CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND NBTY MANUFACTURING TEXAS, LLC

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WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant municipal funds in furtherance of public purposes for economic development projects; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, GRANTOR created an economic development program for the purpose of making such grants available; and

WHEREAS, GRANTEE is engaged in an economic development project to be located at 4266 Dividend, San Antonio, Texas, 78219 (the "Property") and which shall be comprised of the establishment of a vitamin manufacturing facility that will have an estimated investment of approximately $6,000,000.00 to purchase existing real and personal property assets and make certain improvement to same and is anticipated to create 65 full-time jobs over a three- to- five-year period (the "Project"); and

WHEREAS, GRANTEE has requested an economic development grant for the purpose of deferring costs associated with the Project and GRANTOR has identified funds available in the form of an economic development program grant for GRANTEE to use to carry out this purpose; and

WHEREAS, the City Council of GRANTOR authorized the City Manager or her designee to enter into this Agreement with GRANTEE as reflected in Ordinance No. 2012-04-12-_____, passed and approved on April 12, 2012 and GRANTOR now wishes to engage GRANTEE to carry out the Project; **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

GRANTEE shall undertake the Project which shall include the purchase of the Property and certain Equipment and shall hire employees some of whom may have worked for the former owner or a company related to the former Property owner. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio. GRANTOR is supporting the Project through this Economic Development Program Grant to provide funds to be used to defer costs associated with undertaking and completing the Project.

SECTION 2. PROJECT REQUIREMENTS

A. Property. GRANTEE shall purchase the Property prior to July 30 2012 (the "Outside Acquisition Date"). Upon its acquisition of the Property, GRANTEE will provide a copy of the Deed for same to GRANTOR within the time period set forth on Exhibit "A". Construction activities shall be completed no later than November 30, 2012 and GRANTEE shall occupy the Property no later than January 31, 2013.

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C. Full-Time Job Creation. GRANTEE shall create SIXTY-FIVE (65) full-time jobs on the Property prior to January 1, 2016, as follows:

On or Before:	Number of Full Time Jobs to be created:
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1. A Full-Time Job, for the purposes of this Agreement, shall be equivalent to one thousand nine hundred and fifty (1,950) straight-time paid hours within the GRANTEE's fiscal year.

2. Additionally, all employees of GRANTEE (or its Related Organizations) who fill Full-Time Job positions at the Property shall be offered an opportunity to participate in GRANTEE's employee benefits program which shall be substantially similar to employee benefits offered to similarly situated employees of GRANTEE in other locations. GRANTEE further covenants and agrees that all employees of GRANTEE (or its Related Organizations) who fill Full-Time Job positions at the Property shall be offered a health plan which provides coverage for their eligible dependents on terms substantially similar to the coverage provided to the eligible dependents generally of GRANTEE's non-temporary full-time employees at other locations.

D. Certification. GRANTEE covenants and agrees that it shall provide GRANTOR's Director of Economic Development Department with an annual certification from an officer of GRANTEE attesting to the number of Jobs created and maintained, as well as wages paid for all employees at the Property.

E. Reserved.

F. Laws. GRANTEE shall comply with all applicable Federal, State and local laws and regulations.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT

A. Economic Development Program Grant. GRANTOR is providing GRANTEE with an Economic Development Program Grant in a cumulative amount of up to approximately FOUR HUNDRED ONE THOUSAND FIVE HUNDRED AND FORTY-SIX DOLLARS AND 0 CENTS ($401,546.00) over the Term of this Agreement.

B. Grant Disbursement. Following the execution of this Agreement by the Parties, submission by GRANTEE to GRANTOR of documentation evidencing the purchasing of the Property, and subject to the terms and conditions herein, GRANTOR will direct disbursement of grant funds as follows:

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ii) Annual Disbursement. No sooner than twelve (12) months following the date of submission by the GRANTEE for the Initial Distribution and each of the three (3) anniversaries thereof, and provided that GRANTEE is in compliance with all terms of this Agreement, GRANTEE shall submit an invoice for additional annual disbursements of FIFTY THOUSAND DOLLARS AND 0 CENTS ($50,000.00) for the three consecutive years following the Initial Disbursement. In no case shall disbursements made under Section 3(B)(i) and Section 3(B)(ii) exceed the cumulative amount of TWO HUNDRED THOUSAND DOLLARS AND 0 CENTS ($200,000.00).

