

**ASSIGNMENT AND FIRST AMENDED AND RESTATED DEVELOPMENT
AGREEMENT TO PROMOTE ECONOMIC DEVELOPMENT ACTIVITIES**

THIS ASSIGNMENT AND FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT TO PROMOTE ECONOMIC ACTIVITIES (the "Amended Agreement") is made and entered into on _____, 2016 (the "Effective Date"), by and between the **CITY OF LEE'S SUMMIT, MISSOURI**, a Missouri constitutional charter city and political subdivision (the "City"), **EXERGONIX, INC.**, a Missouri corporation ("Exergonix") and **WESTCOTT INVESTMENT GROUP**, a Delaware limited liability company ("Westcott").

Recitals.

A. Whereas, the City Council of the City previously determined that assisting in the acquisition and redevelopment of certain real property located within the City near the intersection of U.S. Highway 50 and Missouri Highway 291 (the "Property") 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, (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 authorized the City to enter into the Development Agreement To Promote Economic Activities with Exergonix on the 2nd day of September, 2011 (the "Original Agreement") to encourage Exergonix to carry out the acquisition and redevelopment of the Property.

B. Whereas, the City and Exergonix 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 and the First Amendment to Option Agreement on September 2, 2011 (the "First Amended Option"). Pursuant to the Original Option Agreement, as amended by the First Amended Option, Exergonix granted to the City a right and option to purchase the Property (the "Original Option").

C. Whereas, 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.

D. Whereas, the recession caused a slowdown in the real estate market and brought about unforeseen challenges for development of the Property.

E. Whereas, a key component of the Original Agreement was the development of a green technology campus by the University of Central Missouri.

F. Whereas, the University of Central Missouri has decided to locate and has in fact located its campus elsewhere in the City.

G. Whereas, Exergonix has determined that it is in the best interest of the City to bring in Westcott, a developer with vast experience in business park and commercial development, to lead the development efforts on the Property.

H. Whereas, Westcott not only wants to bring its expertise to the development of the Property, it also intends to acquire and develop surrounding properties in order to create a homogenous and cohesive gateway into the City.

I. Whereas, Westcott, in undertaking its development plans for the area, wishes to take on Exergonix's rights, duties and obligations regarding the Property under the Original Agreement, as amended hereunder.

J. Whereas, Exergonix wishes to assign its rights, duties and obligations under the Original Agreement to Westcott as provided for herein.

K. Whereas, City recognizes that in order to expedite development of the Property and the surrounding area, it is in the City's best interest to approve and authorize the assignment of Exergonix's rights under the Original Agreement to Westcott.

L. Whereas, City recognizes that in order to reflect current market and other conditions in the City for the development of the Property, it is in the City's best interest to amend the Original Agreement and to restate Westcott's rights, duties and obligations under the Original Agreement to reflect current conditions and circumstances.

M. In accordance with the terms and conditions set forth herein, Westcott proposes to construct and develop: (i) a business park of approximately One Million (1,000,000) square feet on the Property as generally depicted on the Site Plan attached hereto as **Exhibit B** (the "Site Plan") (the "Project"); and (ii) a mixed use gateway development on adjacent property as conceptually shown on **Exhibit B** including the construction of compatible residential, commercial and office users, as more fully set forth herein.

N. Whereas, in order to implement this Amended Agreement, the Property must be transferred and conveyed by Exergonix to Westcott.

O. Whereas, the Property is subject to the Original Option Agreement, as amended by the First Amended Option which the parties agree to revise and modify to reflect the terms of the Amended Agreement (the "Second Amended Option"). (The Original Option Agreement as modified by the First Amended Option and Second Amended Option is referred to as the "Amended Option.")

P. 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 Amended Agreement.

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

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 Amended Agreement.

(a) "Affiliate", any person, entity or group of persons or entities in which any owner or member of Westcott 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 by the First Amended Option and the Second Amended 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) "Hard Costs," the costs paid or incurred by Westcott: (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 the Project; (ii) to acquire furniture, fixtures and equipment utilized in the Project; 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.

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

(i) "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).

