquisition, reconstruction and installation of the Facility.

Section 8. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Real Estate Holding Company and the Operating Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from New York State sales and use exemptions benefits. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$17,250 and shall last no longer than two years from the execution and delivery of the Agency Documents.**

Section 9. Notwithstanding anything herein to the contrary, the amount of mortgage recording tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$23,790.**

Section 10. Notwithstanding anything herein to the contrary, the amount of real property tax exemption benefits comprising the Financial Assistance approved herein shall be approximately

\$227,300, which such amount reflects the total estimated real property tax exemptions for the Facility (which constitute those taxes that would have been paid if the Facility were on the tax rolls and not subject to the Lease Agreement) of approximately **\$748,313** less the estimated payments in lieu of taxes of approximately **\$521,013** to be made by the Real Estate Holding Company to the affected tax jurisdictions with respect to the Facility during the terms of the Lease Agreement. The approximate amount of estimated real property tax exemptions and the approximate amount of estimated payments in lieu of taxes are estimated based on an assumed assessed value of the Facility and assumed future tax rates of the affected tax jurisdictions. The actual amount of real property tax abatement benefit is subject to change over the terms of the Lease Agreement depending on any changes to assessed value and/or tax rates of the Affected Tax Jurisdictions. Exhibit A attached hereto reflects the calculation for the annual amount of the payments in lieu of taxes to be made to the affected tax jurisdictions in each year during the terms of the Lease Agreement.

Section 10. The Preliminary Agreement, the Agency Documents and the Loan Documents shall be deemed the obligations of the Agency, and not of any member, officer, agent or employee of the Agency in his/her individual capacity, and the members, officers, agents and employees of the Agency shall not be personally liable thereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The Preliminary Agreement, the Agency Documents and the Loan Documents shall not constitute or give rise to an obligation of the State of New York or Suffolk County, New York and neither the State of New York nor Suffolk County, New York shall be liable thereon, and further, such agreement shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency.

Section 11. This resolution shall take effect immediately upon adoption.

PRELIMINARY AGREEMENT

THIS PRELIMINARY AGREEMENT dated as of April 21, 2021 among the TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation organized and existing under the laws of the State of New York, LUSH ESSENCE CORP., a corporation organized and existing under the laws of the State of New York (the "Operating Company") and A&M HUDSON LLC, a limited liability company organized and existing under the laws of the State of New York (the "Real Estate Holding Company").

WITNESSETH:

WHEREAS, Town of Babylon Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 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 177 of the Laws of 1973, as amended, constituting Section 907-a 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, renovating, improving, maintaining, equipping and furnishing of 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, the purposes of the Act are to promote industry and develop trade and thereby advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the Town of Babylon, New York and the State of New York, to improve their prosperity and standard of living and to prevent unemployment and economic deterioration; and

WHEREAS, by resolution adopted by the members of the Agency on April 21, 2021 (the "Approving Resolution"), the Agency determined to undertake a project (the "Project") on behalf of the Operating Company, the Real Estate Holding Company and/or entities formed or to be formed on behalf of the foregoing, consisting of the following: (A)(1) the acquisition of an interest in approximately 1.21 acres of real estate located at 90 Hudson Street, Copiague (tax map no. 0100-201.00-03.00-019.002) in the Town of Babylon, Suffolk County, New York (the "Land"), the renovation of an existing approximately 26,000 square foot building located on the Land (the "Improvements"), and the acquisition and installation therein and thereon of certain equipment and personal property not part of the Equipment (as such term is defined herein) (the "Facility Equipment"; and, together with the Land and the Improvements, the "Company Facility"), which Company Facility is to be leased and subleased by the Agency to the Real Estate Holding Company and further subleased by the Real Estate Holding Company to the Operating Company; and (2) the acquisition and installation of certain equipment and personal property (the "Equipment", and together with the Company Facility, the "Facility"), which Facility will be used by the Operating Company as a warehouse and distribution facility and related uses for its business as an online and wholesale retailer of professional high-end skin care and hair care brands; (B) the granting of certain "financial assistance" (within the meaning of

section 854(14) of the Act) with respect to the foregoing limited to potential exemptions from certain sales and use taxes, transfer taxes, mortgage recording taxes (except as limited by Section 874 of the Act) and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Company Facility to the Real Estate Holding Company or such other person as may be designated by the Real Estate Holding Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency, the Operating Company and the Real Estate Holding Company agree as follows:

Article 1. Representations.