iii) Property Tax Reimbursement. Commencing on January 1, 2013 and for a period not to exceed ten (10) years following, GRANTEE shall be entitled to receive a reimbursement from GRANTOR of its annual real and personal property taxes for the Property paid to GRANTOR above the Tax Year 2012 amount (the "Annual Property Tax Reimbursement"). The Annual Property Tax Reimbursement shall not exceed a cumulative total of TWO HUNDRED AND ONE THOUSAND FIVE HUNDRED AND FORTY-SIX DOLLARS AND N0 CENTS ($201,546.00). Subject to the terms and conditions of this Agreement, for each annual Tax Year (January 1 through December 31) commencing with the 2013 Tax Year and then annually for a period of ten (10) years thereafter, GRANTOR shall pay to GRANTEE, no later than forty-five (45) business days following the submission of a tax invoice by GRANTEE indicating payment of all taxes owed on the Property, an amount equal to: (a) the actual amount of Real and Personal property taxes paid by GRANTEE to GRANTOR with respect to the Property for the immediately preceding Tax Year, *less* (b) that portion of the Personal Property taxes committed toward the City's annual debt service which is currently $0.2115 per $100 of property valuation, and (c) the amount of such Taxes paid for the 2012 calendar year. It is understood that GRANTEE shall continue to pay all taxes owed on the Property as required by law. Taxes owed or paid shall be determined by the Bexar County Appraisal District and paid to the Tax Assessor's Office. Prior to

GRANTOR disbursing funds under this Section 3(B)(iii), GRANTEE must provide to GRANTOR evidence indicating that it is in compliance with all terms of this Agreement and that all taxes owed on the Property have been paid in full for the tax year for which payment of the Annual Personal Property Tax Reimbursement is sought, subject to GRANTEE's right to protest taxes as permitted by law.

If, during the Term of this Agreement, GRANTEE allows any of its ad valorem taxes due on the Project Site to become delinquent and fails to timely and properly follow the legal procedures for the protest and/or contest of the taxing value, then the termination and recapture provisions of Section 8 of this Agreement shall apply.

SECTION 4. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page of this Agreement and terminate upon the tenth anniversary of that date (the "Term") unless earlier terminated:

1. By GRANTOR under Section 15 effective on the dates set out therein; or

2. By GRANTOR at request of GRANTEE under Section 16 effective as of the date such request is approved.

In addition, if GRANTEE does not acquire the Property by the Outside Acquisition Date, this Agreement shall terminate and neither party shall have any rights or obligations one unto the other hereunder.

SECTION 5. GRANTOR'S OBLIGATIONS

A. Payment. In consideration of full and satisfactory performance of activities required by Section 2 and/or Section 3 of this Agreement, as applicable, and subject to the annual appropriation of funds by GRANTOR's City Council, GRANTOR will pay GRANTEE in accordance with Section 3 above.

B. No Liability for Costs. GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. Retention. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records and any supporting documentation for the greater of: (1) Four (4) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. Access. GRANTEE shall, following reasonable advance, written notice from GRANTOR, give GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all material records related to the Project (the "Records"). GRANTOR's access to the Records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the

Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized City representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default.

SECTION 7. MONITORING

GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

SECTION 8. CONFLICT OF INTEREST

If applicable, GRANTEE shall ensure that no employee, officer, or individual agent of GRANTOR shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. To the extent GRANTEE hires any former or current employee or official of GRANTOR who would be subject to the GRANTOR's ethics policy, as same exists from time to time, GRANTEE shall take reasonable efforts to ensure that such person complies with all applicable requirements of the GRANTOR's ethics ordinance in dealings between GRANTOR and GRANTEE.

SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. Nondiscrimination. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. Sectarian Activity. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. Inclusion. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Section in all agreements entered into by GRANTEE associated with the funds made available through this Agreement.

SECTION 10. LEGAL AUTHORITY

A. Legal Authority. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. Lack of Authority. GRANTOR shall have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement for reasons enumerated in this Section.

