

**TERMINATION OF RIGHTS, DUTIES, OBLIGATIONS,  
AND SETTLEMENT AGREEMENT**

**THIS TERMINATION OF RIGHTS, DUTIES, OBLIGATIONS, AND SETTLEMENT AGREEMENT** (the "**Termination and Settlement Agreement**") is made and entered into on August 13, 2019 (the "**Effective Date**"), by and between the **CITY OF LEE'S SUMMIT, MISSOURI**, a Missouri constitutional charter city and political subdivision (the "**City**"), **WESTCOTT INVESTMENT GROUP, LLC**, a Delaware limited liability company ("**Westcott**"), and **THE GROVE AT LEE'S SUMMIT, LLC**, a Missouri limited liability company ("**The Grove**") (together with Westcott the "**Developer Parties**" and collectively the "**Parties**").

**RECITALS**

A. WHEREAS, the City Council of the City previously determined that assisting in the acquisition and redevelopment of the approximately 83 acres located within the City near the intersection of U.S. Highway 50 and Missouri Highway 291 as legally described on **Exhibit A** and shown on the site plan attached hereto as **Exhibit A-1** attached hereto and by this reference made a part hereof (the "**Property**") will serve public purposes because the acquisition and redevelopment of the Property would, 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, Inc., a Missouri corporation ("**Exergonix**") on September 2, 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, the First Amendment to Option Agreement on September 2, 2011 (the "**First Amended Option**"), and the Second Amendment to Option Agreement on June 13, 2016 (the "**Second Amended Option**"). Pursuant to the Original Option Agreement, as amended by the First Amended Option

and Second 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.

D. WHEREAS, on June 1, 2016, the City, Exergonix, and Westcott, entered into an Assignment Agreement and Amended and Restated Development Agreement to Promote Economic Activity ("**Amended Development Agreement**") and an Addendum to Real Estate Development Agreement (the "**Addendum**") which provided that Westcott would act as the Developer and lead the Development plan.

E. WHEREAS, on June 13, 2016, the City, Exergonix, and Westcott entered into an Assignment and First Amended and Restated Development Agreement to Promote Economic Development Activities ("**Assignment and Restated Development Agreement**"), which, among other things, assigned Exergonix's rights, duties and obligations under the Original Agreement, and as amended under the Assignment and Restated Development Agreement.

F. WHEREAS, under the terms of the Assignment and Restated Development Agreement, the Property was conveyed by Exergonix to Westcott. The Property was then transferred to The Grove, which is an entity controlled by the same manager as Westcott. Westcott, The Grove and the City are the only parties in privity.

G. WHEREAS, the Parties wish to terminate their rights, duties and obligations under the Original Agreement, Assignment and Restated Development Agreement, and all other agreements between the Parties affecting the Property, eliminate or settle all now existing or future claims related to the development of the Property, and, in addition to the good and valuable consideration listed below, convey certain real property from the Developer Parties to the City.

**NOW, THEREFORE**, for \$3,053,000.00, the completion of certain transactions including the sale of certain real estate, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:

## ARTICLE I – INCORPORATION OF RECITALS

1.1 The above recitals are incorporated herein by this reference. Capitalized terms shall have the definition set forth under this Termination and Settlement Agreement.

## ARTICLE II – TERMINATION OF PRIOR AGREEMENTS

2.1 For valuable consideration, the Parties hereby agree to terminate all now existing or prior agreements, including their rights, duties and obligations under each in favor of this Termination and Settlement Agreement.

2.2 The Parties hereby expressly agree that the following agreements (the “**Project Agreements**”) will be deemed to be terminated at the completion of the Settlement Closing (as defined in Section 3.8), some of which were previously terminated or otherwise amended:

- (a) The Original Agreement dated September 2, 2011;
- (b) The Original Option Agreement dated June 15, 2011;
- (c) The First Amended Option dated September 2, 2011;
- (d) The Amended Development Agreement dated June 1, 2016;
- (e) The Addendum dated June 1, 2016;
- (f) The Assignment and Restated Development Agreement dated June 13, 2016; and
- (g) The Second Amended Option dated June 13, 2016.

2.3 When the Project Agreements are terminated, the Parties agree that such action will have terminated any rights, duties or obligations they may have thereunder, including any rights then existing under any of the Project Agreements to control the use, development, or assignment of the Property.

2.4 If the Settlement Closing does not occur, the Parties agree that the Project Agreements shall continue to be in full force and effect according to their terms and the City’s option to purchase the Lot 4 as defined below may be exercised as set forth in Paragraph 3.8.b below.

**2.5** When the Project Agreements are terminated, the Parties agree that the use and development of the Property and the associated public and private infrastructure necessary for development of the Property will be controlled by all generally-applicable City code provisions which govern the zoning, platting and usage of the Property including the requirements of the Unified Development Ordinance (the “UDO”).

**2.6** The Parties agree that following the execution of this Termination and Settlement Agreement, no other agreement shall have any effect on the rights, duties, or obligations of the Parties, except for the Real Estate Sales Contract as set forth in Article III below.

