

Form of Amendment to Original Option Agreement

SECOND AMENDMENT TO OPTION AGREEMENT

THIS SECOND AMENDMENT TO OPTION AGREEMENT ("Second Amendment") is entered into as of the ___ day of _____, 2016, by and between WESTCOTT INVESTMENT GROUP, a Delaware limited liability company ("Westcott"), 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. Reference is made to that certain First Amendment to Option Agreement dated September 2, 2011, recorded on _____, as Document No. _____ in the Recorder's Office of Jackson County, Missouri ("First Amendment"), between the City and Exergonix revising the Original Optional Agreement relating to the Property.

C. The City has previously 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 new 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.

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

E. As of the date hereof, Exergonix and the City have entered into the Development Agreement ("Development Agreement") authorizing the First Amendment and creating a revised option to purchase the Property in favor of the City and furthermore Exergonix, the City, and Westcott have entered in an Assignment and First Amended and Restated Development Agreement to Promote Economic Activities (the "Amended Agreement") authorizing this Second Amendment.

F. The City desires to encourage Westcott to carry out the acquisition and redevelopment of the Property by entering into this Second 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 Second Amendment shall have the meaning assigned to them in the Amended 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:

(a.) **Term.** This Amended 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 Amended Agreement; or (ii) upon the completion of the Minimum Development by the Minimum Development – Phase II Completion Date as confirmed by the City's Termination Notice (as such terms are defined in the Amended Agreement). If Westcott has not achieved the creation of the Minimum Development by the Minimum Development – Phase II Completion Date, City shall have the right to exercise the Option at any time thereafter for a period of ten (10) years (the "Option Period").

3. **Recording Memorandum.** A memorandum of this Second 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.

4. **Counterparts.** This Second 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.

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

In Witness Whereof, the parties have executed this Second 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

WESTCOTT INVESTMENT GROUP

By: _____
Robert C. Dunn, Trustee for Westcott
Investment Group, LLC

DRAFT

**Exhibit A
to Second 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" {32956 / 68068; 692157.4 }

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 Second 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 _____, 2016, 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

WESTCOTT INVESTMENT GROUP

By: _____
Robert C. Dunn, Trustee for Westcott
Investment Group, LLC

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ___ day of _____, 2016, before me personally appeared to me Stephen Arbo, personally known, who being by me duly sworn did say that he 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 Lee's Summit, Missouri the day and year last above written.

Notary Public

My commission expires:

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ___ day of _____, 2016, 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:

DRAFT

STATE OF)
) ss.
COUNTY OF)

On this __ day of _____, 2016, before me personally appeared to me Robert C. Dunn, personally known, who being by me duly sworn did say that he is the Trustee for Westcott Investment Group, LLC and that said instrument was signed on behalf of said limited liability company, and said Robert C. Dunn acknowledged said instrument to be the free act and deed of said limited liability company.

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:

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DRAFT