SECTION 11. LITIGATION AND CLAIMS

A. Notice to City. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out the performance of any activities at the Property. Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify GRANTOR immediately of any legal action, known to GRANTEE, filed against the GRANTEE or any subcontractor thereto, or of any known proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to GRANTOR within 30 calendar days after receipt by GRANTEE of the same. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding, GRANTEE is not required to notify GRANTOR of claim litigation which arise out of GRANTEE's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 12. ATTORNEY'S FEES

In the event GRANTEE should default beyond applicable cure periods under any of the provisions of this Agreement and GRANTOR should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of GRANTEE herein contained, GRANTEE agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by GRANTOR.

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GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

SECTION 8. CONFLICT OF INTEREST

If applicable, GRANTEE shall ensure that no employee, officer, or individual agent of GRANTOR shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. To the extent GRANTEE hires any former or current employee or official of GRANTOR who would be subject to the GRANTOR's ethics policy, as same exists from time to time, GRANTEE shall take reasonable efforts to ensure that such person complies with all applicable requirements of the GRANTOR's ethics ordinance in dealings between GRANTOR and GRANTEE.

SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. Nondiscrimination. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. Sectarian Activity. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. Inclusion. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Section in all agreements entered into by GRANTEE associated with the funds made available through this Agreement.

SECTION 10. LEGAL AUTHORITY

A. Legal Authority. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. Lack of Authority. GRANTOR shall have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement for reasons enumerated in this Section.

SECTION 11. LITIGATION AND CLAIMS

A. Notice to City. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out the performance of any activities at the Property. Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify GRANTOR immediately of any legal action, known to GRANTEE, filed against the GRANTEE or any subcontractor thereto, or of any known proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to GRANTOR within 30 calendar days after receipt by GRANTEE of the same. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding, GRANTEE is not required to notify GRANTOR of claim litigation which arise out of GRANTEE's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 12. ATTORNEY'S FEES

In the event GRANTEE should default beyond applicable cure periods under any of the provisions of this Agreement and GRANTOR should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of GRANTEE herein contained, GRANTEE agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by GRANTOR.

SECTION 13. CHANGES AND AMENDMENTS

A. Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.

B. 380 Program. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Change of Law. In the event that Chapter 380 of the Texas Local Government Code is rescinded and not otherwise replaced with other statutory authority for GRANTOR to make the grants contemplated to be made to GRANTEE under this Agreement and the terms of this Agreement are not "grandfathered" so that following such rescission it will be illegal for GRANTOR to make the economic development grants contemplated by this Agreement, the parties will use good faith reasonable efforts to identify other lawful means by which GRANTOR can provide GRANTEE with substantially similar benefits to those which GRANTEE is entitled to receive under this Agreement.

SECTION 14. SUSPENSION

A. Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance and grant GRANTEE a sixty (60) day period following the date of the GRANTEE's receipt of GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. Extensions. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, GRANTOR may extend the cure period to such reasonable time to allow GRANTEE to cure such default provided that GRANTEE: (1) immediately upon receipt of Notice of Suspension advises GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institutes and thereafter pursues to completion with reasonable dispatch all steps necessary to cure same.

C. Lifting of Suspension. A suspension under this Section may be lifted only by GRANTOR upon a showing of full compliance with or written waiver by GRANTOR of the term(s) in question.

D. No Liability. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 15. TERMINATION AND RECAPTURE

A. Relocation Defined. For purposes of this section, "Relocation" or "Relocate" shall mean GRANTEE or a Related Organization which has taken the place of GRANTEE, transferring Business Activities to a location not on the Property

B. Relocation. Should GRANTEE occupy and use the Property for its Business Activities and subsequently Relocates (as defined in this Section 15, Paragraph A) during the Term, unless such Relocation is caused by a Force Majeure, as defined in Section 16, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless GRANTEE presents credible evidence to clearly indicate a date of Relocation, GRANTOR's determination of a date of relocation shall be final and conclusive. Upon termination, any and all funds disbursed to GRANTEE and for the benefit of the GRANTEE under this Agreement shall be recaptured by GRANTOR according to the schedule in Section 15, Paragraph G below and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

C. Ceasing. If GRANTEE occupies and uses the Property for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) at the site for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Section 16, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Unless GRANTEE presents credible evidence to clearly indicate a date of cessation, GRANTOR's determination of a date of cessation shall be final and conclusive. Upon termination, any and all funds disbursed to GRANTEE and for the benefit of the GRANTEE under this Agreement shall be recaptured by GRANTOR according to the schedule in Section 15, Paragraph G below and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

