

AN ORDINANCE APPROVING THE ASSIGNMENT AND FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT TO PROMOTE ECONOMIC DEVELOPMENT ACTIVITIES AND THE SECOND AMENDED TO OPTION AGREEMENT, BOTH BEING BY AND BETWEEN EXERGONIX, INC., WESTCOTT INVESTMENT GROUP, LLC., AND THE CITY OF LEE'S SUMMIT AND PERTAINING TO THE SAME SUBJECT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME BY AND ON BEHALF OF THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, on September 2, 2011 the Council of the City of Lee's Summit authorized the execution of a Development Agreement to Promote Economic Activities with Exergonix, Inc.; and,

WHEREAS, as a part of that agreement, the City agreed to transfer certain property to Exergonix, Inc., and was granted a right and option to purchase the property in the event of non-occurrence of events or non-performance; and,

WHEREAS, the time for performance by Exergonix will expire in September 2016 and the City may exercise its option; and,

WHEREAS, Westcott Investment Group, LLC., wishes to acquire the rights of Exergonix; and,

WHEREAS, pursuant to the terms of the agreement, in order for the rights to be transferred to Exergonix, the City must consent to the transfer; and,

WHEREAS, the City Council of the City of Lee's Summit wishes to authorize the assignment of said rights from Exergonix, Inc., to Westcott Investment Group, LLC., and make certain other changes to the development agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

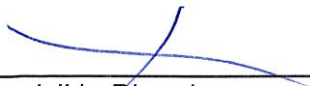
SECTION 1. That the ASSIGNMENT AND FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT TO PROMOTE ECONOMIC DEVELOPMENT ACTIVITIES by and between Exergonix, Inc., Westcott Investment Group, LLC., and the City of Lee's Summit, Missouri, a true and accurate copy being attached hereto as exhibit "A" be and the same is hereby approved.

SECTION 2. That the SECOND AMENDMENT TO OPTION AGREEMENT by and between Exergonix, Inc., Westcott Investment Group, LLC., and the City of Lee's Summit, Missouri, a true and accurate copy being attached hereto as exhibit "B" be and the same is hereby approved.

SECTION 3. That the City Manager is hereby authorized and directed to execute said agreement referenced herein above by and on behalf of the City of Lee's Summit, Missouri.

SECTION 4. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this 19th day of May, 2016.




Mayor *Randall L. Rhoads*

ATTEST:

Deputy City Clerk *Trisha Fowler*

APPROVED by the Mayor of said city this _____ day of _____, 2016.



Mayor *Randall L. Rhoads*

ATTEST:

Deputy City Clerk *Trisha Fowler*

APPROVED AS TO FORM:



City Attorney *Brian W. Head*

*VETO
Randall L. Rhoads
5/25/2016*

Development Agreement Comparison

Exergonix Agreement 2011	Westcott Agreement 4/14/16	Westcott Agreement 5/19/16
PMIX zoning & land uses 150 Quality Jobs (County Avg. Wage & 50% Health Care premium covered by employer)	PMIX zoning & land uses 500,000 square feet of leasable space (200K s.f. on or before 8/15/19 and additional 300K s.f. on or before 12/1/22)	PMIX zoning & land uses 500,000 square feet of leasable space (200K s.f. on or before 8/15/19 and additional 300K s.f. on or before 12/1/22). Completion bond in favor of City for 200,000 s.f. building(s) - minimum amount of \$5M with actual bond amount TBD based upon PMIX process. Completion bond in favor of City for all on-site and off-site public infrastructure (estimate \$2-3M).
\$50 Million Qualified Investment (improvements)	Design standards for development	Design standards for development
60% of total square footage = Green Technology Use / UCM Facility	Reasonable efforts to develop in a way to attract Quality Jobs	Reasonable efforts to develop in a way to attract Quality Jobs
40% may be permitted uses as defined in agreement	Right of way contribution for interchange	Right of way contribution for interchange
5 year timeframe (9/1/2016)		Financially backed guarantee for the construction of all on-site and off-site infrastructure necessary to support development of the property
City Investment in Corridor Area \$1.4 M "Pfizer Property" purchase \$8M for M-291 / US 50 Hwy Interchange \$8.389M - Bailey Road Bridge \$17.789 M Total investment in area		Participation in a confidential independent financial review of Westcott to confirm fiscal strength and capability to successfully develop property Dedication of 2 acre +/- site for a Fire/EMS station at no cost to City

Westcott Financial Commitment (data provided by Westcott)

Predevelopment costs: \$750,000
Local Office & Employees: \$250,000 (annual)
Building Completion Bond: \$5M minimum
Public Infrastructure Bond: \$2 - 3M
MoDOT ROW donation: \$500,000
Fire Station property donation: \$200,000
\$9,700,000 (does not include value of 1M s.f. of development)

RECORDER'S CERTIFICATION
JACKSON COUNTY, MISSOURI
03/25/2015 02:53:42 PM
INSTRUMENT TYPE: ORDI FEE: \$162.00 49 PGS
NON-STANDARD FEE: EXEMPT



INSTRUMENT NUMBER / BOOK & PAGE

2015E0024736

Robert T. Kelly, Director, Recorder Of Deeds

**Jackson County
Recorder of Deeds
Exempt Document**

This document has been recorded under exempt status
pursuant to RSMo 59.310.4.

This certificate has been added to your document
in compliance with the laws of the
State of Missouri.



Robert T. Kelly, Recorder of Deeds

415 E. 12th Street, Room 104
Kansas City, MO 64106

112 W. Lexington, Suite 30
Independence, MO 64050

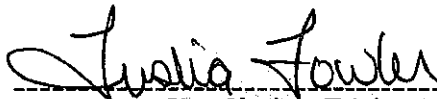
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STATE OF MISSOURI}
COUNTY OF JACKSON}

{SS.

This is to certify that the attached ORDINANCE NO. 7086- AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT TO PROMOTE ECONOMIC DEVELOPMENT ACTIVITIES BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND EXERGONIX, INC., is a full, true and complete copy of same as recorded in the office of the City Clerk for the City of Lee's Summit, Missouri.

IN WITNESS WHEREOF, I hereunto set my hand, and affix the seal of said City of Lee's Summit, Missouri, this 25th day of March, 2015.



Deputy City Clerk - *Trisha Fowler*

AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT TO PROMOTE ECONOMIC DEVELOPMENT ACTIVITIES BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND EXERGOX, INC.

WHEREAS, the City Council of the City of Lee's Summit has determined that assisting in the acquisition and redevelopment of certain real property located within the City at the intersection of U.S. Highway 50 and Missouri Highway 291 (the "Property") will serve public purposes because the acquisition and redevelopment of the Property will, without limitation, (i) result in the creation of new jobs (including desirable new green technology jobs within the City), (ii) promote economic development in the City, (iii) remediate an area of the City that has been previously declared blighted by the City Council of the City, (iv) result in generation of additional tax revenues to the City from the conduct of business and other activities in the City that would not otherwise occur, (v) serve as a catalyst for additional investment in and further redevelopment and rehabilitation of the portion of the City in which the Property is located, and (vi) further the City's policy of encouraging economic stability and growth, and therefore the City desires to encourage Exergonix, Inc. to carry out the acquisition and redevelopment of the Property; and,

WHEREAS, the City and Exergonix, Inc. desire to enter into a DEVELOPMENT AGREEMENT TO PROMOTE ECONOMIC DEVELOPMENT ACTIVITIES to facilitate the redevelopment of the Property and advance the public purposes set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, AS FOLLOWS:

SECTION 1. That the City Council of the City hereby finds that entering into the DEVELOPMENT AGREEMENT TO PROMOTE ECONOMIC DEVELOPMENT ACTIVITIES ("Agreement") will assist in the redevelopment of the Property and will serve public purposes because the redevelopment of the Property will, without limitation, (i) result in the creation of new jobs (including desirable new green technology jobs within the City), (ii) promote economic development in the City, (iii) remediate an area of the City that has been previously declared blighted by the City Council of the City, (iv) result in generation of additional tax revenues to the City from the conduct of business and other activities in the City that would not otherwise occur, (v) serve as a catalyst for additional investment in and further redevelopment and rehabilitation of the portion of the City in which the Property is located, and (vi) further the City's policy of encouraging economic stability and growth.

SECTION 2. That the Agreement, in substantially the form attached hereto, is approved, and the Mayor is authorized to execute the Agreement on behalf of the City.

SECTION 3. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council for the City of Lee's Summit, Missouri, this 4th day of August, 2011.

Randall L. Rhoads
Mayor Randall L. Rhoads

ATTEST:

Judith Whitehead, Deputy City Clerk
for City Clerk Denise R. Chisum

APPROVED by the Mayor of said city this 8th day of August, 2011.

Randall L. Rhoads
Mayor Randall L. Rhoads

ATTEST:

Judith Whitehead, Deputy City Clerk
for City Clerk Denise R. Chisum

APPROVED AS TO FORM:

John L. Mautino
Deputy City Attorney John L. Mautino

PRESENTED TO THE MAYOR ON THE 5th DAY OF August, 2011.
SIGNATURE REQUIRED BY THE 15th DAY OF August, 2011.