(j) "Minimum Development – Phase I," 200,000 square feet of gross leasable area, in one or more buildings, located on the Property.

(k) "Minimum Development – Phase I Commencement Date," subject to the provisions of Section 3.1(b)(1) below, August 15, 2017.

(l) "Minimum Development – Phase I Completion Date," subject to the provisions of Section 3.1(b)(1) below, August 15, 2019.

(m) "Minimum Development – Phase II," an additional 300,000 s.f. of gross leasable area, in one or more buildings, located on the Property, over and above the Minimum Development – Phase I.

(n) "Minimum Development – Phase II Completion Date," subject to the provisions of Section 3.1(b)(1) below, December 1, 2022.

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

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

<u>Term</u>	<u>Article/Recital/Section</u>
"Action"	Article X, ¶ 10.3(b)
"Amended Option"	Recital B
"Amended Option Termination"	Article IV, ¶ 4.2(a)
"Approved Transferee"	Article VII, ¶ 7.1
"Escrow Rights"	Article V, ¶ 5.1
"Escrowed Sales Funds"	Article V, ¶ 5.1
"Indemnified Parties/Party"	Article X, ¶ 10.3(a)
"Interest Rate"	Article VI, ¶ 6.4
"Minimum Development Completion Date"	Article I, ¶ 1.1(m) and (o)
"MMD"	Article VI, ¶ 6.4
"Percentage Payment"	Article VI, ¶ 6.3
"PMIX Submittal Date"	Article III, ¶ 3.1(b)(1)
"Project"	Recital M
"Property"	Recital A
"Property Permitted Uses"	Article IX, ¶ 9.1

"Original Option Agreement"	Recital B
"Original Option"	Recital B
"Term"	Article III, ¶ 3.2
"Termination Notice"	Article III, ¶ 3.5

ARTICLE II - ASSIGNMENT OF PROJECT

2.1 Assignment. The parties hereby acknowledge and agree that, other than as specifically set forth in this Amended Agreement, all rights, duties and obligations of Exergonix under the Original Agreement are hereby assigned and conveyed to Westcott.

2.2 Amendment of Obligations. Westcott's rights, duties and obligations as assigned under the Original Agreement are amended and modified by the terms and provisions of this Amended Agreement.

2.3 Release and Discharge. Unless specifically set forth herein, Exergonix is hereby released and discharged from any and all obligations arising under the Original Agreement.

ARTICLE III - DEVELOPMENT OF PROJECT

3.1 The Project. Westcott 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 Westcott hereunder shall be as an independent contractor and not as an agent of the City, except as otherwise specifically provided herein.

(p) **Minimum Development.** In order to satisfy its obligations to construct the Project, Westcott must: (i) commence construction of the Minimum Development – Phase I by August 15, 2017, the Minimum Development – Phase I Commencement Date and complete construction thereon by August 15, 2019, the Minimum Development – Phase I Completion Date; and (ii) complete construction of the Minimum Development – Phase II by December 1, 2022, the Minimum Development – Phase II Completion Date (the "Minimum Development – Phase I and the Minimum Development – Phase II are collectively referred to as the "Minimum Development").

(q) **Additional Obligations.** In addition to Westcott's obligation to commence construction of the Minimum Development – Phase I by the Minimum Development – Phase I Commencement Date in order to satisfy its obligations under this Amended Agreement, Westcott agrees to:

(1) submit an application to rezone the Property to a PMIX zoning classification, including the submittal of design guidelines for consideration by the City on or before September 1, 2017 (the "PMIX Submittal Date"). The PMIX Submittal Date deadline may be extended by the City Manager or his designee in the event that the anticipated South 291 Corridor planning process is not concluded on or before June 1, 2016. In the event the PMIX Submittal Date is

extended by the City Manager, the Minimum Development – Phase I Commencement Date and the Minimum Development – Phase I Completion Date shall automatically be extended for the same amount of time.