D. Number of Jobs. If, after the end of any calendar year beginning in year 2013 of this Agreement, GRANTEE, a Related Organization or City-approved assignee fails to have created full-time jobs on the Property in accordance with Section 2(C) of this Agreement, then GRANTEE shall be required to reimburse GRANTOR THREE THOUSAND DOLLARS ($3,000.00) per job below stated annual job requirement at the time in question, but only to the extent GRANTEE has received grants attributable to such jobs, with payments being deemed attributable to jobs in the order created (i.e., the first $50,000.00 grant will be attributable to the first 16 jobs to be created, the second $50,000.00 payment to the next to be created 16 jobs, etc...). However, after year 2015, should GRANTEE fail to maintain at least THIRTY-ONE (31) full-time jobs at the Property, then this failure may be grounds for termination of this Agreement. Said termination shall be effective at the end of the first calendar year during which GRANTEE is determined to be non-compliant. Upon termination, any and all funds disbursed to GRANTEE and for the benefit of the GRANTEE under this Agreement shall be recaptured by GRANTOR according to the schedule in Section 15, Paragraph G below and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

E. Notice of Default. During the Term, GRANTOR may declare a default if GRANTEE fails to comply with any of the terms of this Agreement. Should GRANTOR determine GRANTEE is in default under any of the terms of this Agreement, GRANTOR will notify GRANTEE in writing at the address below in Section 23. If said default is not cured within sixty (60) calendar days from the date of such

notice (hereinafter the "Cure Period"), then GRANTOR shall have the right to terminate this Agreement. GRANTOR may extend the Cure Period if GRANTEE commences the cure within the Cure Period and GRANTEE is diligently pursuing such cure. If the Agreement is terminated as a result of default, all grant funds disbursed shall be due for the calendar year during which the termination occurred; in addition, GRANTOR shall have the right to recapture from GRANTEE previously disbursed grant funds under this Agreement according to the schedule in Section 15, Paragraph G below and said grant funds shall be paid by GRANTEE to GRANTOR within sixty (60) calendar days of receiving GRANTOR's written notification of recapture.

F. OMITTED

G. Calculation of Grant Funds Subject to Recapture. If GRANTEE fails to comply with any of the terms of this Agreement including, but not limited to, those pertaining to this Section 15 then GRANTOR shall have the right to recapture from GRANTEE a percentage of the disbursed grant funds which have not previously been reimbursed to GRANTOR based on the following table:

TERM YEAR	**TOTAL PERCENTAGE OF GRANT FUNDS TO BE RECAPTURED**:
3-5	100%
6	80%
7	60%
8	40%
9	20%
10	20%

Notwithstanding the foregoing, any such recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled at law or under this Agreement. The termination and/or recapture of grant funds provided in this Section 15 are not applicable to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as GRANTEE, its parent, subsidiary, affiliate or any successor or assignee allowed under the terms of this Agreement, continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

The foregoing termination and recapture rights shall be GRANTOR's sole and exclusive remedies in the event GRANTEE shall default under this Agreement; provided, however, that the foregoing shall not preclude GRANTOR from bringing any legal action to recover the amounts which it is entitled to recapture under this Agreement and in the event GRANTOR brings any such action, all reasonable attorney's fees and court costs incurred in connection therewith may be recovered by GRANTOR from GRANTEE.

H. GRANTOR Defaults. GRANTOR shall be in default under this Agreement if it defaults in the performance of any of its obligations under this Agreement and such failure continues uncured for a period of thirty (30) days from and after the date GRANTEE notifies GRANTOR of such failure. Upon a default by GRANTOR, GRANTEE shall be entitled to seek any right or remedies available to it at law or in equity, including, without limitation, bringing an action to require GRANTOR to specifically perform its obligations hereunder including, without limitation, a mandamus action to compel such performance and shall expressly be allowed to recoup any and all amounts which it is owed by GRANTOR by crediting same against any and all amounts that may thereafter be owed by GRANTEE or any of its subsidiaries (direct or indirect) or affiliates to GRANTOR, including, without limitation, any amounts

owed by Visionary Properties, Inc. under the Parking Agreement. GRANTOR acknowledges that GRANTEE's remedies shall be cumulative of each other.