Development Agreement

Dated September 2, 2011

By and Between:

**City of Lee's Summit, Missouri (Grantee)
And
Exergonix, Inc. (Grantor)**

**Mailing Address of Grantee:
The City of Lee's Summit
City Hall
220 SW Green Street
Lee's Summit, MO 64063**

**Mailing Address of Grantor:
Exergonix, Inc.
Attention: Don Nissanka, President/CEO
4201 NE Lakewood Way
Lee's Summit, Missouri 64064**

**Legal Descriptions of Property on pages 21-22
of the Development Agreement**

**DEVELOPMENT AGREEMENT
TO PROMOTE ECONOMIC DEVELOPMENT ACTIVITIES**

THIS DEVELOPMENT AGREEMENT TO PROMOTE ECONOMIC ACTIVITIES (this "Agreement") is made and entered into on September 2, 2011 (the "Effective Date"), by and between the **CITY OF LEE'S SUMMIT, MISSOURI**, a Missouri constitutional charter city and political subdivision (the "City"), and **EXERGONIX, INC.**, a Missouri corporation ("Exergonix").

Recitals.

A. The City Council of the City has determined that assisting in the acquisition and redevelopment of certain real property located within the City at the intersection of U.S. Highway 50 and Missouri Highway 291, and described on **Exhibit A** attached hereto and by this reference made a part hereof (the "Property") will serve public purposes because the acquisition and redevelopment of the Property will, without limitation, (i) result in the creation of new jobs (including desirable new green technology jobs within the City), (ii) promote economic development in the City, (iii) remediate an area of the City that has been previously declared blighted by the City Council of the City, (iv) result in generation of additional tax revenues to the City from the conduct of business and other activities in the City that would not otherwise occur, (v) serve as a catalyst for additional investment in and further redevelopment and rehabilitation of the portion of the City in which the Property is located, and (vi) further the City's policy of encouraging economic stability and growth, and therefore the City desires to encourage Exergonix to carry out the acquisition and redevelopment of the Property.

B. The City and Exergonix previously entered into an Option Agreement, dated June 15, 2011 (the "Original Option Agreement"), pursuant to authorization given by the City Council of the City on June 2, 2011. Pursuant to the Original Option Agreement, Exergonix granted to the City a right and option to purchase the Property (the "Original Option").

C. Exergonix acquired the Property on June 15, 2011, subject to the City's right to purchase the Property as set forth in the Original Option Agreement. The Original Option Agreement contemplated the execution of this Agreement.

D. In accordance with the terms and conditions set forth herein, Exergonix proposes to construct and develop a campus on the Property consisting in major part of: (i) innovative, green, high tech manufacturing, sales, and distribution facilities, (ii) facilities for the University of Central Missouri's Lee's Summit Campus, (iii) compatible commercial and office users; and (iv) limited retail to support the campus activities (the "Project"), as more fully set forth herein.

E. In order to further the public purposes of economic development, job creation and blight clearance, and the other public purposes considered by the City Council in determining to proceed as provided herein, the City desires to enter into this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

{32210 / 65771; 357755.5}

ARTICLE I - DEFINITIONS

1.1 Definitions. All capitalized words shall have the meanings ascribed to them in this Section unless the context in which such words and terms are used clearly requires otherwise or unless defined elsewhere in this Agreement.

(a) "Affiliate", any person, entity or group of persons or entities in which any owner or member of Exergonix owns or controls five percent (5%) or more of the ownership interests. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

(b) "Amended Option," the Original Option, as amended as provided herein. The Amended Option is also sometime referred to as the "Option".

(c) "City," the City of Lee's Summit, Missouri.

(d) "City Manager," the city manager of the City.

(e) "City Council," the governing body of the City.

(f) "Finance Director," the finance director of the City.

(g) "Green Technology Use(s)," permanent uses including but not limited to: (i) uses connected or related to the design, development, manufacturing, sales or distribution of green or renewable energy products or technologies; (ii) uses connected or related to the theoretical or practical application of environmental science and green chemistry; (iii) uses connected or related to conservation of the natural environment and resources to curb the negative impacts of human involvement. Certain uses have been pre-approved by the City Council as qualifying Green Technology Uses and are set forth on Exhibit C hereto and incorporated by reference herein.

(h) "Hard Costs," the costs paid or incurred by Exergonix: (i) to a contractor or material supplier for labor, material and equipment, excluding all soft costs (soft costs include but are not limited to, architectural and engineering costs, legal fees, permitting costs and fees, financing fees, construction interest and operating expenses, leasing and real estate commissions, advertising and promotion, and supervision) used for the construction of Green Technology Uses; (ii) to acquire furniture, fixtures and equipment utilized in Green Technology Uses; and (iii) for construction of infrastructure improvements within and adjacent to the Property necessary for the operation of the Project. No amounts paid to an Affiliate shall be considered Hard Costs.

(i) "Land Use Approvals," those approvals required pursuant to the City's zoning and subdivision regulations which are required for the construction of the Project.

(j) "Legal Requirements," any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or

decision of or agreement with or by any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence and specifically including but not limited to all ordinances, rules and regulations of the City of Lee's Summit, Missouri, such as zoning ordinances, subdivision ordinances, building codes, property maintenance codes, and City's Design and Construction Manual (Ordinance No. 3719).

(k) "Net New Job," a job created by an employer that represents an increase in the number of jobs of such employer within the State of Missouri over the number of jobs of such employer prior to the creation of such job. For purposes of this Agreement, no job transferred from another location in the State of Missouri to a location on the Property shall constitute a Net New Job.

(l) "Qualified Appraiser," an appraiser who is independent, licensed and a member of the American Institute of Real Estate Appraisers or its successor, with at least ten (10) years experience appraising commercial properties in the Kansas City metropolitan area.

(m) "Qualified Investment," the direct costs actually paid to a contractor, architect, engineer or material supplier for the design, development of or for labor, material and equipment used in the construction of the Green Technology Use component of the Project, including costs for fixtures, furniture and equipment utilized in Green Technology Uses. No soft costs, other than architectural and engineering costs, including but not limited to legal fees, permitting costs and fees, financing fees, construction interest and operating expenses, leasing and real estate commissions, advertising and promotion, and supervision, shall be included in determining Qualified Investment. All Hard Costs are considered as Qualified Investment.

(n) "Qualifying Job," with respect to each employer that creates any Net New Jobs on the Property during the period commencing on the Effective Date and ending on the Completion Date, each Net New Job created by such employer that meets the following requirements:

(i) The average wages (exclusive of benefits and deferred compensation) paid by such employer for such Net New Jobs must be equal to the lesser of (1) the Jackson County average annual wage then in effect under the Missouri Quality Jobs program as of the date an employee begins receiving wages, or (2) the average Missouri statewide annual wage then in effect under the Missouri Quality Jobs program as of the date an employee begins receiving wages;

(ii) The terms of such Net New Jobs shall include an offer of health insurance from the employer and payment by the employer of at least fifty percent (50%) of the health insurance premium for such employee;

(iii) Such Net New Jobs shall be offered by an employer that is in an industry that has an NAICS code that is eligible for participation in the Missouri Quality Jobs program;

(iv) Such Net New Jobs shall otherwise meet all requirements for each Net New Job to be eligible for benefits under the Missouri Quality Jobs program; and

(v) Such Net New Jobs shall exist for a minimum of six (6) months.

No jobs created for the construction of any portion of the Project (even if for the construction of facilities for Green Technology Use) shall be considered a Qualifying Job.

(o) "Sales Proceeds," the net sales proceeds due and owing to Exergonix from the sale of any portion of the Property to an Approved Transferee derived from subtracting reasonable and standard closing costs actually paid by Exergonix from the gross sales price.

1.2 Other Defined Terms. The following terms are defined in the Sections of this Agreement indicated below:

<u>Term</u>	<u>Article/Recital/Section</u>
"60% Green Requirement"	Article VIII, ¶ 8.2
"Action"	Article VII, ¶ 7.3(b)
"Amended Option Agreement"	Article III, ¶ 3.1
"Approved Transferee"	Article VI, ¶ 6.1
"Chapter 100"	Article II, ¶ 2.4
"City Notice"	Article II, ¶ 2.6(c)
"Completion Date"	Article II, ¶ 2.1(a)(i)
"Escrow Rights"	Article IV, ¶ 4.1
"Escrowed Sales Funds"	Article IV, ¶ 4.1
"Exergonix Parcel"	Article II, ¶ 2.4
"Indemnified Parties/Party"	Article IX, ¶ 9.3(a)
"Interest Rate"	Article V, ¶ 5.4
"Investment Report"	Article II, ¶ 2.6
"Jobs Report"	Article II, ¶ 2.6
"Minimum Investment"	Article II, ¶ 2.1(a)(i)
"Minimum Jobs"	Article II, ¶ 2.1(a)(ii)

"MMD"	Article V, ¶ 5.4
"Option"	Article I, ¶ 1.1(b) and Article III, ¶3.1
"Option Agreement"	Article III, ¶ 3.1
"Option Termination"	Article III, ¶ 3.2(a)
"Percentage Payment"	Article V, ¶ 5.3
"PILOT Agreement"	Article II, ¶ 2.5(b)
"PILOT Notice"	Article II, ¶ 2.5(a)
"PILOT Payment Lien"	Article II, ¶ 2.5
"PILOT Payment Term"	Article II, ¶ 2.5
"PILOT Payment"	Article II, ¶ 2.5
"Project"	Recital D
"Property Permitted Uses"	Article VIII, ¶ 8.1
"Property"	Recital A
"Retail Use Area"	Article VIII, ¶ 8.2
"Retail User"	Article VIII, ¶ 8.2
"Original Option Agreement"	Recital B
"Original Option"	Recital B
"Term"	Article II, ¶ 2.2
"Termination Notice"	Article II, ¶ 2.6
"UCM Facility"	Article IV, ¶ 4.2(a)(iii)
"UCM"	Article IV, ¶ 4.2(a)(iii)

ARTICLE II - DEVELOPMENT OF PROJECT

2.1 The Project. Exergonix hereby agrees to develop and construct or cause the development and construction of the Project subject to the terms and conditions hereinafter provided. The performance of all activities by Exergonix hereunder shall be as an independent contractor and not as an agent of the City, except as otherwise specifically provided herein.