### **ARTICLE III – TRANSACTIONS**

**3.1** In addition to the good and valuable consideration outlined above, the Developer Parties have agreed to sell, and the City has agreed to acquire, a portion of the Property known as Lot 4 (“**Lot 4**”) and have entered into a real estate sales contract (the “**Real Estate Sales Contract**”), a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference. A site plan generally depicting the location of Lot 4 is attached as **Exhibit A** to the Real Estate Sales Contract (the “**Lot 4 Description**”).

**3.2** The conveyance of Lot 4 shall be governed by the Real Estate Sales Contract and can only occur if the Settlement Closing has been completed as described in Section 3.8.

**3.3** Prior to the conveyance of Lot 4, the Developer Parties shall subdivide Lot 4 from the Property pursuant to the UDO (the “**Lot 4 Plat**”) and the Lot 4 Plat shall be recorded by the Developer with the Jackson County Recorder of Deeds.

**3.4** As part of the processing of the Final Plat, unless already permitted pursuant to the UDO, the Developer Parties shall provide security to the City for the completion of the improvements to the Property which are necessary to satisfy the “Pad Ready” condition as described in the Real Estate Sales Contract (the “**Pad Ready Improvements**”) through one of the methods authorized under the UDO. The Parties agree that the dollar amount of the security that is necessary to ensure completion of the Pad Ready Improvements shall be \$400,000 (the “**Security Amount**”).

**3.5** If all or any portion of the Property will be developed promptly after the Settlement Closing and if the Developer Parties will be providing security for the public improvements associated with such development pursuant to the requirements of Section 7.340 of the UDO, then the Security Amount shall be added to the amount of the security that is required to be provided to the City pursuant to the UDO for such development. The City may withhold the issuance of a building permit for any development on the Property until the Security Amount is provided as part of such permit.

**3.6** In order to provide assurance that the Developer Parties obtain approval for and record the Lot 4 Final Plat, including constructing the Pad Ready Improvements, until such time as the Lot 4 Final Plat is recorded with the Jackson County Recorder of Deeds, notwithstanding the provisions of the UDO, the City may withhold the issuance of a certificate of occupancy for any building built on the Property.

**3.7** The Parties will place into escrow with Assured Quality Title (the "**Title Company**") the following:

- a. In advance of the passage of the Ordinance, as defined below:
  - i. Developer Parties shall deposit \$3,053,000 (the "**Settlement Payment**") prior to the second reading of the ordinance approving the execution of this Termination and Settlement Agreement (the "**Ordinance**"). Proof of such deposit will be provided to the City prior to the City's consideration of Second Reading of the Ordinance. The Settlement Payment will be held by the Title Company with instructions that they shall be disbursed in accordance with the escrow instructions mutually agreed to by the parties and attached hereto as Exhibit C (the "**Escrow Instructions**"). The fully executed Escrow Instructions will be provided to the Company by the Parties concurrent with the deposit of the Settlement Agreement;
  - ii. Developer Parties shall deliver an executed Termination and Settlement Agreement;
  - iii. The Grove shall deliver the executed Real Estate Sales Contract; and

- iv. The Grove shall deliver an executed general warranty deed which transfers the Property to the City, in a form approved by the City Law Department (the “**Warranty Deed**”).
- b. Immediately after passage of the Ordinance:
- i. The City shall deposit \$100.
  - ii. The City shall deliver a fully executed Termination and Settlement Agreement;
  - iii. The City shall deliver a fully executed “Release of Option and Deed of Release” in the form set forth in the attached **Exhibit D**; and
  - iv. The City shall deliver an executed Real Estate Sale Contract.

**3.8** The Parties shall provide the following written instructions to the Title Company as part of the Escrow Instructions:

- a. Upon passage of the Ordinance by the City, if: the Title Company has received written confirmation from the City (the “**City Letter**”) that: (1) there is no judicial order, issued by a court of competent jurisdiction, which prohibits the ability of the Parties and the Title Company to complete the Settlement Closing (as defined below in this paragraph); (2) there are no intervening actions by Westcott or The Grove which would cause a delay of the Closing; and (3) the City has received proof that the Indemnity Insurance Policy as defined in Section 4.3(e) has been issued (each individually “**Closing Condition No. 1, 2 or 3**” and collectively the “**Conditions to Closing**”), then the Title Company shall take these steps in this order based on the written instructions of the Parties which will be given to the Title Company: (1) transfer the Settlement Payment by wire to the City; (2) after receiving written confirmation from the City of receipt of the Settlement Payment, which confirmation shall be given by the City within one (1) hour of receipt of payment, record the Release of Option and Deed of Release and the fully executed Termination of Rights, Duties and Obligations and Settlement Agreement with the Recorder of Deeds for Jackson County, in Independence, Missouri (the “**Recorder**”) (collectively, the actions described in this paragraph are the

**“Settlement Closing”**). As time is of the essence, it is the goal and objective of the Parties for the Settlement Closing to occur on or before August 16, 2019 (the **“Settlement Closing Date”**). Furthermore, the Parties may mutually agree to extend the Settlement Closing to allow for the satisfaction of any of the Conditions to Closing which have not been satisfied.