SECTION 16. AUTHORIZED RELIEF FROM PERFORMANCE

In addition to relief expressly granted in this Agreement, GRANTOR may grant relief from performance of this Agreement if GRANTEE is prevented from compliance and performance by an event of Force Majeure. For purposes of this section, "Force Majeure" is defined as an act of God or natural disaster. It also includes explosion or other casualty or accident which is not the result solely of gross negligence, intentional act or misconduct on the part of GRANTEE. The burden of proof for the need for such relief shall rest upon GRANTEE. To obtain release based upon this Section 16, GRANTEE must file a written request with the GRANTOR's Economic Development Department for review and approval, which request shall not be unreasonably denied.

SECTION 17. SPECIAL CONDITIONS AND TERMS

GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Term of this Agreement who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Workers"). If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay GRANTOR the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date GRANTEE is notified by GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such violation notice until paid. GRANTEE shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom GRANTEE contracts.

SECTION 18. RESERVED

SECTION 19. DEBARMENT

By signing this Agreement, GRANTEE certifies that it will not knowingly award any funds provided under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by GRANTOR.

SECTION 20. NO WAIVER

It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between GRANTEE and GRANTOR under any provision of law, nor shall any action taken in the failure by either party to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time in the future.

SECTION 21. NON-ASSIGNMENT

This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a parent, subsidiary, affiliate entity or newly created entity resulting from a merger, acquisition (regardless of whether in a stock or asset transaction) or other corporate restructure or reorganization of GRANTEE, or to any entity owned or controlled, or under common control, directly or indirectly by GRANTEE, without the written consent of the non-assigning Parties. The GRANTEE may also have the right to assign this Agreement to any other party that acquires the Project, subject to GRANTOR's prior written consent which shall be evidenced by a duly authorized ordinance, which consent will not be unreasonably withheld, conditioned or delayed. In either of such cases, GRANTEE shall give GRANTOR no less than SIXTY (60) days prior written notice of the assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of GRANTOR; if required, shall release GRANTOR from performing any of the terms, covenants and conditions herein and may subject GRANTEE to the Termination and Recapture of grant funds in accordance with Section 15 of this Agreement. Any assignment of this Agreement in violation of this Section shall enable GRANTOR to terminate this Agreement and exercise its rights under this Agreement.

SECTION 22. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 22. RESERVED

SECTION 23. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or upon actual receipt if by such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO GRANTOR:

(Whether personally delivered or mailed):

City of San Antonio

Attn: Economic Development
P.O. Box 839966
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

Economic Development

Attn: Director
19th Floor
100 Houston St.
San Antonio, Texas 78205

TO GRANTEE:

- If mailed:

NBTY MANUFACTURING TEXAS, LLC
Attn: General Counsel
2100 Smithtown Avenue
Ronkonkoma, New York 11779

COPIES TO:

NBTY MANUFACTURING TEXAS, LLC
Attn: Nancy G. Shores, Esq.
90 Orville Drive
Bohemia, New York 11716

COPIES TO:

City Attorney
3rd Floor – City Hall
San Antonio, TX 78205

COX SMITH, Inc.
Attn: Jeffrey Bizon, Esq.
112 E. Pecan Street, Suite 1800
San Antonio, Texas 78205

SECTION 24. INCORPORATION OF EXHIBITS

Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A – Acknowledgment of Purchase

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of April 25, **2012 (the "EFFECTIVE DATE"):**

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number 2012-04-12-0267 and GRANTEE pursuant to its authority.

GRANTOR:
CITY OF SAN ANTONIO,

a Texas Municipal Corporation

For
Sheryl L. Sculley
CITY MANAGER

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

Michael D. Bernard
CITY ATTORNEY

GRANTEE:
NBTY MANUFACTURING TEXAS, L.L.C.

a limited liability company

Name: Hans Lindgren
Title: Vice President + Secretary

ATTEST:

Name: Nancy Shores
Title: Director of Real Estate - General Counsel

OFFICIALLY POSTED ON THE WEB:
4/5/2012 3:47 PM

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
2012 APR -5 PM 3:56

AGENDA
City Council Meeting
Municipal Plaza Building
City Hall Complex
114 W. Commerce
San Antonio, TX 78205
April 12, 2012
9:00 A.M.