(a) Required Components of the Project. In order to satisfy its obligations to construct the Project, Exergonix must, at a minimum, achieve the following minimum investment and job creation objectives on the Property:

(i) Minimum Development and Investment. Exergonix agrees to invest or cause to be invested, a minimum Qualified Investment of \$50 million (the "Minimum Investment") on or before September 1, 2016 (the "Completion Date").

(ii) Minimum Job Creation. Exergonix agrees to create, or to cause to be created, 150 Qualifying Jobs to be performed at the Property for Green Technology Uses (the "Minimum Jobs") on or before the Completion Date.

2.2 Term. This Agreement is effective as of the Effective Date and shall continue until the earlier to occur of (i) the date the Amended Option is exercised by the City, or (ii) the date of the issuance by the City of the Termination Notice, as described in Section 2.6 (the "Term").

2.3 Restrictions on Encumbrances. Prior to the release of the Option, Exergonix shall not create or incur or permit to be created or incurred or to exist any mortgage, lien, security interest, charge or encumbrance upon the Property, or any part thereof, except as otherwise set forth herein. Notice is hereby given that any lien granted during the Term upon any portion of the Property that has not been released from the Option shall be subject and subordinate to all rights, titles and interests created pursuant to the Option, and no such lien shall encumber or affect the interest of any purchaser of the Property or any part thereof pursuant to the Option or any successor or assign of any purchaser of the Property or any part thereof pursuant to the Option. This restriction will terminate upon release of the Option by the City.

2.4 Chapter 100 Application. It is anticipated that Exergonix will submit, solely with respect to the portion of the Property to be developed by Exergonix for its use as a facility for research activities related to, and the development and manufacturing of advanced technology batteries (the "Exergonix Parcel"), an application for a Chapter 100 Industrial Development Plan as set forth in Chapter 100, Missouri Revised Statutes ("Chapter 100"). Unless the Chapter 100 is approved by the City Council in its sole legislative discretion, with respect to the Exergonix Parcel, the Exergonix Parcel will remain subject to ad valorem real property taxes.

2.5 Payment of Property Taxes and PILOTS. Except as provided in Section 2.4 above for the Exergonix Parcel, Exergonix agrees, for itself and its successors and assigns, that all of the Property will remain subject to ad valorem real property taxes during the Term and for a period of ten (10) years following the end of the Term (the "PILOT Payment Term"). Exergonix, and any Approved Transferee, whether or not such Approved Transferee is exempt from the payment of ad valorem real property tax shall, during the PILOT Payment Term pay or cause to be paid, as they become due and payable, all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Property or any part thereof. If, because any Approved Transferee is an entity that is not obligated to pay ad valorem real estate taxes upon real property it owns by reason of any exemption or abatement provided by statute or constitutional provision (federal or state), (i) ad valorem property taxes (A) are not levied, assessed or imposed upon the Property or any part thereof, or (B) are levied or imposed at any rate less than the full levy rate applicable to real property not classified as "Agricultural and Horticultural property" or "Residential property" under Missouri law; or (ii) after the Project or portions thereof are built, the developed portions of the Property are assessed in any manner that results in the ad valorem real property taxes being less than the taxes that would otherwise be paid if the Property was subject to full assessment as real property not classified as "Agricultural and Horticultural property" or "Residential property" under Missouri law, Exergonix will make, or will cause any Approved Transferee to make, payments in lieu of taxes during the PILOT Payment Term in amounts equal to the taxes, assessments and other governmental charges that

{32210 / 63771; 357755.5}

would be lawfully levied or assessed or imposed upon the Property or any part thereof in the absence of any tax exemption or abatement (the "PILOT Payment"). The PILOT Payment shall be due and payable not later than December 31 of the year for which such PILOT Payment is due and payable. Exergonix hereby grants to City a lien (the "PILOT Payment Lien") upon the Property or portion thereof for which a PILOT Payment is due to secure the payment of the PILOT Payment in accordance with the terms hereof. The PILOT Payment Lien shall be prior to all other rights hereafter granted or interests granted or created by Exergonix after the Effective Date.

(a) Determination of PILOT Payment. The City, acting through its Finance Director or such other person (including a Qualified Appraiser) as the Finance Director shall designate, will determine the amount of the PILOT Payment and will notify Exergonix or the Approved Transferee of the amount of the PILOT Payment, together with the methodology used to determine such amount (the "PILOT Notice"). If Exergonix or the Approved Transferee does not agree with the PILOT Payment amount submitted by the City in the PILOT Notice, then Exergonix or the Approved Transferee shall notify the City in writing within ten (10) days of delivery of the PILOT Notice. Exergonix or the Approved Transferee shall then retain a Qualified Appraiser who will make an independent determination of the appropriate PILOT Payment and shall submit the same to the City within forty-five (45) days of the PILOT Notice, including the methodology used. If the Qualified Appraiser and the City cannot mutually agree upon the appropriate PILOT Payment within ten (10) days of the delivery of the Exergonix or the Approved Transferee information, the City and the Qualified Appraiser shall promptly jointly select a different Qualified Appraiser (the "Final Appraiser"). Within twenty (20) days after his appointment, the Final Appraiser shall select one of the two initially submitted amounts as the appropriate PILOT Payment, and such selection shall be binding upon the parties. The fee of the selected Qualified Appraiser shall be paid by the party whose determination of the PILOT Payment was not selected.

(b) Pilot Agreement. In order to memorialize the PILOT Payment requirement and the PILOT Payment Lien, Exergonix, with respect to the Exergonix Parcel, and all Approved Transferees with respect to the portion of the Property sold or transferred shall enter into and execute a PILOT Agreement in a form substantially similar to that attached hereto as **Exhibit B** which will be recorded against the portion of the Property to be acquired by the Approved Transferee (all such agreements are collectively referred to herein as the "PILOT Agreement"). The PILOT Agreement will (i) create a lien upon the portion of the Property owned by Exergonix or the Approved Transferee, (ii) contain a notice that the portion of the Property owned by Exergonix or the Approved Transferee will be liable for any PILOT Payment due and owing on such property and is subject to a PILOT Payment Lien for a period of ten (10) years following the end of the Term, (iii) include all of the provisions set forth in this **Section 2.5**, including without limitation the procedure for determining the amount of the PILOT Payment as set forth in **Section 2.5(a)** hereof, and (iv) provide for foreclosure of the lien granted in the event that any PILOT Payment then due and owing is not paid by December 31 of the year for which such PILOT Payment is due and payable.

2.6 Reporting Requirements.

{32210/65771; 357755.5}

(a) Minimum Jobs. Semi-annually commencing on the anniversary of the Effective Date, and again upon the achievement of the Minimum Jobs requirement, Exergonix shall submit to City a report (the "Jobs Report") certifying (i) the total number of Qualifying Jobs created on the Property during the Term, (ii) evidence of the wages paid with respect to the new Qualifying Jobs created within the most recent six (6) month period, and (iii) such other evidence as the City requires in order to confirm creation of the Qualifying Jobs as required under this Agreement. In order for a new job to be counted toward the Minimum Jobs requirement, Exergonix must provide evidence that the job existed for at least six (6) months; provided, however, that if any new job that Exergonix contends is to be counted toward the Minimum Jobs requirement is created less than six (6) months prior to the Completion Date, the parties shall wait a full six (6) months from the date of creation to determine if such job still exists. If after the passage of such 6-month period the job still exists and otherwise continues to meet the requirements to be counted toward the Minimum Jobs requirement, it will count toward the Minimum Jobs requirement as of the Completion Date. After receipt of each Jobs Report, the City will conduct such investigation as it deems necessary and review the materials provided by Exergonix and will provide a response to Exergonix indicating if the City concurs with Exergonix that the information provided is sufficient to determine that the jobs created through such date are Qualifying Jobs. The obligation to provide the Job Report shall terminate six (6) months after the City has completed its investigation and determined, as provided herein, that Minimum Jobs requirement has been satisfied.

(b) Minimum Investment. Within 60 days after any Qualified Investment is made and again upon achievement of the Minimum Investment, Exergonix shall submit to City a report (the "Investment Report") certifying the Qualified Investment incurred for the construction of facilities on the Property that are utilized for Green Technology Uses. The Investment Report shall include copies of paid invoices, cancelled checks, receipts and such other supporting documentation as the City shall reasonably require in order to confirm the total Qualified Investment. After receipt of each Investment Report, the City will conduct such investigation as it deems necessary and review the materials provided by Exergonix and will provide a response to Exergonix indicating if the City concurs with Exergonix that the information provided is sufficient to determine that the investment made through such date qualifies as a Qualified Investment. The obligation to provide the Investment Report shall terminate after the City has completed its investigation and determined, as provided herein, that Minimum Investment requirement has been satisfied.