Among the representations that have resulted in the execution of this Preliminary Agreement are the following:

Section 1.01. The Real Estate Holding Company and the Operating Company hereby represent to the Agency that:

(A) Although the completion of the Facility will result in the removal of a plant or facility of the Operating Company from one area of the State of New York to another area of the State of New York or in the abandonment of a plant or facility of the Operating Company located in the State of New York, the Project is reasonably necessary to discourage the Operating Company from removing such other plant or facility to a location outside the State of New York and is reasonably necessary to preserve the competitive position of the Operating Company in its respective industry.

(B) The Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project.

(C) The Facility is located entirely within the boundaries of the Town of Babylon, New York.

(D) The granting of the Financial Assistance by the Agency with respect to the Project will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the Town of Babylon, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act and will encourage and assist the Real Estate Holding Company and the Operating Company in providing the Project.

Article 2. Undertaking on the Part of the Agency.

Based upon the statements, representations and undertakings of the Real Estate Holding Company and the Operating Company and subject to the conditions set forth herein, the undertakings on the part of the Agency are as follows:

Section 2.01. If the Real Estate Holding Company and the Operating Company comply with all conditions set forth in this Preliminary Agreement and the Approving Resolution, then the Agency will (A) undertake the Project, and (B) grant certain Financial Assistance with respect to the Project; PROVIDED HOWEVER, that the foregoing obligation of the Agency to undertake the Project and to grant the Financial Assistance relating to the Project is subject to the conditions hereinafter contained in this Preliminary Agreement, including but not limited to the following conditions:

(A) An interest in the Facility shall be acquired by the Agency from the Real Estate Holding Company and the Operating Company pursuant to one or more deeds, lease agreements, license agreements or other documentation to be negotiated between the Agency and the Real Estate Holding Company and the Agency and the Operating Company (hereinafter, collectively, the "Acquisition Agreement") that contain terms mutually acceptable to the Agency, the Real Estate Holding Company and the Operating Company for the conveyance of an interest in the Facility to the Agency. The Acquisition Agreement and any other documents to be executed by the Agency, the Real Estate Holding Company and the Operating Company in connection with the Project (collectively, the "Project Documents") shall in all respects comply with the requirements of, and limitations contained in, the Act;

(B) The Real Estate Holding Company and the Operating Company shall have executed the Project Documents among the Agency, the Real Estate Holding Company and the Operating Company, the terms of which shall be acceptable in form and content to the Agency, the Real Estate Holding Company and the Operating Company and pursuant to which, among other things, the Real Estate Holding Company and the Operating Company, jointly and severally, shall be obligated to pay all costs incurred by the Agency with respect to the Project, including all costs of operation and maintenance of the Project and/or the Facility, all taxes and other governmental charges, any required payments in lieu of taxes, and the reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project and/or the Facility (including reasonable counsel fees and out-of-pocket expenses), it being understood that the Real Estate Holding Company and the Operating Company will, prior to or contemporaneously with the granting of the Financial Assistance, enter into such Project Documents;

(C) No event shall have occurred that constitutes (or which after notice or lapse of time or both would constitute) an event of default under the Project Documents;

(D) The Agency shall receive, in form and substance satisfactory to the Agency, such rulings, approvals, resolutions, consents, certificates, opinions of counsel and other instruments and proceedings as shall be specified by the Agency in connection with the Financial Assistance, the Project and the Project Documents, such rulings, approvals, resolutions, consents, certificates, opinions of counsel and other instruments and proceedings to be obtained from transaction counsel, counsel to the Agency and such other governmental and nongovernmental agencies and entities as may have or assert competence or jurisdiction over or interest in matters pertaining thereto, and the same shall be in full force and effect at the time of the granting of the Financial Assistance; and

(E) Agreements shall be made as to (1) payments by the Real Estate Holding Company and the Operating Company to or on behalf of the Agency of any required amounts in lieu of real property taxes, (2) indemnity by the Real Estate Holding Company and the Operating Company of the Agency and the members and officers of the Agency, and (3) payment by the Real Estate Holding Company and the Operating Company of the expenses incurred by the Agency in connection with the Project (including reasonable counsel fees and out-of-pocket expenses) and the administrative fee of the Agency, and such agreements shall be satisfactory in form and substance to the Agency.

Article 3. Undertakings on the Part of the Real Estate Holding Company and the Operating Company.

Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein, the undertakings on the part of the Real Estate Holding Company and the Operating Company are as follows:

Section 3.01. The Real Estate Holding Company and the Operating Company will enter into the Project Documents with the Agency containing the terms and conditions described in Section 2.01 hereof.