The City Council shall hold its regular meetings in the Norma S. Rodriguez Council Chamber in the Municipal Plaza Building within the City Hall Complex beginning at 9:00 a.m. After the meeting is convened, the City Council shall consider the following time certain items no sooner than the designated times, but may consider them at a later time.

9:00AM: Invocation and Approval of Minutes
12:00PM: Lunch Break
6:00PM: Adjourn

At any time during the meeting, the City Council may meet in executive session for consultation concerning attorney-client matters under Chapter 551 of the Texas Government Code.

Citizens may appear before the City Council to speak for or against any item on this agenda, in accordance with procedural rules governing City Council meetings. Questions relating to these rules may be directed to the Office of the City Clerk at (210) 207-7253.

DISABILITY ACCESS STATEMENT

This meeting site is wheelchair accessible. The accessible entrance is located at the Municipal Plaza Building / Main Plaza entrance. Accessible visitor parking spaces are located at City Hall, 100 Military Plaza, north side. Auxiliary aids and services, including Deaf interpreters, must be requested forty-eight [48] hours prior to the meeting. For assistance, call (210) 207-7245 or 711 (Texas Relay Services for the Deaf).

For additional information on any item on this agenda, please visit www.sanantonio.gov or call 207-7080.

City Code Amendments

7. An Ordinance amending the Traffic Control Devices Schedules for the City of San Antonio, established in Chapter 19, Section 68 of the City Code, to include new traffic control devices and delete previous entries from the schedules that are in conflict with current traffic code regulations; providing for criminal and civil penalties for violations; and add Schedule M(h) and Schedule M(i) to allow for the inclusion and regulation of School Speed Zones that extend past 4:00 p.m. [Ed Belmares, Assistant City Manager; Majed A. Al-Ghafry, Director, Public Works]

Boards, Commissions and Committee Appointments

8. Consideration of the appointments of H. Norman Abramson, Aviation Industry; Mark R. Fessler, Business Community; W.L. Walker, Jr., Community; George D. Alva, Taxi Industry; and reappointments of James D. Quinn, Business Community; Leslie A. Hobgood and Kyle M. Tate, Community; Earl Jackson, Jr., Federal Aviation Administration; and Marco A. Barros, Travel and Tourism, to the Airport Advisory Commission for the remainder of unexpired terms of office to expire March 18, 2014, to be effective immediately upon the receipt of eight affirmative votes, or, in the event eight affirmative votes are not received, ten days after appointment. [Leticia M. Vacek, City Clerk]

Miscellaneous

9. An Ordinance authorizing a Chapter 380 Economic Development Program Grant Agreement between the City of San Antonio and NBTY Manufacturing Texas L.L.C. to provide financial incentives in an amount not to exceed $401,546 over 10 years based on NBTY's commitment to create 65 new jobs and invest approximately $6 million at 4266 Dividend located in Council District 2. [Pat DiGiovanni, Deputy City Manager; Rene Dominguez, Director, Economic Development]

10. An Ordinance authorizing the San Antonio Metropolitan Health District to execute media purchases for advertising with Clear Channel Outdoor for an amount not to exceed $78,450.00 for a period beginning May 1, 2012 through August 31, 2012. [Erik J. Walsh, Deputy City Manager; Dr. Thomas L. Schlenker, Director, Health]

11. An Ordinance authorizing a License Agreement with Tulsa Pro Arena Football LLC, new owners of the San Antonio Talons Arena Football League (AFL) team, to host its home football games at the Alamodome beginning in 2012, for an initial term of two years, with a one-year renewal option. [Pat DiGiovanni, Deputy City Manager; Michael J. Sawaya, Director, Convention, Sports, and Entertainment Facilities]

12. Consideration of the following Ordinances related to agreements with San Antonio Sports for the expenditure of up to a cumulative amount of $99,899.00 for the SPARK School Park

EXHIBIT A: ACKNOWLEDGEMENT OF PURCHASE

In order to provide evidence that GRANTEE has acquired the Property, GRANTEE will provide a copy of the Deed for same to GRANTOR within thirty (30) days of the date GRANTEE acquires the Property.