3.2 Term. This Amended 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 3.5** (the "Term").

3.3 Restrictions on Encumbrances. Prior to the release of the Amended Option, neither Exergonix nor Westcott shall 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 Amended Option shall be subject and subordinate to all rights, titles and interests created pursuant to the Amended Option, and no such lien shall encumber or affect the interest of any purchaser of the Property or any part thereof pursuant to the Amended Option or any successor or assign of any purchaser of the Property or any part thereof pursuant to the Amended Option. This restriction will terminate upon release of the Amended Option by the City. Notwithstanding the foregoing, with the consent of the City, which shall not unreasonably be withheld and which may be given by the City Manager or his designee, Westcott may encumber individual platted lots within the Property upon which the Minimum Development or portions thereof are being constructed for purposes of obtaining construction and permanent financing specifically related to such construction and development.

3.4 Reporting Requirements. Within one hundred twenty (120) days after the Effective Date, Westcott shall submit to City a report ("Development Report") updating the City as to the status of: (i) the PMIX application referred to in Section 3.1(b)(2) above; and (ii) acquisition of any land adjacent to the Property.

3.5 Termination of Agreement. When the City determines that the Minimum Development has been achieved on or prior to the Minimum Development – Phase II Completion Date, and that as of the date of the request, Westcott has complied with and performed all of its covenants and agreements set forth in this Amended Agreement, then the City will execute a notice, in recordable form, of satisfaction of the Minimum Development and a notice of termination of this Amended Agreement (the "Termination Notice"). If the City determines that the Minimum Development is not otherwise in compliance with this Amended 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 Westcott, the City Council shall hold a hearing at which Westcott may present its evidence directly to the City Council for approval.

ARTICLE IV - OPTION TO PURCHASE

4.1 Option. The City, Exergonix and Westcott hereby acknowledge and agree, without limiting any other term or provision set forth in the Amended Option, that the Amended

Option is in full force and effect. The Amended Option may be exercised in the following circumstances:

- (a) If Westcott fails to commence construction of the Minimum Development – Phase I on or before the Minimum Development – Phase I Commencement Date;
- (b) If Westcott fails to complete construction of the Minimum Development – Phase I on or before the Minimum Development – Phase I Completion Date;
- (c) If Westcott fails to complete construction of the Minimum Development – Phase II on or before the Minimum Development – Phase II Completion Date.

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 Amended Option, exercise the Amended Option on or within ten (10) years after the Minimum Development – Phase II Completion Date.

4.2 Release of Amended Option.

(a) If on or before the Minimum Development – Phase II Completion Date Westcott has achieved or caused the achievement of the Minimum Development and City has confirmed such achievement and issued the Termination Notice as described in **Section 3.5**, then the City will execute a notice, in recordable form, releasing the Amended Option as to all of the Property then remaining subject to the Amended Option ("Amended Option Termination").

(b) If on or before the Minimum Development – Phase II Completion Date Westcott sells a portion of the Property to an Approved Transferee (as defined herein), and all of the requirements set forth in **Article VIII** hereof have been met and satisfied, then the City will release the Amended Option as to the affected portion of the Property.

ARTICLE V - ESCROW ACCOUNT

5.1 Escrowed Sales Funds. Upon any approved sale or other transfer to an Approved Transferee, Westcott 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 Westcott, as set forth in the settlement statement, includes reductions that are not reasonable and standard closing costs actually paid by Westcott, or that any such reductions are in violation of the terms of this Amended Agreement, then City shall not release the Amended 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 Westcott, subject to the terms of this Amended Agreement under **Section 5.2** below.

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

(a) Prior to Minimum Development Completion Date.

(i) Prior to the Minimum Development Completion Date and subject to the City's review and approval as provided in **Subsection (ii)** below, the Escrowed Sales Funds may only be used by Westcott to directly fund Hard Costs incurred, provided that Westcott 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 Westcott 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. Westcott 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 Westcott 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 Westcott 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. Westcott will either submit additional information sufficient to respond to the City's disapproval or Westcott 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.

(b) After the Minimum Development Completion Date.

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

(ii) If Westcott fails to achieve or cause to be achieved the Minimum Development in accordance with the terms and provisions of this Amended Agreement by the Minimum Development Completion Date, all remaining

Escrowed Sales Funds shall be distributed to the City as provided in **Article VII** herein.