(c) Final Completion Report and Termination of Agreement. After receipt of the final Jobs Report and final Investment Report whereby Exergonix certifies that it has achieved the Minimum Jobs and Minimum Investment, the City will conduct such investigation as it deems necessary, review the materials provided by Exergonix and notify Exergonix within thirty (30) days of submittal of the final reports if the City requires further information or materials to make its determination whether Exergonix has achieved the Minimum Jobs and Minimum Investment. When the City determines it has received all information and materials necessary to complete its review of the Jobs Report and Investment Report, City will deliver its written notice (the "City Notice") to Exergonix. City will, within sixty (60) days of the delivery of the City Notice, complete

its investigation and its review of the materials provided by Exergonix as required by **Sections 2.6(a) and 2.6(b)** above. If the City determines that the Minimum Investment and Minimum Jobs have been achieved on or prior to the Completion Date, and that as of the date of the request, Exergonix has complied with and performed all of its covenants and agreements set forth in this Agreement, then the City will execute a notice, in recordable form, of satisfaction of the Minimum Investment and Minimum Jobs requirements, a notice of termination of this Agreement (the "Termination Notice"). If the City determines that the Minimum Investment or Minimum Jobs has not been achieved as required by this Agreement, or that Exergonix is not otherwise in compliance with this Agreement or has not performed all of its covenants and agreements set forth herein, then the City shall not issue the Termination Notice and shall specify in writing the reason or reasons for withholding its certification. Upon the request of Exergonix, the City Council shall hold a hearing at which Exergonix may present its evidence directly to the City Council for approval.

ARTICLE III - OPTION TO PURCHASE

3.1 Option. The City and Exergonix hereby agree that the Original Option Agreement will, concurrently with the execution of this Agreement, be amended in substantially the form attached hereto as **Exhibit B** (the Original Option Agreement, as amended, is referred to herein as the "Amended Option Agreement" or the "Option Agreement," and the "Original Option", as amended pursuant to the Option Agreement, is referred to herein as the "Option"). Without limiting any other term or provision set forth in the Option Agreement, the Option may be exercised in the following circumstances:

(a) If Exergonix fails to achieve the Minimum Investment on or before the Completion Date, then, in addition to and not in limitation of City's other rights and remedies contained herein, or at law or in equity, the City may, as to that portion of the Property which is still subject to the Option, exercise the Option on or within ten (10) years after the Completion Date; and

(b) If Exergonix fails to achieve the creation of the Minimum Jobs on or before the Completion Date, then, in addition to and not in limitation of the City's other rights and remedies contained herein or at law or in equity, the City may, as to that portion of the Property which is still subject to the Option, exercise the Option on or within ten (10) years after the Completion Date.

3.2 Release of Option.

(a) If on or before the Completion Date Exergonix has achieved or caused the achievement of the Minimum Jobs and the Minimum Investment and City has confirmed such achievement and issued the Termination Notice as described in **Section 2.6**, then the City will execute a notice, in recordable form, releasing the Option as to all of the Property then remaining subject to the Option ("Option Termination").

(b) If on or before the Completion Date Exergonix sells a portion of the Property to an Approved Transferee (as defined herein), and all of the requirements set

forth in Article VI hereof have been met and satisfied, then the City will release the Option as to the affected portion of the Property.

ARTICLE IV - ESCROW ACCOUNT

4.1 Escrowed Sales Funds. Upon any approved sale or other transfer to an Approved Transferee, Exergonix will cause all Sales Proceeds to be disbursed, pursuant to a settlement statement reviewed in advance by the City, directly to the City by wire transfer; provided, however, that if the City determines that the net amount due to Exergonix, as set forth in the settlement statement, includes reductions that are not reasonable and standard closing costs actually paid by Exergonix, or that any such reductions are in violation of the terms of this Agreement, then City shall not release the Option pending resolution of such determination in a manner acceptable to City. City's right to receive and hold all Sales Proceeds collected as a result of a sale of any portion of the Property to an Approved Transferee is referred to herein as the "Escrow Rights". City will hold the Sales Proceeds and any interest earned therein in a City-owned escrow account at UMB Bank (the "Escrowed Sales Funds") for the benefit of Exergonix, subject to the terms of this Agreement under Section 4.2 below.

4.2 Use of Escrowed Sales Funds. The Escrowed Sales Funds shall be held and disbursed as follows:

(a) Prior to Completion Date.

(i) Prior to the Completion Date and subject to the City's review and approval as provided in Subsection (ii) and (iii) below, the Escrowed Sales Funds may only be used by Exergonix to directly fund Hard Costs incurred, provided that Exergonix receives no other compensation for such payment of Hard Costs from any third party, including in the form of increased rent or purchase price. If Exergonix does receive any compensation for such payment of Hard Costs from any third party, such payment must be put into the Escrowed Sales Funds.

(ii) Reimbursement From Escrowed Sales Fund. The City must approve all disbursements of the Escrowed Sales Funds. All Hard Costs for which reimbursement is requested out of the Escrowed Sales Funds must be submitted within 60 days after they are incurred. Exergonix must provide evidence of the payment of Hard Costs providing the City with the following information:

(A) Copies of paid invoices, cancelled checks, receipts and such other supporting documentation as the City shall require, all evidencing that Exergonix paid the Hard Costs;

(B) Lien waivers from applicable contractors and sub-contractors; and

(C) Such other documentation and evidence as the City may reasonably request to confirm that the Escrowed Sales Funds will be used to directly fund or reimburse Exergonix for a Hard Cost.

The City will have thirty (30) days to review each request for reimbursement of the Escrowed Sales Funds. If City, pursuant to its review of the materials submitted, determines that any portion of the request for reimbursement should not be approved, it shall promptly state the reasons for such disapproval. Exergonix will either submit additional information sufficient to respond to the City's disapproval or Exergonix may appeal any disapproval to the City Council for approval. Should City fail to approve, disapprove, or request additional information within such thirty (30) day period, the reimbursement request will be deemed approved by City.

(iii) Funding of UCM Hard Costs. The City hereby acknowledges that the University of Central Missouri ("UCM") has proposed a facility (the "UCM Facility") to be constructed upon a portion of the Property. The UCM Facility will be used as the new "Lee's Summit Campus" of UCM. Portions of the UCM Facility will be dedicated to Green Technology Uses including higher education in the theoretical and practical applications of Green Technology Uses and the promotion of internships and partnerships with Green Technology Uses located on the Property and elsewhere in the community. The City agrees and confirms that the Hard Costs for the portion of the UCM Facility dedicated to Green Technology Use, qualify as an Approved Escrow Use, subject to verification of costs by City as provided above. Exergonix must provide evidence that the Hard Costs related to the UCM Facility were expended by Exergonix with no reimbursement from UCM or any other party. City reserves the right to determine, in its sole discretion, the portion of the UCM Facility that is dedicated to Green Technology Uses and the appropriate allocation of Hard Costs incurred by Exergonix that may be paid as an approved use of Escrowed Sales Funds. All Hard Costs for the portion of the UCM Facility, dedicated to Green Technology Use shall count towards the satisfaction of the Minimum Investment.

(b) After the Completion Date.

(i) If Exergonix has achieved or caused to be achieved the Minimum Jobs and Minimum Investment by the Completion Date, and City has issued the Termination Notice, all remaining Escrowed Sales Funds will be distributed to Exergonix.

(ii) If Exergonix fails to achieve or cause to be achieved the Minimum Jobs and Minimum Investment in accordance with the terms and provisions of this Agreement by the Completion Date, all remaining Escrowed Sales Funds shall be distributed to the City as provided in Article V herein.

ARTICLE V - FAILURE TO ACHIEVE OBJECTIVES

If Exergonix fails to achieve or cause to be achieved the Minimum Jobs and Minimum Investment by the Completion Date, City shall have the following rights and remedies.

5.1 Exercise of Option. As described in the Option, City may exercise the Option upon failure by Exergonix to achieve or cause to be achieved the Minimum Jobs and Minimum Investment by the Completion Date.

5.2 Use of Escrowed Sales Funds. In addition to the right to exercise the Option, if Exergonix fails to achieve its obligations with respect to the Minimum Investment and Minimum Jobs before the Completion Date, the balance of the Escrowed Sales Funds will immediately become the property of the City and Exergonix will have no further interest, claim to or right or title in the Escrowed Sales Funds.

5.3 Percentage Payment. In addition to the City's right to exercise the Option and the ability to receive and retain the Escrowed Sales Funds, if Exergonix fails to achieve the Minimum Investment and Minimum Jobs before the Completion Date, Exergonix will pay to City an amount equal to \$1,405,280 multiplied by a fraction, the numerator of which is the amount of the Minimum Investment that Exergonix failed to invest by the Completion Date and the denominator of which is \$50,000,000, together with interest at the Interest Rate (defined herein) (such payment shall be referred to as the "Percentage Payment"). Interest on the Percentage Payment shall begin to accrue on the Effective Date of the Option Agreement and run through the date that Exergonix submits the Percentage Payment to the City.

5.4 Interest Rate. For purposes of this Article, "Interest Rate" shall mean a rate equal to the rate set forth for a five (5) year maturity in the A scale number "92" as quoted in the Municipal Market Digest of interest rates ("MMD") scale in the *Wall Street Journal*. The rate will be adjusted annually on May 1 at the then-current five (5) year rate.

5.5 Example. For purposes of example only, if it is assumed that Exergonix failed to complete the Minimum Investment and Minimum Jobs before the Completion Date, but Exergonix (i) expended \$40 Million in Qualified Investment, and (ii) sold a portion of the Property with Sales Proceeds equal to \$1,000,000 and did not utilize any of the Escrow Sales Fund to pay for Hard Costs, after the Completion Date the City can (x) exercise the Option and purchase the remaining Property subject to the Option, (y) retain the \$1,000,000 Sales Proceeds (i.e. the Escrow Sales Fund), and (z) require Exergonix to pay \$281,056 (derived by multiplying \$1,405,280 X (\$10,000,000/\$50,000)), plus interest at the Interest Rate upon such \$281,056 from the Effective Date of the Option Agreement and run through the date that Exergonix submits the Percentage Payment to the City.