- b. If, after passage of the Ordinance, the Settlement Closing does not occur due to Closing Condition 1 not being satisfied, the Settlement Closing Date shall be extended to October 4, 2019 to allow the Parties the opportunity to obtain judicial review of any judicial order issued which prohibited the ability of the Parties to close on the Settlement Closing Date. After October 4, 2019, unless further extended by agreement of the Parties, if the Settlement Closing Date has not occurred, then the Title Company shall, on a date selected by the City, take these steps in this order: (1) transfer \$3,053,100 to Westcott; (2) record the Warranty Deed with the Recorder; (3) return the Release of Option and Deed of Release to the City; and (4) return the \$100 deposit to the City.
- c. If, after passage of the Ordinance, the Settlement Closing does not occur due to Closing Condition 2 or 3 not being satisfied, then, unless the Settlement Closing Date is extended by mutual agreement of the Parties or the election by the City at its sole discretion to waive Closing Conditions 2 and 3, the Title Company shall take these steps in this order: (1) transfer \$3,053,100 to Westcott; (2) record the Warranty Deed with the Recorder; (3) return the Release of Option and Deed of Release to the City; and (4) return the \$100 deposit to the City.
- d. If the Ordinance has not been passed by the City by September 1, 2019, then upon confirmation in writing of the non-passage of the Ordinance by either the City or Developer Parties, the Title Company, within seven (7) business days of receiving such notice, shall take these steps in this order: (1) transfer \$3,053,100 to Westcott; (2) return the Warranty Deed to Westcott, and (3) return \$100 to the City.

## ARTICLE IV – SETTLEMENT AND MUTUAL RELEASE OF CLAIMS AND INDEMNIFICATION

4.1 The Parties agree, for good and valuable consideration, that they will settle or forego any claims, now or existing in the future, as a condition of this Termination and Settlement Agreement.

4.2 No claim, lawsuit, or other legal action shall be brought by any Party to this Termination and Settlement Agreement related to any of the Project Agreements set forth in Paragraph 2.2 after the Project Agreements are deemed to be terminated pursuant to this Termination and Settlement Agreement. All claims, lawsuits, or other legal actions related to the Project Agreements, regardless of whether they exist now or arise in the future, shall be expressly barred under the terms of this Termination and Settlement Agreement after they are deemed terminated pursuant to this Termination and Settlement Agreement. The Parties agree that this Termination and Settlement Agreement releases any and all claims made by any Party or its individual members, shareholders, or assigns after the Project Agreements are deemed terminated at the Closing. This Paragraph *shall not* apply to any action to enforce this Termination and Settlement Agreement or to claims which may arise based on approvals granted in the future by the City relating to the zoning, platting and development of the Property.

### 4.3 Indemnification.

- a. For a period of five years following the Effective Date of this Settlement and Termination Agreement, Developer Parties 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, costs and expenses, including reasonable attorney's fees, costs and expenses, made by any party that is not a Party to this Settlement and Termination Agreement and 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 the Developer Parties, its constituent members or partners, its managers, 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 the Project Agreements and this Termination and Settlement Agreement, (iii) in connection with the ownership, use or occupancy and development or redevelopment of the Property or a portion thereof, (iv) as a result of a challenge to the terms of this Termination and Settlement Agreement or the legality thereof or (v) in connection with the Project Agreements, except to the extent such claims, demands, liabilities and costs are made against the City regarding Lot 4, subsequent to the sale of Lot 4.

- b. In the event any suit, action, investigation, claim or proceeding (collectively, an "**Action**") is begun or made as a result of which the Developer Parties may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to the Developer Parties of the occurrence of such event. The failure to notify the Developer Parties will relieve the Developer Parties of any liability that it may have to an Indemnified Party unless the Developer Parties learn of such Action by notice directed to one or more of the Developer Parties by the party commencing such Action or by another third party. After receipt of such notice, the Developer Parties shall defend, contest or otherwise protect the Indemnified Party against any such Action, at the cost and expense of the Developer Parties. 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 the Developer Parties shall fail to timely to defend, contest or otherwise protect an Indemnified Party against such Action, the Indemnified Party shall have the right to (1) make a claim on the Indemnity Insurance Policy and/or (2) defend, contest or otherwise protect against such Action. If such defense is undertaken by the Indemnified Party after notice to the Developer Parties asserting the Developer Parties' 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 the Developer Parties for payment and, within sixty (60) business days after such submission, the Developer Parties shall transfer to the Indemnified Party sufficient funds to pay such bills. The Developer Parties 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 the Developer Parties any settlement proposal that the Indemnified Party shall receive. The Developer Parties shall be liable for the payment of any amounts paid in settlement of any Action to the extent that the Developer Parties consent to such settlement. Neither the Developer Parties nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement.
- d. The Developer Parties expressly confirm and agree that they have provided this indemnification and assumes the obligations under this Termination and Settlement Agreement imposed upon the Developer Parties in order to induce City to enter into this Termination and Settlement 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 Termination and Settlement Agreement, and the right to apply any deposit or other funds submitted by the Developer Parties 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 the Developer Parties for all fees and expenses (including attorney's fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).
- e. Simultaneously with the execution of this Settlement Agreement and annually thereafter for a period of five (5) years after the Effective Date, the Developer Parties shall provide evidence of contractual liability insurance, in form and substance reasonably acceptable to the City Attorney (the "**Indemnity Insurance Policy**"), covering the Developer's obligations to defend, indemnify and hold harmless the Indemnified Parties, as provided in this Agreement, by an insurance company with a rating by a reputable rating agency indicating excellent or superior financial strength in the form of an A.M. Best rating of "A-" or better. The Developer Parties agree to provide immediate written notice to the City

when a cancellation, termination, expiration or modification of the Indemnity Insurance Policy occurs. The Settlement Closing shall not occur until proof of the Indemnity Insurance Policy has been provided to the City. The City agrees to execute all necessary documents to facilitate proper insurance coverage.