ARTICLE VI - FAILURE TO ACHIEVE OBJECTIVES

If Westcott fails to achieve or cause to be achieved the Minimum Development pursuant to the terms of Section 3.1(a) above, City shall have the following rights and remedies.

6.1 Exercise of Option. As described in the Amended Option, City may exercise the Amended Option upon failure by Westcott to achieve or cause to be achieved the Minimum Development – Phase I by the Minimum Development – Phase I Completion Date and the Minimum Development – Phase II by the Minimum Development – Phase II Completion Date.

6.2 Use of Escrowed Sales Funds. In addition to the right to exercise the Amended Option, if Westcott fails to achieve its obligations with respect to the Minimum Development – Phase I and the Minimum Development – Phase II as described in Section 3.1(a) above before the Minimum Development Completion Dates, the balance of the Escrowed Sales Funds will immediately become the property of the City and Westcott will have no further interest, claim to or right or title in the Escrowed Sales Funds.

6.3 Percentage Payment. In addition to the City's right to exercise the Amended Option and the ability to receive and retain the Escrowed Sales Funds, if Westcott fails to achieve the Minimum Development before the Minimum Development Completion Date, Westcott 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 Development that Westcott failed to construct by the Minimum Development Completion Date and the denominator of which is 500,000 s.f., 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 Westcott submits the Percentage Payment to the City.

6.4 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.

6.5 Example. For purposes of example only, if it is assumed that Westcott failed to complete the Minimum Development before the Minimum Development Completion Date, but Westcott (i) built 100,000 s.f. of development, 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 Minimum Development Phase II Completion Date the City can (x) exercise the Amended Option and purchase the remaining Property subject to the Amended Option, (y) retain the \$1,000,000 Sales Proceeds (i.e. the Escrow Sales Fund), and (z) require Westcott to pay \$281,056 (derived by multiplying \$1,405,280 X (100,000/500,000)), plus interest at the Interest Rate upon such \$281,056 from the Effective Date of the Option Agreement and run through the date that Westcott submits the Percentage Payment to the City.

ARTICLE VII - CITY APPROVAL OF TRANSFERS

7.1 City Approval of Transfer and Transferee. Other than the transfer to Westcott which is specifically approved, 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;

(b) provide proof that such proposed transferee is an unrelated third party and that the terms of the transaction between the proposed transferee and Westcott 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; and

(e) 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.

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 Westcott 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 VIII - DEVELOPMENT OF THE PROPERTY

8.1 Development of the Property. Until the Minimum Development has been built in connection with the development of any portion of the Property, if this Amended Agreement and the Amended Option are still in effect, Westcott must request the release of the Amended Option by the City for any portion of the Property. In order for the City to approve the request, Westcott 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 Property;

(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 Property 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; and

(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.

The City will provide notice to Westcott 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 Amended 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 Amended Agreement, the City will release the Amended Option as to the Property.

8.2 Quality Jobs. In order to promote the economic development goals and objectives of the City and further the public benefits promoted by the this Amended Agreement, Westcott, during the term of this Amended Agreement, shall use commercially reasonable efforts to develop the Property in such a way as to attract Quality Jobs.

8.3 Right of Way Dedication. It is understood and agreed between the parties that the City and the Missouri Department of Transportation are in the process of acquiring right-of-way for the realignment and reconstruction of the intersection of M291 and US Highway 50 near the Property (the "291 South Improvements.") It is understood that Westcott, and Exergonix, to the extent it may still own the Property, shall dedicate such reasonable right-of-way and permanent and temporary easements from the Property necessary to complete the construction of the 291 South Improvements on or attendant to the Property (the "Property ROW Dedication.") The parties further agree that no compensation of any kind will be paid by the City or the Missouri Department of Transportation for the Property ROW Dedication.

ARTICLE IX - USE RESTRICTIONS

9.1 Permitted Uses. In addition to the other provisions and restrictions contained in this Amended Agreement, the Property may only be used for such uses that are permitted under zoning Districts PI and PMIX as of the Effective Date and as otherwise permitted by the Land Use Approvals (the "Property Permitted Uses"). The City acknowledges that Westcott 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.