ARTICLE VI - CITY APPROVAL OF TRANSFERS

6.1 City Approval of Transfer and Transferee. No sale, transfer, lease, or other conveyance of any portion of the Property may be made except with the prior written approval of City. City's right of approval of any transfer shall be in force until the recording of the Termination Notice. Without limiting the generality of the foregoing, City will require that any proposed transferee:

- (a) provide a detailed financing plan (reasonably acceptable to the City) detailing all sources and uses (including a listing of costs with reasonable specificity) necessary to develop the proposed project, and proof to the City's satisfaction that all necessary debt and equity is committed and available to develop the proposed project;

(32210 / 65771; 357755.3)

(b) provide proof that such proposed transferee is an unrelated third party and that the terms of the transaction between the proposed transferee and Exergonix are arms length and at market price;

(c) provide evidence of submission for approval by the City of all zoning, platting, and land use matters and plans required by law, including the City's Unified Development Ordinance, for the development of that portion of the Property that is proposed to be transferred to the proposed transferee;

(d) provide for the City's reasonable approval (i) the schematic design drawings, (ii) the design development drawings; and (iii) the architectural design materials including the quality and types of exterior finish for the proposed project. City shall have twenty-one (21) days from submittal to issue its approval, or in the case approval is not given, the detailed reasons in writing for not granting approval;

(e) provide a detailed description of how the proposed transferee intends to use the development for Green Technology Uses;

(f) has received approval by City or in City's sole determination is reasonably likely to receive approval of all required Land Use Approvals for the proposed project; and

(g) execute the PILOT Agreement.

City may require that any transferee demonstrate to City's reasonable satisfaction that it has sufficient financial, management, property ownership and operation capabilities, and that it is interested in the long-term viability of the Project. The City will provide notice to Exergonix and the proposed transferee when the City has received all the required information for the City's review. Once the City has received all the required information from the proposed transferee, City shall exercise its right to approve or deny any proposed sale or transfer within forty-five (45) days from the date of the City's notice of receipt. A City-approved transferee is referred to herein as an "Approved Transferee".

ARTICLE VII - DEVELOPMENT OF EXERGONIX PARCEL

7.1 Development of Exergonix Parcel. In connection with the development of the Exergonix Parcel, if this Agreement and the Option are still in effect, Exergonix must request the release of the Option by the City for the Exergonix Parcel. In order for the City to approve the request, Exergonix must:

(a) provide a detailed financing plan (reasonably acceptable to the City) detailing all sources and uses (including a listing of costs with reasonable specificity) necessary to develop the proposed project, and proof to the City's satisfaction that all necessary debt and equity is committed and available to develop the proposed project;

(b) submit plans for approval by the City of all zoning, platting, and land use matters and plans required by law, including the City's Unified Development Ordinance, for the development of the Exergonix parcel;

{32210 / 65771; 357755.5}

(c) have received approval by City or in City's sole determination is reasonably likely to receive approval of all required Land Use Approvals for development of the Exergonix Parcel for the proposed project;

(d) provide for the City's reasonable approval (i) the schematic design drawings, (ii) the design development drawings; and (iii) the architectural design materials including the quality and types of exterior finish for the proposed project. City shall have twenty-one (21) days from submittal to issue its approval, or in the case approval is not given, the detailed reasons in writing for not granting approval;

(e) provide a fully-executed construction contract for construction of the proposed project. Such contract should contain a guaranteed maximum price consistent with the City-approved financing plan; and

(f) have executed the PILOT Agreement.

The City will provide notice to Exergonix when the City has received all the required information for the City's review. Once the City has received all the required information, City shall complete its review to confirm compliance with terms of this Agreement within forty-five (45) days from the date of the City's notice of receipt, and if the proposed project complies with the terms of this Agreement, the City will release the Option as to the Exergonix Parcel.

ARTICLE VIII - USE RESTRICTIONS

8.1 Permitted Uses. In addition to the other provisions and restrictions contained in this Agreement, the Property may only be used for such uses that are permitted under zoning District PMIX as of the Effective Date and as otherwise permitted by the Land Use Approvals (the "Property Permitted Uses"). The City acknowledges that Exergonix has the right to request other uses for the Property on a case-by-case basis, subject to the review and approval of the City Council, which approval may be given in the sole and subjective discretion of the City Council.

8.2 Green Technology Use Required. No less than 60% of the total square footage of the Property must be utilized for a Green Technology Use (the "60% Green Requirement"). The remaining 40% of the Property may be developed for Property Permitted Uses. The 60% Green Requirement will remain a restriction on all portions of the Property for which the Option has not been released. In connection with the approval of a project or a proposed transfer, the City will make a determination as to whether the proposed use qualifies as a Green Technology Use. If the City determines that the proposed use qualifies as a Green Technology Use, the square footage of the Property transferred to the Approved Transferee will count toward the 60% Green Requirement. Up to five percent (5%) of the Property may be used by a user whose primary business operation is retail sales (the "Retail User"), provided such user is approved as an Approved Transferee under Section 6.1 hereof. None of the Retailer User property may be utilized to reach the 60% Green Requirement. A Retail User may only be located within the area shown on the site plan attached hereto as Exhibit D and designated thereon as the "Retail Use Area".

8.3 Pre-Approved Uses. A list of uses pre-approved by the City Council that meet the definition of Green Technology Use and pre-approved Retail Users is attached hereto as Exhibit C, and incorporated herein by reference.

ARTICLE IX - MISCELLANEOUS

9.1 Compliance with Laws. Subject to Exergonix' rights to contest the same in any manner permitted by law, Exergonix, its officers, directors and principals, successors and assigns, and Approved Transferees, at their sole cost and expense, shall comply in every respect with all Legal Requirements, ordinances, rules and regulations of all federal, state, county and municipal governments, agencies, bureaus or instrumentalities thereof now in force or which may be enacted hereafter which pertain to the development, construction, ownership, occupancy, use and operation of the Project and the Property, specifically including, if required under State law, the payment of workers at the "prevailing hourly rate of wages", as such term is defined in Mo. Rev. Stat. § 290.210(5).

9.2 Notice. Any notice, request, consent or communication under this Agreement will be effective only if it is in writing and personally delivered or sent by a nationally recognized overnight delivery service, with delivery confirmed, addressed as follows:

If to the City:

Name:

Attn: Stephen Arbo, City Manager
The City of Lee's Summit, Missouri
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

With Copy To:

Teresa Williams, City Attorney
The City of Lee's Summit, Missouri
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

If to Exergonix:

Name:

Attn: Don Nissanka, President/CEO
Exergonix, Inc.
4201 NE Lakewood Way
Lee's Summit, Missouri 64064

With Copy To:

Mark L. Weinrub
MW Law, PC
15180 Dallas Parkway, Suite 600
Addison, TX 75001

Aaron March, Esq.
White Goss Bowers March Schulte
& Weisenfels
4510 Belleview Suite 300
Kansas City, Mo 64111

or such other persons and/or addresses as are furnished in writing by any party to the other party, and will be deemed to have been given, if delivered personally, upon its delivery, and if via nationally recognized overnight delivery service, with delivery confirmed, upon the 1st business day following deposit with such delivery service.

9.3 Indemnification.

(a) Exergonix shall indemnify, protect, defend and hold the City and its officers, agents, employees, elected officials and attorneys, each in their official and individual capacities, now or previously holding office (collectively, the "Indemnified Parties" or, individually, an "Indemnified Party") harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property occurring or allegedly occurring (i) on or about the Property, or (ii) as a result of any acts or omissions of Exergonix, its constituent members or partners, their employees, agents, independent contractors, licensees, invitees or others acting by, through or under such indemnifying parties, in connection with its or their activities conducted pursuant to this Agreement, (iii) in connection with the ownership, use or occupancy and development or redevelopment of the Property or a portion thereof, or (iv) as a result of a challenge to the terms of this Agreement or the legality thereof, except to the extent such claims, demands, liabilities and costs were caused by the City's negligent or intentional acts or omissions.

(b) In the event any suit, action, investigation, claim or proceeding (collectively, an "Action") is begun or made as a result of which Exergonix may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to Exergonix of the occurrence of such event, but the failure to notify Exergonix will not relieve Exergonix of any liability that it may have to an Indemnified Party. After receipt of such notice, Exergonix may elect to defend, contest or otherwise protect the Indemnified Party against any such Action, at the cost and expense of Exergonix, utilizing counsel approved by the Indemnified Party. The Indemnified Party shall have the right, but not the obligation, to participate, at the Indemnified Party's own cost and expense, in the defense thereof by counsel of the Indemnified Party's choice. In the event that Exergonix shall fail timely to defend, contest or otherwise protect an Indemnified Party against such Action, the Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Indemnified Party after notice to Exergonix asserting Exergonix' failure to timely defend, contest or otherwise protect against such Action), the Indemnified Party may submit any bills for fees and costs received from its counsel to Exergonix for payment and, within thirty (30) business days after such submission, Exergonix shall transfer to the Indemnified Party sufficient funds to pay such bills. Exergonix acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

(c) An Indemnified Party shall submit to Exergonix any settlement proposal that the Indemnified Party shall receive. Exergonix shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Exergonix consents to such settlement. Neither Exergonix nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement.