**ARTICLE V – MISCELLANEOUS PROVISIONS**

**5.1 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 United States Mail or by a nationally recognized delivery service, with delivery confirmed, addressed as follows:

If to the City:

Name:

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:

David Bushek, City Law Department  
The City of Lee's Summit, Missouri  
City Hall, 220 SE Green Street  
Lee's Summit, Missouri 64063

If to Westcott:

Name:

Steve Singh  
Westcott Investment Group, LLC  
2100 Geng Road, Suite 210  
Palo Alto, CA 94803

With Copy To:

Aaron March, Esq.  
Rouse Frets White Goss  
Gentile Rhodes, P.C.  
4510 Belleview Ave., Suite 300  
Kansas City, MO 64111

If to The Grove:

Name:

Steve Singh  
The Grove at Lee's Summit, LLC  
2100 Geng Road, Suite 210  
Palo Alto, CA 94803

With Copy To:

Aaron March, Esq.  
Rouse Frets White Goss  
Gentile Rhodes, P.C.  
4510 Belleview Ave., 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 United States Mail or nationally recognized delivery service, with delivery confirmed, upon receipt of such communication.

**5.2 Breach and Remedies.**

- a. If any action is instituted by any party hereunder, the non-prevailing party in such action shall pay any and all costs, fees and expenses, including attorneys' fees incurred by the prevailing party in enforcing this Termination and Settlement Agreement.
- b. The rights and remedies of the Parties to this Termination and Settlement Agreement, whether provided by law or by this Termination and Settlement Agreement, shall be cumulative and the exercise by any 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 any party shall apply to obligations beyond those expressly waived.

**5.3 Assignment.** This Termination and Settlement Agreement may be assigned with the written approval of all other Parties.

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

**5.5 Recording.** This Termination and Settlement Agreement shall be recorded pursuant to the provisions of Paragraph 3.8.a above, at the Developer Parties' expense.

**5.6 Binding Effect.** This Termination and Settlement 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 Termination and Settlement 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.

**5.7 Governing Law.** This Termination and Settlement 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.

**5.8 Time and Performance are of the Essence.** Time and exact performance are of the essence of this Termination and Settlement Agreement.

**5.9 Entire Agreement; Controlling Documents.** This Termination and Settlement Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof. In the event of a discrepancy between this Termination and Settlement Agreement and any other agreement this Termination and Settlement Agreement shall control.

**5.10 Counterparts.** This Termination and Settlement 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.

**5.11 No Third-Party Beneficiaries.** Nothing in this Termination and Settlement 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 Termination and Settlement Agreement.

**5.12 Acknowledgement.** The Developer Parties agree that the City has not made, and does not make, any representation or warranty to the Developer Parties about the tax treatment or implications of the transactions contemplated in this Termination and Settlement Agreement, or with respect to any other matter relating to this Termination and Settlement Agreement or the conduct or handling of the transactions contemplated herein. The Developer Parties agree that it has made an independent decision to enter into this Termination and Settlement 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 Termination and Settlement Agreement

**5.13 City's Legislative Authority.** Notwithstanding any other provisions in this Termination and Settlement 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 Termination and Settlement Agreement.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK,  
SIGNATURE PAGE TO FOLLOW]**

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

THE CITY OF LEE'S SUMMIT, MISSOURI

By: \_\_\_\_\_  
Stephen A. Arbo, City Manager

STATE OF MISSOURI     )  
  ) SS.  
COUNTY OF JACKSON    )

On this \_\_\_\_ day of August, 2019, before me appeared Stephen A. Arbo, to me 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 constitutional charter city and political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said Stephen A. Arbo acknowledged said instrument to be the free act and deed of said City.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires: \_\_\_\_\_







**EXHIBIT A**  
**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 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 A-1**  
**Site Plan**



**EXHIBIT B**  
**Real Estate Sales Contract**

**REAL ESTATE SALES CONTRACT**

This Commercial Real Estate Sales Contract (the “**Contract**”) is made and entered into on August 13, 2019, between:

**SELLER:** The Grove at Lee’s Summit, LLC, a Missouri limited liability company, and

**BUYER:** The City of Lee’s Summit, Missouri, a Missouri constitutional charter city and is effective as of the date of acceptance on the last signature on this Contract (the “**Effective Date**”).