9.2 Pre-Approved Uses. A list of uses pre-approved by the City Council is attached hereto as **Exhibit C**, and incorporated herein by reference.

ARTICLE X - MISCELLANEOUS

10.1 Compliance with Laws. Subject to Westcott's rights to contest the same in any manner permitted by law, Westcott, 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).

10.2 Notice. Any notice, request, consent or communication under this Amended 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:
Brian Head, 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:
Kenneth E. Barnes
Barnes Law Firm
919 W. 47th Street
Kansas City, MO 64112

If to Westcott:

Name:
Attn: Steven Singh
Westcott Investment Group
P.O. Box 3102
San Rafael, CA 94912

With Copy To:
Aaron March, Esq.
White Goss,
a Professional Corporation
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.

10.3 Indemnification.

(a) Westcott 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 Westcott, 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 Amended 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 Amended 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 Westcott may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to Westcott of the occurrence of such event, but the failure to notify Westcott will not relieve Westcott of any liability that it may have to an Indemnified Party. After receipt of such notice, Westcott may elect to defend, contest or otherwise protect the Indemnified Party against any such Action, at the cost and expense of Westcott, 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 Westcott 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 Westcott asserting Westcott's 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 Westcott for payment and, within thirty (30) business days after such submission, Westcott shall transfer to the Indemnified Party sufficient funds to pay such bills. Westcott 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 Westcott any settlement proposal that the Indemnified Party shall receive. Westcott shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Westcott consents to such settlement. Neither Westcott nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement.

(d) Westcott expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Amended Agreement imposed upon Westcott in order to induce City to enter into this Amended 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 Amended Agreement, and the right to apply any deposit or other funds submitted by Westcott 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 Westcott 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 Amended Agreement shall survive the termination of this Amended Agreement.

10.4 Breach-Compliance.

(a) If Westcott or City does not comply with provisions of this Amended 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 Westcott 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 Amended 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 Westcott 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 Amended Agreement.

(c) The rights and remedies of the parties to this Amended Agreement, whether provided by law or by this Amended 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) Westcott (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 Amended 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, Westcott agrees that in the event of any default by City under this Amended 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 Amended Agreement. Actions brought in equity or which otherwise do not seek to recover damages are not precluded by this Section.

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

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

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

10.8 Binding Effect. This Amended 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 Amended 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.

10.9 Governing Law. This Amended 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.

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

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

10.12 Counterparts. This Amended 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.

10.13 No Third Party Beneficiaries. Nothing in this Amended 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 Amended Agreement.

10.14 Acknowledgement. Westcott agrees that the City has not made, and does not make, any representation or warranty to Westcott about the tax treatment or implications of the transactions contemplated in this Amended Agreement, or with respect to any other matter relating to this Amended Agreement or the conduct or handling of the transactions contemplated herein. Westcott agrees that it has made an independent decision to enter into this Amended 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 Amended Agreement.

10.15 City's Legislative Authority. Notwithstanding any other provisions in this Amended 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 Amended Agreement.

10.16 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.

DRAFT

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

THE CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: _____
Title: _____

EXERGONIX, INC.

By: _____
Name: _____
Title: _____

WESTCOTT INVESTMENT GROUP

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

**EXHIBIT A
TO AMENDED AGREEMENT**

Legal Description of 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

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 AMENDED AGREEMENT**

Conceptual Site Plan



Exhibit B the "Site Plan"
Tuesday, March 22, 2016

**EXHIBIT C
TO AMENDED AGREEMENT**

Pre-Approved Uses And Retail Users

- Exergonix
- Convenience store with gas pumps
- Restaurants and food service operations
- Coffee shops
- Electric vehicle manufacture, sales and distribution
- LED lighting manufacture, sales and distribution
- Lighting system integration manufacture, sales and distribution
- Design and engineering services
- Environmental testing and materials analysis
- Material manufacture, sales and distribution
- Office warehouse and distribution facilities
- Light industrial manufacture, sales and distribution