(d) Exergonix expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon Exergonix in order to induce City to enter into this Agreement. To the fullest extent permitted by law, an Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement, and the right to apply any deposit or other funds submitted by Exergonix to the Indemnified Party in payment of the damages suffered by it, as is necessary to protect the Indemnified Party from loss. If such court action is successful, the Indemnified Party shall be reimbursed by Exergonix for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

(e) The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

9.4 Breach-Compliance.

(a) If Exergonix or City does not comply with provisions of this Agreement, within the time limits and in the manner for the completion of the Project as therein stated, except for any extensions or waivers described herein, in that Exergonix or City shall do, permit to be done, or fail or omit to do, or shall be about so to do, permit to be done, or fail or omit to have done, anything contrary to or required of it by this Agreement, and if, within thirty (30) days after notice of such default by the nondefaulting party to the defaulting party, the defaulting party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period (but in any event if the defaulting party shall not have cured such default within one hundred twenty (120) days), then the nondefaulting party may institute such proceedings as may be necessary in its opinion to cure the default including, but not limited to, proceedings to compel specific performance by the party in default of its obligations and the right to apply any deposit or other funds submitted by Exergonix to City in payment of the damages suffered by it, the right to withhold or apply funds from the Escrowed Sales Fund to such extent as is necessary to protect City from loss or to ensure that the Project is fully and successfully implemented in a timely fashion.

(b) If any action is instituted by either party hereunder, the nonprevailing party in such action shall pay any and all costs, fees and expenses, including attorneys' fees incurred by the prevailing party in enforcing this Agreement.

(c) The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by either party shall apply to obligations beyond those expressly waived.

(d) Exergonix (for itself and its successors and assigns, and for all other persons who are or who shall become liable, by express or implied assumption or otherwise, upon or subject to any obligation or burden under this Agreement), waives to the fullest extent permitted by law and equity all claims or defenses otherwise available on the ground of being or having become a surety or guarantor, whether by agreement or operation of law. This waiver includes, but is not limited to, all claims and defenses based upon extensions of time, indulgence or modification of terms of Agreement.

(e) Any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit them in any way. No waiver in fact made by either party of any specific default by the other party shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect, to the particular default except to the extent specifically waived.

(f) Notwithstanding anything to the contrary herein, Exergonix agrees that in the event of any default by City under this Agreement, it will not bring any action or suit to recover damages against City or any officer, director, commissioner, member, employee, or agent of any of them, except that this Section shall not prevent the award of attorneys' fees in the event of a default by City under this Agreement. Actions brought in equity or which otherwise do not seek to recover damages are not precluded by this Section.

9.5 Assignment. This Agreement may only be assigned with the express approval of the parties.

9.6 Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement between the City and Exergonix. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

9.7 Recording. Upon full execution by City and Exergonix, this Agreement shall be recorded by City, at Exergonix' expense, in the Office of the Recorder of Deeds for Jackson County, in Independence, Missouri.

9.8 Binding Effect. This Agreement will bind and, except as specifically provided herein, will inure to the benefit of the respective successors and permitted assigns, as applicable, of the parties hereto. The provisions of this Agreement shall be covenants running with the land and shall remain in effect for the duration of the Term. They shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by the parties, against each other and their respective successors and assigns, and every successor in interest to the subject Property, or any part of it or any interest in it and any party in possession or occupancy of the Property or any part thereof.

9.9 Governing Law. This Agreement is governed by and is to be construed and determined in accordance with the laws of the State of Missouri without reference to its choice of law provisions.

9.10 Time and Performance are of the Essence. Time and exact performance are of the essence of this Agreement.

9.11 Entire Agreement; Controlling Documents. This Agreement, the Option Agreement, and the PILOT Agreement constitute the entire agreement between the parties hereto with respect to the subject matter hereof. In the event of a discrepancy between this Agreement and the Option, the Option Agreement shall control. In the event of a discrepancy between this Agreement and any PILOT Agreement, such PILOT Agreement shall control. In the event of a discrepancy between the Option and any PILOT Agreement, the Option Agreement shall control.

9.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

9.13 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

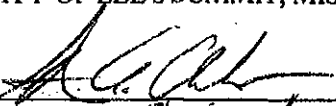
9.14 Acknowledgement. Exergonix agrees that the City has not made, and does not make, any representation or warranty to Exergonix about the tax treatment or implications of the transactions contemplated in this Agreement, or with respect to any other matter relating to this Agreement or the conduct or handling of the transactions contemplated herein. Exergonix agrees that it has made an independent decision to enter into this Agreement, without reliance on any representation, warranty, covenant or undertaking by the City, whether written or oral, explicit or implicit, except to the extent expressly set forth in this Agreement.

9.15 City's Legislative Authority. Notwithstanding any other provisions in this Agreement, nothing herein shall be deemed to usurp the governmental authority or police powers of the City or to limit the legislative discretion of the City Council, and no action by the City Council in exercising its legislative authority, including without limitation any decision to approve the satisfaction of any conditions precedent hereunder, shall be a default under this Agreement.


9.16 Subject to Appropriation. If and to the extent that any covenant, agreement or obligation of the City hereunder requires the payment by the City of any monies that have not, as of the Effective Date, been appropriated by the City Council of the City, then City's obligation to pay such monies hereunder shall be subject to the passage of an ordinance by the City Council appropriating such monies for payment hereunder.

The parties have executed this Agreement on the date first above written.

THE CITY OF LEE'S SUMMIT, MISSOURI

By: 
Name: Stephen A. Arabo
Title: City Manager

EXERGONIX, INC.

By: 
Name: DON NISSANKA
Title: PRESIDENT / CEO

**EXHIBIT A
TO DEVELOPMENT AGREEMENT**

Legal Description of the Property

PARCEL 1:

ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 47, RANGE 31, IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE NORTH 02°-22'-03" EAST ALONG THE EAST LINE OF SAID QUARTER SECTION, A DISTANCE OF 19.34 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD AS NOW ESTABLISHED; THENCE NORTH 29°-25'-41" WEST ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, A DISTANCE OF 153.40 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 83°-24'-46" WEST, A DISTANCE OF 656.73 FEET; THENCE NORTH 87°-49'-44" WEST, A DISTANCE OF 312.64 FEET; THENCE NORTH 02°-58'-23" EAST, A DISTANCE OF 678.03 FEET; THENCE NORTH 87°-01'-37" WEST, A DISTANCE OF 1019.79 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF MISSOURI STATE HIGHWAY NO. 291, AS NOW ESTABLISHED; THENCE NORTH 06°-06'-41" WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 144.99 FEET; THENCE NORTH 07°-51'-41" WEST CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 549.47 FEET; THENCE SOUTH 87°-49'-30" EAST DEPARTING SAID RIGHT OF WAY LINE, A DISTANCE OF 1303.12 FEET TO A POINT ON SAID SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE SOUTH 29°-25'-41" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1498.93 FEET TO THE POINT OF BEGINNING. CONTAINING 1,524,252 SQUARE FEET, OR 34.992 ACRES, MORE OR LESS.

PARCEL 2:

ALL THAT PART OF THE NORTHWEST QUARTER, AND ALL THAT PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 47, RANGE 31, IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 87°-53'-51" EAST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 11.96 FEET, TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, AS NOW ESTABLISHED; THENCE SOUTH 29°-25'-41" EAST, ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, A DISTANCE OF 223.09 FEET, TO THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 29°-25'-41" EAST, A DISTANCE OF 1323.59 FEET, TO A POINT IN THE SOUTH LINE OF THE NORTHWEST QUARTER

{32210 / 65771; 357755.5}

OF SAID NORTHEAST QUARTER; THENCE NORTH 87°-32'-55" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 832.35 FEET, TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE NORTH 2°-36'-20" EAST, ALONG THE EAST LINE SAID NORTHWEST QUARTER AND ALONG THE EAST LINE OF **MADDOX ACRES**, A SUBDIVISION, A DISTANCE OF 358.00 FEET, TO THE NORTHEAST CORNER OF LOT 12 OF SAID SUBDIVISION; THENCE NORTH 87°-49'-43" WEST, ALONG THE NORTH LINE OF SAID SUBDIVISION, A DISTANCE OF 1507.48 FEET, TO A POINT ON THE EAST RIGHT OF WAY LINE OF MISSOURI STATE HIGHWAY NO. 291, AS NOW ESTABLISHED; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY LINE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2416.83 FEET, A CHORD BEARING OF NORTH 26°-20'-38" WEST, A CENTRAL ANGLE OF 1°-18'-57", AN ARC LENGTH OF 55.50 FEET; THENCE NORTH 27°-00'-06" WEST, CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 256.79 FEET; THENCE NORTH 26°-49'-41" WEST, CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 241.77 FEET; THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE, ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1784.86 FEET, A CHORD BEARING OF NORTH 18°-00'-47" WEST, A CENTRAL ANGLE OF 12°-35'-16", AN ARC LENGTH OF 392.13 FEET; THENCE NORTH 32°-04'-12" EAST, CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 61.73 FEET; THENCE SOUTH 87°-49'-44" EAST, A DISTANCE OF 1158.47 FEET; THENCE SOUTH 78°-33'-51" EAST, A DISTANCE OF 869.58 FEET, TO THE POINT OF BEGINNING. CONTAINING 2,079,053 SQUARE FEET, OR 47.728 ACRES, MORE OR LESS.

**EXHIBIT B
TO DEVELOPMENT AGREEMENT**

Form of Amendment to Original Option Agreement

FIRST AMENDMENT TO OPTION AGREEMENT

THIS FIRST AMENDMENT TO OPTION AGREEMENT ("Amendment") is entered into as of the ___ day of _____, 2011, by and between EXERGONIX, INC., a Missouri corporation ("Exergonix"), and the CITY OF LEE'S SUMMIT, MISSOURI, a Missouri constitutional charter city and political subdivision ("City").