WHEREAS, Exergonix, Inc., a Missouri corporation (“**Exergonix**”) and The City of Lee’s Summit, Missouri constitutional charter city and political subdivision (the “**City**” or “**Buyer**”) entered into that certain Option Agreement dated June 15, 2001 (the “**Original Option Agreement**”); and

WHEREAS, the City and Exergonix entered into that certain First Amendment to Option Agreement on September 2, 2001 (the “**First Amended Option**”); and

WHEREAS, pursuant to the Original Option Agreement as Amended by the First Amended Option, Exergonix granted to the City a right of option to purchase the property described in said Original Option Agreement as amended by First Amended Option (the “**Option Property**”); and

WHEREAS, Exergonix acquired the Option Property on June 15, 2011; and

WHEREAS, Exergonix, the City and Westcott Investment Group, a Delaware limited liability company (“**Westcott**”) entered into that Assignment and First Amended and Restated Development Agreement to promote economic and development activities dated June 13, 2016 (the “**Amended Development Agreement**”); an

WHEREAS, the Amended Development Agreement replaced that certain Development Agreement to promote Economic Activities between the City and Exergonix dated September 2, 2011 (the “**Original Development Agreement**”); and

WHEREAS, in connection with the execution of the Amended Development Agreement, Exergonix with the consent of the City and to further implement the terms of the Amended Development Agreement conveyed the Option Property to Westcott; and

WHEREAS, Westcott, Exergonix and the City entered into that certain Second Amendment to Option Agreement dated June 13, 2016 (“**Second Option Amendment**”) as one of the conditions of the Amended Development Agreement; and

WHEREAS, pursuant to the Amended Development Agreement, Westcott agreed to convey to the City land from the Option Property for the City to use as a location for an EMS/fire facility (the “**EMS/Fire Station Property**”); and

WHEREAS, the City and Westcott have agreed that the EMS/Fire Station Property shall be located on the property legally described on **Exhibit A** attached hereto, which will become Lot 4, The Grove, a subdivision in Lee’s Summit, Jackson County, Missouri (the “**Lot 4**”); and

WHEREAS, pursuant to the Amended Development Agreement, City now desires to acquire title to Lot 4 pursuant to the Amended Development Agreement; and

WHEREAS, the City previously authorized Westcott to convey the Option Property to the Grove at Lee’s Summit, LLC, a Missouri limited liability company (“**The Grove**” or “**Seller**”); and

WHEREAS, as a result of the conveyance from Westcott to The Grove, The Grove is the Seller under this Contract with the City as Buyer.

1. **PROPERTY:** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the real estate described in Exhibit A (Legal Description) attached hereto, such legal description to be verified by the Title Company. Such real estate and other property shall be collectively referred to in this Contract as the “Property”.

2. **EXCEPTIONS:** The Property shall be conveyed subject to the Permitted Exceptions (as defined in the paragraph entitled “**Title Insurance**”) and all zoning and platting requirements of the City.

3. **PURCHASE PRICE:** The Purchase Price to be paid by Buyer for the Property is as follows:

a. \$100.00; and

b. The Buyer shall have entered into a Termination of Rights, Duties, Obligations and Settlement Agreement (the “**Settlement Agreement**”) which establishes the conditions under which the Original Option Agreement, the First Option Amendment, the Second Option Amendment, the Original Development Agreement and the Amended Development Agreement shall be terminated, in form acceptable to Seller and Westcott so that, upon the satisfaction of certain conditions stated in the Settlement Agreement, Seller and Westcott will no longer have any obligations under those agreements and the Option Property (including the property being conveyed to the City for the EMS/Fire Station) will be released from all burdens and encumbrances of such agreements.

4. **CLOSING AND POSSESSION DATE(S):** Subject to all the provisions of this Contract, the closing of this Contract (the “Closing”) shall take place at the offices of Assured Quality Title ten (10) days after the Lot 4 Plat (as defined in the Settlement Agreement), platting the Property as Lot 4, The Grove, has been recorded in Jackson County, Missouri. Possession of the Property shall be delivered to Buyer upon closing.

5. **PRORATIONS:** Seller shall pay all general real estate taxes levied and assessed against the Property, and all installments of special assessments for the years prior to the calendar year of Closing. Taxes and installments of special assessments becoming due and accruing during the calendar year of Closing shall not be prorated between Seller and Buyer on the basis of such calendar year because as of Closing the Property will be exempt from the obligation to pay general real estate taxes or special assessments (not otherwise consented to by the Buyer).

6. **TITLE INSURANCE:** Seller shall deliver and pay for an owner’s ALTA title insurance policy insuring marketable fee simple title in Buyer in the amount of \$250,000 as of the time and date of recording of Seller’s Warranty Deed (the “Deed”), subject only to the Permitted Exceptions defined below. Seller shall, as soon as possible and not later than twenty (20) days after the Effective Date of this Contract, cause to be furnished to Buyer a current commitment to issue the title policy (the “**Title Commitment**”), to be issued through Assured Quality Title (the “**Title Company**”). Buyer shall have ten (10) days after receipt of the Title Commitment (the “**Title Review Period**”) in which to notify Seller in writing of any objections Buyer has regarding any matters shown or referred to in the Title Commitment. Any matters which are set forth in the Title Commitment and to which Buyer does not object within the Review Period shall be deemed to be permitted exceptions to the status of Seller’s title (the “**Permitted Exceptions**”). The Option Agreement as amended and the Development Agreement as amended will not be Permitted Exceptions as the same shall be terminated prior to Closing and a document recorded to evidence such termination and release of the Option Property and the Property from the burdens of the same. With regard to items to which Buyer does object within the Review Period, Seller shall have ten (10) days after receipt of Buyer’s written notice of objections to cure such objections (“**Title Cure Period**”). Seller shall pay all charges of the Title Company for escrow and related closing services.