Section 3.02. The Real Estate Holding Company and the Operating Company agree that the Agency, its directors, members, officers, agents (except the Real Estate Holding Company and the Operating Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Real Estate Holding Company and the Operating Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the use thereof or under this Preliminary Agreement, or (ii) liability arising from or expense incurred by the Agency's acquiring, constructing, renovating, equipping, installation, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Real Estate Holding Company and/or the Operating Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Preliminary Agreement (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Real Estate Holding Company and the Operating Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these

indemnities shall remain in full force and effect.

Section 3.03. The Real Estate Holding Company and the Operating Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as they may deem appropriate in pursuance thereof.

Article 4. General Provisions.

Section 4.01. All commitments of the Agency under Article 2 hereof are subject to the condition that the following events shall have occurred not later than one (1) year from the date hereof (or such other date as shall be mutually satisfactory to the Agency, the Real Estate Holding Company and the Operating Company):

(A) The Agency, the Real Estate Holding Company and the Operating Company shall have agreed on mutually acceptable terms and conditions of the Project Documents and any other agreements referred to in Articles 2 or 3 hereof;

(B) All necessary governmental approvals shall be obtained; and

(C) All other conditions expressed in this Preliminary Agreement shall have been satisfied.

Section 4.02. Subject to the terms and conditions of Section 4.03 hereof, the Real Estate Holding Company and the Operating Company shall have the right to unilaterally cancel this Preliminary Agreement at any time within thirty (30) days of the date hereof by written notice of cancellation delivered to the Agency at the address set forth in Section 4.04 hereof.

Section 4.03. If the events set forth in Section 4.01 hereof do not take place within the time set forth in said Section 4.01, or any extension thereof, or if the Real Estate Holding Company and the Operating Company exercises their right of cancellation as set forth in Section 4.02 hereof, the Real Estate Holding Company and the Operating Company jointly and severally agree that (A) they will promptly reimburse the Agency (and its officers, members, agents or employees) for all reasonable and necessary actual out-of-pocket expenses (including reasonable legal fees and expenses) which the Agency (and its officers, members, agents or employees) may incur with respect to the execution of this Preliminary Agreement and the performance of its obligations hereunder; and (B) the obligations of the Real Estate Holding Company and the Operating Company set forth in Section 3.02 hereof shall survive the termination of this Preliminary Agreement and shall remain in full force and effect until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters described therein may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency (and its officers, members, agents or employees) relating to the enforcement of the provisions therein stated.

Section 4.04. (A) All notices and other communications hereunder shall be in writing and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(i) TO THE AGENCY:

Town of Babylon Industrial Development Agency
47 West Main Street, Suite 3
Babylon, New York 11702
Attention: Chief Executive Officer

WITH A COPY TO:

John Braslow, Esq.
816 Deer Park Avenue
North Babylon, New York 11703

AND TO:

Barclay Damon LLP
80 State Street
Albany, New York 12207
Attention: Melissa C. Bennett, Esq.

(ii) IF TO THE REAL ESTATE HOLDING COMPANY AND OPERATING COMPANY:

Lush Essence Corp.
100 Charlotte Avenue
Hicksville, New York 11081
Attention: Markiel Chulpayev, General Manager

AND TO:

A&M Hudson LLC
90 Hudson Street
Copiague, New York 11726
Attention: Markiel Chulpayev, General Manager

WITH A COPY TO:

Law Offices of Mark A. Cuthbertson
434 New York Avenue
Huntington, New York 11743
Attention: Mark A. Cuthbertson, Esq.

(B) The Agency, the Real Estate Holding Company and the Operating Company may, by notice given hereunder, designate any other or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 4.05. All covenants and agreements herein contained by or on behalf of the Agency, the Real Estate Holding Company and the Operating Company shall bind and inure to the benefit of the respective successors and assigns of the Agency, the Real Estate Holding Company and the Operating Company whether so expressed or not.

Section 4.06. The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his or her individual capacity, and the members, officers, agents and employees of the Agency shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any action contemplated hereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or of the Town of Babylon, New York and neither the State of New York nor the Town of Babylon, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project.

Section 4.07. Notwithstanding any provision of this Preliminary Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (A) the Agency shall have been requested to do so in writing by the Real Estate Holding Company and the Operating Company; and (B) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent or employee of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the Real Estate Holding Company and the Operating Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

Section 4.08. All obligations of the Real Estate Holding Company and the Operating Company under this Preliminary Agreement shall be the joint and several obligations of A&M Hudson LLC and Lush Essence Corp.