Recitals

A. Reference is made to that certain Option Agreement dated June 15, 2011, recorded on _____, as Document No. _____ in the Recorder's Office of Jackson County, Missouri ("Original Option Agreement"), between the City and Exergonix granting City an option relating to certain real property located within the City at the intersection of U.S. Highway 50 and Missouri Highway 291, and described on **Exhibit A** attached hereto and by this reference made a part hereof (the "Property").

B. The City has determined that assisting in the acquisition and redevelopment of the Property, will serve public purposes because it will, without limitation, (i) result in the creation of desirable new technology jobs within the City, (ii) promote economic development in the City, (iii) remediate an area of the City that has been previously declared blighted by the City Council of the City, (iv) result in generation of additional tax revenues to the City from the conduct of business and other activities in the City that would not otherwise occur, (v) serve as a catalyst for additional investment in and further redevelopment and rehabilitation of the portion of the City in which the Property is located, and (vi) further the City's policy of encouraging economic stability and growth.

C. The Original Option Agreement contemplated the execution by Exergonix and the City of a definitive development agreement.

D. As of the date hereof, Exergonix and the City have entered into the Development Agreement ("Development Agreement") authorizing this Amendment and creating a revised option to purchase the Property in favor of the City.

E. The City desires to encourage Exergonix to carry out the acquisition and redevelopment of the Property by entering into this Amendment.

Agreement

In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows.

1. **Incorporation of Recitals.** The above Recitals are incorporated herein by this reference. Capitalized terms not defined in this Amendment shall have the meaning assigned to them in the Agreement.

2. **Amendment to Term.** Paragraph 4 of the Option is hereby amended by deleting Paragraph 4 in its entirety and replacing it with the following:

(32210 / 65771; 357755.5)

Term. This Agreement shall be effective upon the Effective Date and shall remain in effect until the earlier to occur of (i) the release of this Option by City pursuant to the terms of the Development Agreement; or (ii) upon the completion of the Minimum Investment and Minimum Jobs as confirmed by the City's Termination Notice (as such terms are defined in the Development Agreement). If Exergonix has not achieved the creation of the Minimum Investment and Minimum Jobs by September 1, 2016, City shall have the right to exercise the Option at any time thereafter for a period of ten (10) years (the "Option Period").

3. **Confirmation of Completion.** The parties acknowledge that the City has made the Option Payment as required under Paragraph 3 of the Original Option Agreement, and that Exergonix has provided copies of all surveys, reports, test and studies as required under Paragraph 9 of the Original Option Agreement.

4. **Recording Memorandum.** A memorandum of this Amendment will be recorded by City, in a form substantially similar to that attached hereto as Exhibit B (the "Memorandum"). The Memorandum will be recorded in the public land records for Jackson County, Missouri.

5. **Counterparts.** This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

6. **Continued Effect.** Except as specifically modified by this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. In the event of a conflict between any term and provision of the Agreement and this Amendment, the terms and provisions of this Amendment shall control.

In Witness Whereof, the parties have executed this Amendment as of the date first above written.

THE CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Stephen Arbo, City Manager

EXERGONIX, INC.

By: _____
Don Nissanka, President/CEO

**Exhibit A
to First Amendment to Option Agreement**

LEGAL DESCRIPTION

PARCEL 1:

ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 47, RANGE 31, IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE NORTH 02°-22'-03" EAST ALONG THE EAST LINE OF SAID QUARTER SECTION, A DISTANCE OF 19.34 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD AS NOW ESTABLISHED; THENCE NORTH 29°-25'-41" WEST ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, A DISTANCE OF 153.40 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 83°-24'-46" WEST, A DISTANCE OF 656.73 FEET; THENCE NORTH 87°-49'-44" WEST, A DISTANCE OF 312.64 FEET; THENCE NORTH 02°-58'-23" EAST, A DISTANCE OF 678.03 FEET; THENCE NORTH 87°-01'-37" WEST, A DISTANCE OF 1019.79 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF MISSOURI STATE HIGHWAY NO. 291, AS NOW ESTABLISHED; THENCE NORTH 06°-06'-41" WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 144.99 FEET; THENCE NORTH 07°-51'-41" WEST CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 549.47 FEET; THENCE SOUTH 87°-49'-30" EAST DEPARTING SAID RIGHT OF WAY LINE, A DISTANCE OF 1303.12 FEET TO A POINT ON SAID SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE SOUTH 29°-25'-41" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1498.93 FEET TO THE POINT OF BEGINNING. CONTAINING 1,524,252 SQUARE FEET, OR 34.992 ACRES, MORE OR LESS.

PARCEL 2:

ALL THAT PART OF THE NORTHWEST QUARTER, AND ALL THAT PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 47, RANGE 31, IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 87°-53'-51" EAST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 11.96 FEET, TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, AS NOW ESTABLISHED; THENCE SOUTH 29°-25'-41" EAST, ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, A DISTANCE OF 223.09 FEET, TO THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 29°-25'-41" EAST, A DISTANCE OF 1323.59 FEET, TO A POINT IN THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER; THENCE NORTH 87°-32'-55" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 832.35 FEET, TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE NORTH 2°-36'-20" (32210 / 65771; 357755.5)

EAST, ALONG THE EAST LINE SAID NORTHWEST QUARTER AND ALONG THE EAST LINE OF **MADDOX ACRES**, A SUBDIVISION, A DISTANCE OF 358.00 FEET, TO THE NORTHEAST CORNER OF LOT 12 OF SAID SUBDIVISION; THENCE NORTH $87^{\circ}-49'-43''$ WEST, ALONG THE NORTH LINE OF SAID SUBDIVISION, A DISTANCE OF 1507.48 FEET, TO A POINT ON THE EAST RIGHT OF WAY LINE OF MISSOURI STATE HIGHWAY NO. 291, AS NOW ESTABLISHED; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY LINE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2416.83 FEET, A CHORD BEARING OF NORTH $26^{\circ}-20'-38''$ WEST, A CENTRAL ANGLE OF $1^{\circ}-18'-57''$, AN ARC LENGTH OF 55.50 FEET; THENCE NORTH $27^{\circ}-00'-06''$ WEST, CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 256.79 FEET; THENCE NORTH $26^{\circ}-49'-41''$ WEST, CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 241.77 FEET; THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE, ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1784.86 FEET, A CHORD BEARING OF NORTH $18^{\circ}-00'-47''$ WEST, A CENTRAL ANGLE OF $12^{\circ}-35'-16''$, AN ARC LENGTH OF 392.13 FEET; THENCE NORTH $32^{\circ}-04'-12''$ EAST, CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 61.73 FEET; THENCE SOUTH $87^{\circ}-49'-44''$ EAST, A DISTANCE OF 1158.47 FEET; THENCE SOUTH $78^{\circ}-33'-51''$ EAST, A DISTANCE OF 869.58 FEET, TO THE POINT OF BEGINNING. CONTAINING 2,079,053 SQUARE FEET, OR 47.728 ACRES, MORE OR LESS.

**Exhibit B
to First Amendment to Option Agreement**

Form of Memorandum

MEMORANDUM OF AMENDMENT

THIS MEMORANDUM OF AMENDMENT (the "Memorandum") is made and entered into as of the _____ day of _____, 2011, by and between Exergonix, Inc., a Missouri corporation ("Exergonix"), and the City of Lee's Summit, Missouri, a Missouri constitutional charter city and political subdivision ("City").

AGREEMENT:

1. Pursuant to that certain Option Agreement dated June 15, 2011, between Exergonix and City (the "Agreement"), a Memorandum of which was recorded on _____ as Instrument No. _____, Exergonix has granted to City an option to purchase certain real property located in the City of Lee's Summit, Missouri, legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

2. Exergonix and City have entered into the First Amendment to Option Agreement, dated _____, 2011 (the "Amendment"), that amends certain terms of the Agreement.

3. The Agreement, as amended by the Amendment, is for a term commencing on June 15, 2011 and ending upon the exercise or release of the Option by City, all as provided in the Agreement and Amendment, to be no later than August 31, 2026.

3. All of the other terms and conditions of the Agreement and Amendment are more fully set forth in the Agreement and Amendment and are incorporated herein by this reference.

4. This Memorandum is executed for recording purposes only and is not intended to alter or amend the terms of the Agreement or Amendment. In the event of a conflict between this Memorandum and the Amendment, the Amendment shall control.

5. This Memorandum shall inure to the benefit of and be binding upon Exergonix and City and their respective representatives, successors and assigns.

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IN WITNESS WHEREOF, Exergonix and City have executed this Memorandum of Amendment as of the date first above written.

THE CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Stephen Arbo, City Manager

EXERGONIX, INC.

By: _____
Don Nissanka, President/CEO

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this __ day of _____, before me personally appeared to me Don Nissanka, personally known, who being by me duly sworn did say that he is the President/CEO of Exergonix, Inc., a Missouri corporation and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and said Don Nissanka acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Lee's Summit, Missouri the day and year last above written.