If Seller does not cure the objections by the end of the Title Cure Period or if Seller and Buyer have not agreed to extend the Title Cure Period by amending this Contract, then this Contract shall automatically be terminated unless Buyer waives the objections no later than five (5) days after the end of the Title Cure Period.

7. **REPRESENTATIONS:** Buyer acknowledges that neither Seller nor any party on Seller’s behalf has made, nor do they hereby make, any representations as to the past, present or future condition, income, expenses, operation or any other matter or thing affecting or relating to the Property except as expressly set forth in this Contract. Buyer agrees to assume full responsibility for completing Buyer’s due diligence, if any, in such a manner as to answer all questions necessary concerning the condition of the Property. Buyer acknowledges that it is accepting title to the Property in its as-is, where-is state, subject to the Seller’s obligation to plat the Property and to make the Property “pad ready” as defined below.

8. **PAD READY.** Seller covenants and agrees to make the Property “Pad Ready”. This obligation of Seller expressly survives Closing. The Property shall be “Pad Ready” when the following conditions are satisfied:

a. The Property has been graded so that it is level and available for construction to begin;

b. public streets shall be constructed along at least two of the boundaries of the Property in accordance with the Unified Development Ordinance (“UDO”); and

c. utilities (electric, water, sanitary and storm sewer) shall be available at the boundaries of the Property in connection with the Seller’s construction of the adjacent roads which are to be constructed by Seller in accordance with the UDO.

9. **BUYER’S CONDITIONS TO CLOSING.** Buyer shall not be required to close until the following conditions have been satisfied:

A, The Property has been platted as Lot 4, The Grove, a subdivision in the City of Lee’s Summit, Jackson County, Missouri and the Lot 4 Plat (as defined in the Settlement Agreement) has been recorded in Jackson County, Missouri.

10. **REAL ESTATE BROKER:** Seller and Buyer agree that no brokers are representing Seller or the City. Any party to this Contract through whom a claim to any broker’s, finder’s or other fee is made, contrary to the representations made above in this paragraph, shall indemnify, defend and hold harmless the other party to this Contract from any other loss, liability, damage, cost or expense, including without limitation, reasonable attorney’s fees, court costs and other legal expenses paid or incurred by the other party, that is in any way related to such a claim. The provisions of this paragraph shall survive Closing or termination of this Contract.

11. **DELIVERY OF DEED; PAYMENT; DISBURSEMENT OF PROCEEDS:** At or before Closing, Seller agrees to properly execute and deliver into escrow the Deed, all other documents and funds necessary to complete the Closing. At or before Closing, Seller and Buyer agree to properly execute and deliver the Settlement Agreement into escrow and funds required of Seller under the Settlement Agreement. The Deed shall convey to Buyer marketable fee simple title to the Property, free and clear of all liens and encumbrances, other than the Permitted Exceptions. At or before the Closing, Seller and Buyer each agree to deliver into escrow a cashier’s check or guaranteed funds sufficient to satisfy their respective obligations under this Contract, if any. Seller understands that, unless otherwise agreed, disbursement of proceeds will not be made until after the Deed or the instrument of conveyance have been recorded and the Title Company can issue the title policy with only the Permitted Exceptions.

12. **MAINTENANCE:** Seller shall do ordinary and necessary maintenance, upkeep and repair to the Property through Closing.



13. **FOREIGN INVESTMENT:** Seller represents that Seller is not a foreign person as described in the Foreign Investment in Real Property Tax Act and agrees to deliver a certificate at Closing to that effect which shall contain Seller's tax identification number.

14. **TERMINATION:** If this Contract is terminated by either party pursuant to a right expressly given in this Contract, neither party shall have any further rights or obligations under this Contract except as otherwise stated in this Contract.

15. **DEFAULT AND REMEDIES:** Seller or Buyer shall be in default under this Contract if either fails to comply with any material covenant, agreement or obligation within any time limits required by this Contract. Following a default by either Seller or Buyer under this Contract, the other party shall have the following remedies:

a. If Seller defaults, Buyer may terminate this Contract by written notice to Seller and, at Buyer's option, pursue any remedy and damages available at law or in equity.

b. If Buyer defaults, Seller may (i) specifically enforce this Contract and recover damages suffered by Seller as a result of the delay in the sale of the Property; or (ii) terminate this Contract by written notice to Buyer or pursue any other remedy and damages available at law or in equity. If, as a result of a default under this Contract, either Seller or Buyer employs an attorney to enforce its rights, the defaulting party shall, unless prohibited by law, reimburse the non-defaulting party for all reasonable attorneys' fees, court costs and other legal expenses incurred by the non-defaulting party in connection with the default.

16. **ENTIRE AGREEMENT AND MANNER OF MODIFICATION:** This Contract, and any attachments or addenda hereto, constitute the complete agreement of the parties concerning the Property, supersede all other agreements and may be modified only by initialing changes in this Contract or by written agreement.

17. **NOTICES:** All notices, consents, approvals, requests, waivers, objections or other communications (collectively "notices") required under this Contract shall be in writing and shall be served by hand delivery, by prepaid U.S. Postal Service certified mail, return receipt requested, or by reputable overnight delivery service guaranteeing next-day delivery and providing a receipt. All notices shall be addressed to the parties at the respective addresses as set forth below, except that any party may, by notice in the manner provided above, change this address for all subsequent notices. Notices shall be deemed served and received upon the earlier of the third day following the date of mailing (in the case of notices mailed by certified mail) or upon delivery (in all other cases). A party's failure or refusal to accept service of a notice shall constitute delivery of the notice.

18. **TIME AND EXACT PERFORMANCE ARE OF THE ESSENCE UNDER THIS CONTRACT.**

19. **ADDENDA:** The following Addenda (riders, supplements, etc.) are attached hereto and are a part of this Contract (*Check Those Which Are Applicable*):

Final for Council Packets

**Exhibit A (Legal Description of the “Property”)**

**THE PARTIES EXECUTING THIS CONTRACT REPRESENT AND WARRANT  
THAT THEY ARE LEGALLY AUTHORIZED TO EXECUTE THIS CONTRACT.**

**All parties agree that this transaction can be conducted by electronic means, including email, according to the Uniform Electronic Transaction Act as adopted in Missouri.**

**SELLER: The Groves at Lee's Summit, LLC**

By: \_\_\_\_\_  
Robert Dunn, Manager

Date: \_\_\_\_\_

**BUYER: The City of Lee's Summit**

\_\_\_\_\_  
Stephen A Arbo, City Manager

Date: \_\_\_\_\_

Attest

\_\_\_\_\_  
Trisha Arcuri, City Clerk

Date: \_\_\_\_\_

Approved as to Form

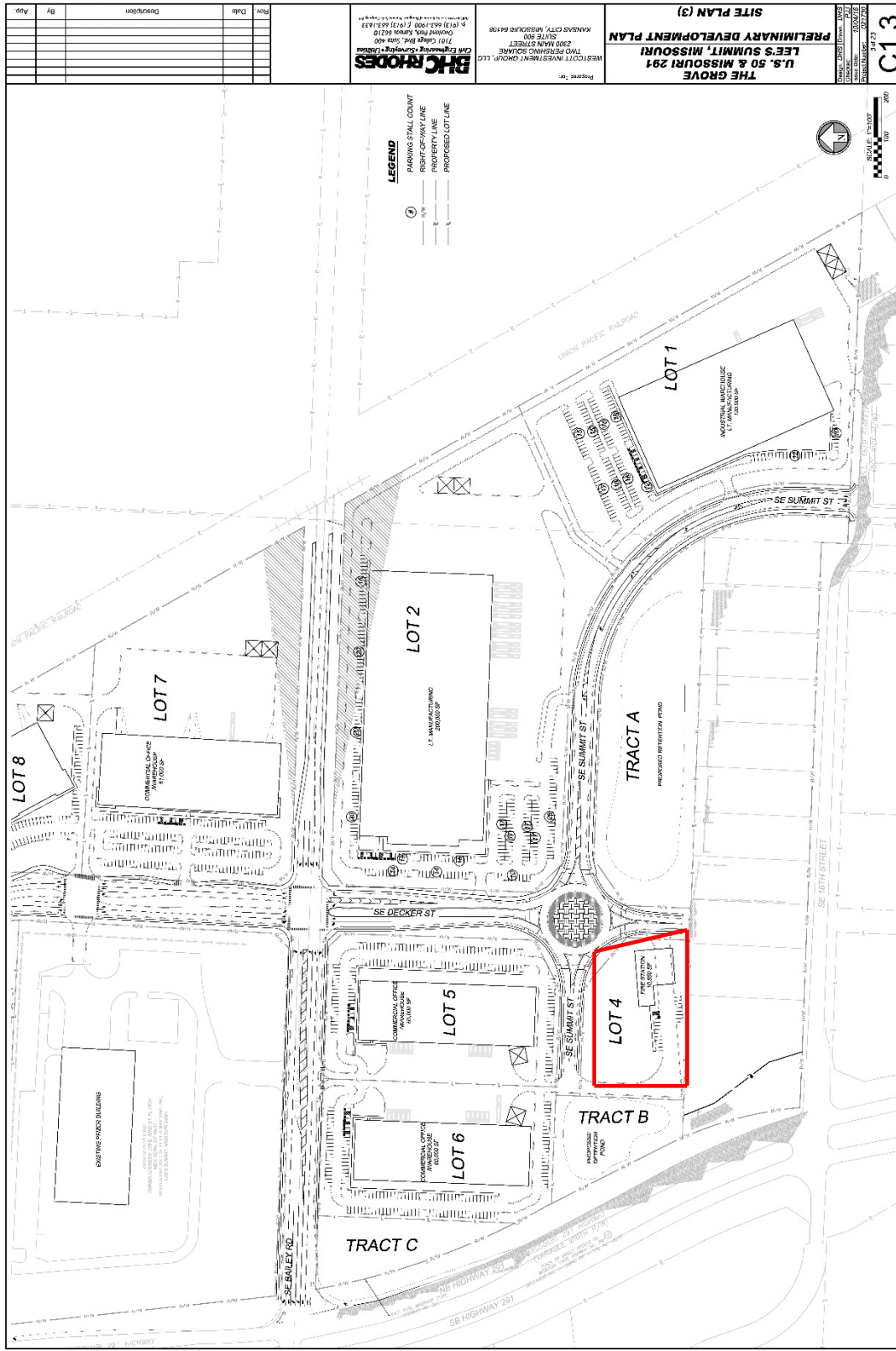
\_\_\_\_\_  
David Bushek, Law Department