Notary Public

My commission expires:

EXHIBIT A TO

MEMORANDUM OF FIRST AMENDMENT TO OPTION

PARCEL 1:

ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 47, RANGE 31, IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER: THENCE NORTH 02°-22'-03" EAST ALONG THE EAST LINE OF SAID QUARTER SECTION, A DISTANCE OF 19.34 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD AS NOW ESTABLISHED; THENCE NORTH 29°-26'-41" WEST ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, A DISTANCE OF 153.40 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 83°-24'-46" WEST, A DISTANCE OF 656.73 FEET; THENCE NORTH 87°-49'-44" WEST, A DISTANCE OF 312.64 FEET; THENCE NORTH 02°-58'-23" EAST, A DISTANCE OF 878.03 FEET; THENCE NORTH 87°-01'-37" WEST, A DISTANCE OF 1019.79 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF MISSOURI STATE HIGHWAY NO. 291, AS NOW ESTABLISHED; THENCE NORTH 08°-08'-41" WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 144.99 FEET; THENCE NORTH 07°-51'-41" WEST CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 549.47 FEET; THENCE SOUTH 87°-49'-30" EAST DEPARTING SAID RIGHT OF WAY LINE, A DISTANCE OF 1303.12 FEET TO A POINT ON SAID SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE SOUTH 29°-25'-41" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1498.93 FEET TO THE POINT OF BEGINNING. CONTAINING 1,524,252 SQUARE FEET, OR 34.992 ACRES, MORE OR LESS.

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392.13 FEET; THENCE NORTH 32°-04'-12" EAST, CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 61.73 FEET; THENCE SOUTH 87°-49'-44" EAST, A DISTANCE OF 1158.47 FEET; THENCE SOUTH 78°-33'-51" EAST, A DISTANCE OF 869.58 FEET, TO THE POINT OF BEGINNING. CONTAINING 2,079,053 SQUARE FEET, OR 47.728 ACRES, MORE OR LESS.

**EXHIBIT B
TO DEVELOPMENT AGREEMENT
FORM OF PILOT AGREEMENT**

(Above Space Reserved for Office of Records)

Document Title: Payment in Lieu of Taxes Agreement

Document Date: _____

Grantor: _____

Grantee: _____

Grantee's Address: _____

Legal Description: See Exhibit A attached hereto

Reference: Document No. _____

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____, 20____, by and between the **CITY OF LEE'S SUMMIT, MISSOURI**, a Missouri constitutional charter city and political subdivision (the "City"), having an address of 220 SE Green Street, Lee's Summit, Missouri, and _____, and its successors in interest as owners of the Property as herein provided (the "Owner").

RECITALS

A. Owner is the owner of a certain parcel of real estate and the improvements thereon, if any, located in Lee's Summit, Jackson County, Missouri, legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

B. The City is a party to that certain Development Agreement to Promote Economic Development Activities (the "Development Agreement"), between the City and Exergonix, Inc. ("Exergonix"), dated _____, 2011, and approved by the City Council of the City on _____, as Ordinance No. _____; and

C. Pursuant to the Development Agreement, Exergonix agreed to develop and construct, or cause to be constructed, a campus consisting in major part of innovative, green, high tech manufacturing and other facilities (the "Project") to be located upon the real property located in Lee's Summit, Jackson County, Missouri, legally described on Exhibit "B" attached hereto and incorporated herein by this reference (the "Project Property"); and

D. The Property is a portion of the Project Property; and

E. The Development Agreement provides that, except as otherwise provided in the Development Agreement, the Project Property will remain subject to ad valorem real property taxes for a certain term, as described herein; and

F. The Development Agreement requires that this Agreement be executed by any successor to Exergonix in the ownership of the Property.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is agreed between City and Owner, for themselves and on behalf of their heirs, personal representatives, successors and assigns, as follows:

1. Definitions. All capitalized words shall have the meanings ascribed to them in this Section unless defined elsewhere in this Agreement. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement.

(a) Finance Director means the finance director of the City.

(b) PILOT Payment Term means the period comprised of the Term of the Development Agreement plus an additional ten (10) years following the end of the Term of the Development Agreement.

(c) Qualified Appraiser means an appraiser who is independent, licensed and a member of the American Institute of Real Estate Appraisers or its successor, with at least ten (10) years experience appraising commercial properties in the Kansas City metropolitan area.

(d) Term of the Development Agreement means that period beginning on _____, 2011 and ending on the earlier to occur of (i) the date the Amended Option (as defined in the Development Agreement) is exercised by the City, or (ii) the date of the issuance by the City of the Termination Notice (as defined in the Development Agreement).

2. Payment of Ad Valorem Real Property Taxes. So long as the Property is not exempt from the payment of ad valorem real property tax, Owner shall pay as they become due and payable, all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Property, or any part thereof or interest therein.

3. Payment in Lieu of Taxes. If, by reason of any exemption or abatement provided by statute or constitutional provision (federal or state), (i) real property taxes for any taxing period (A) are not levied, assessed or imposed upon the Property or any part thereof, or (B) are levied or imposed at any rate less than the full levy rate applicable to real property not classified as "Agricultural and Horticultural property" or "Residential property" under Missouri law, or (ii) the Property or any part thereof is assessed in any manner that results in the real property taxes being less than the taxes that would otherwise be paid if the Property was subject to full assessment as real property not classified as "Agricultural and Horticultural property" or "Residential property" under Missouri law, Owner hereby agrees that it will make payments in lieu of taxes during the PILOT Payment Term in amounts equal to the taxes, assessments and other governmental charges that would be lawfully levied or assessed or imposed upon the Property in the absence of any tax exemption or abatement (the "PILOT Payment"). The PILOT Payment shall be due and payable not later than December 31 of the year for which such PILOT Payment is due and payable.

4. Determination of PILOT Payment. The City, acting through its Finance Director or such other person (including a Qualified Appraiser) as the Finance Director shall designate, will determine the amount of the PILOT Payment and will notify Owner of the amount of the PILOT Payment, together with the methodology used to determine such amount (the "PILOT Notice"). If Owner does not agree with the PILOT Payment amount submitted by the City in the PILOT Notice, then Owner shall notify the City in writing within ten (10) days of delivery of the PILOT Notice. Owner shall then retain a Qualified Appraiser who will make an independent determination of the appropriate PILOT Payment and shall submit the same to the City within forty-five (45) days of the PILOT Notice, including the methodology used. If the Qualified Appraiser and the City cannot mutually agree upon the appropriate PILOT Payment within ten (10) days of the delivery of the Owner information, the City and the Qualified Appraiser shall promptly jointly select a different Qualified Appraiser (the "Final Appraiser"). Within twenty (20) days after his appointment, the Final Appraiser shall select one of the two initially submitted amounts as the appropriate PILOT Payment, and the determination of the Final Appraiser shall be binding upon the parties. The fee of the Final Appraiser shall be paid by the party whose determination of the PILOT Payment was not selected. If, on December 31 of any year, the

amount of the PILOT Payment is being disputed through the above-described process, Owner shall remit to City the amount of the PILOT Payment as determined by City and provided in the PILOT Notice. In the event that as a result of the challenge by Owner, there is a reduction in the amount of the PILOT Payment, City agrees to promptly reimburse Owner the amount of the reduction.

5. Interest. Any PILOT Payment that is not paid in full within thirty (30) days of the due date shall accrue interest at a rate equal to 1-1/2% per month compounding monthly.

6. Lien. Owner hereby grants to City a lien on the Property, effective as of the date of this Agreement, to secure Owner's obligation hereunder to pay when due all PILOT Payments, interest, costs and reasonable attorneys' fees now owing or hereafter becoming due and payable pursuant to the terms of this Agreement. Such lien shall run with the land and shall be a continuing lien upon the Property.

7. Priority of Lien. The lien on the Property granted pursuant to Section 6 hereof is prior to all other liens, encumbrances or other matters except: (i) liens, encumbrances and other matters recorded prior to the recording of this Agreement; and (ii) liens for real estate taxes and other governmental assessments or charges against the Property.

8. Remedy. If the Owner shall breach the terms of this Agreement, City shall have the right to give to the Owner written notice of such breach, and Owner shall have thirty (30) days from the date of receipt of written notice of such breach from the City (the "Cure Period") to cure such breach, including, without limitation, payment of the PILOT Payment. In the event Owner fails to cure such breach within the Cure Period, the City shall have the right to bring an action at law against the Owner or foreclose the lien against the Property. The City may foreclose on the lien in the manner provided in under the laws of the State of Missouri that govern the foreclosure of any interest in property, including without limitation, a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State of Missouri. The recording of this Agreement constitutes record notice and perfection of the lien. The City may, but shall not be required to, file with the Recorder of Deeds of Jackson County, Missouri a certificate of nonpayment identifying the Property and stating the delinquent amount owed under this Agreement.

9. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

10. Costs and Attorneys' Fees. In the event Owner fails to cure a breach within the cure period, then in addition to the amount of the PILOT Payment and the interest as calculated under Section 5 hereof, the Owner is liable for payment of the costs and expenses incurred by or on behalf of City in connection with any proceedings brought by the City under Section 8 hereof, the costs and expenses for the filing of a certificate of nonpayment, if any, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien hereunder or the collection of all amounts owed hereunder.

11. Successors Bound. This Agreement will bind and inure to the benefit of the

respective successors and permitted assigns, as applicable, of the parties hereto. The provisions of this Agreement shall be covenants running with the land and shall remain in effect for the duration of the PILOT Payment Term.

IN WITNESS WHEREOF, each party has executed and sealed this Agreement on the date first above written.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: _____
Title: _____

OWNER:

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this _____ day of _____, 2011, before me personally appeared to me _____, personally known, who being by me duly sworn did say that [he/she] is the City Manager of the City of Lee's Summit, Missouri, a Missouri municipal corporation, that said corporation has no corporate seal, that said instrument was signed on behalf of said corporation by authority of its Council, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in _____ County, _____ the day and year last above written.

Notary Public
Printed Name: _____

My commission expires:

**EXHIBIT D
TO DEVELOPMENT AGREEMENT
SITE PLAN**