Date: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

Land to be platted and legally described as: Lot 4, The Grove, a subdivision in the City of Lee's Summit, Jackson County, Missouri as depicted on the attached site plan.



**EXHIBIT C**  
**Escrow Instructions**

**[To be added based on Section 3.8 of the Agreement]**

August 7, 2019

**JOINT INSTRUCTION LETTER**

VIA HAND DELIVERY

Mr. Jose Evans  
Mr. Don Rodgers  
Assured Quality Title Company  
1001 Walnut  
Kansas City, MO 64106

**Re: Escrow of documents and funds related to Termination of Rights, Duties, Obligations and Settlement Agreement (the “TSA”) between the City of Lee’s Summit, MO (the “City”), Westcott Investment Group, LLC (“Westcott”) and The Grove at Lees Summit LLC (“The Grove”); Westcott and The Grove may be referred to herein as the “Developer Parties”)**

Gentlemen:

These Joint Instructions are submitted to you by the City and the Developer Parties in connection with the TSA. Attached as Exhibit A to this Letter of Instructions is the final version of the TSA. As set out in the TSA, certain transactions may occur if the City passes an Ordinance approving the execution of the TSA by the City. Pursuant to City regulations and law, the proposed Ordinance will be read on two occasions at two meetings of the City Council of the City before it can be voted on (whether to pass or reject). After the first reading, but prior to the second reading of the Ordinance (and prior to any prospective passage of the Ordinance), this Instruction Letter and the funds are being delivered to Assured Quality Title Company. Execution and the delivery of this letter is contingent upon the occurrence of the first reading of the Ordinance having occurred; as such, after the first reading of the Ordinance and prior to the second reading of the Ordinance, the Developer Parties are delivering into escrow (pursuant to Section 3.7.a of the TSA simultaneous with the delivery of this Joint Instruction Letter), the following documents:

1. Two (2) counterparties of the TSA executed by the Developer Parties;
2. The other items described in 3.7(a) of the TSA as follows:
  - a. The Settlement Payment of \$3,053,000.00.
  - b. The Real Estate Sales Contract executed by The Grove.
  - c. The Warranty Deed executed by The Grove.
3. You are to hold these documents and funds in accordance with the terms of the TSA.

If the City passes the Ordinance as defined in the TSA, then the City will deliver into escrow with you the following documents described in Section 3.7(b) of the TSA:

August 7, 2019

Page 2

- a. The sum of \$100;
- b. Two (2) counterparts of the TSA executed by the City; and
- c. The Release of Option and Deed of Release executed by the City.

Upon receipt of the items delivered into escrow pursuant to Section 3.7(a) and 3.7(b) of the TSA and upon passage of the Ordinance, the City and Developer Parties shall proceed pursuant to Section 3.8(a) of the TSA.

Upon your receipt of the City Letter described in TSA Section 3.8(a), you shall then proceed to take the steps set out in Section 3.8(a) beginning with the transfer of the Settlement Payment by wire to the City. If, however, the Closing Conditions are not satisfied and you have not received the City Letter, then you are directed to comply with 3.8(b) or 3.8(c) as applicable depending upon which of the Closing Conditions is not satisfied. Please take note of the Settlement Closing Date and the prospective extension of the same set out in 3.8(b) and 3.8(c) and any other terms which allow the City to either extend the Settlement Closing Date or to waive Closing Conditions two (2) and three (3).

If the Ordinance has not been passed by the City by September 1, 2019, then you are to comply with the provisions of Section 3.8(d) of the TSA.

Your execution of this Joint Instruction Letter evidences your agreement to hold the documents and Settlement Payment in escrow and to comply with the terms of the TSA.

If the Settlement Closing occurs, then you will continue to hold the Warranty Deed for the to-be-platted Lot 4 in accordance with terms of the Real Estate Sale Contract. You should prepare a title commitment for Lot 4 when its platted or when a legal description is otherwise made available to you. At such times as the Settlement Closing occurs, then you should release a fully executed counterpart of the Real Estate Sale Contract to the City and to the Developer Parties. You should continue to hold the Warranty Deed pending Closing of the sale described in the Real Estate Sale Contract. At the time of Closing under the Real Estate Sale Contract, you will then close only pursuant to instructions given you by the Developer Parties and the City.

In the event of any conflict between these Joint Instructions and the TSA, the terms of the TSA shall control unless and until the TSA is amended by written agreement of the City and the Developer Parties.

The Developer Parties shall be responsible for any fees of Assured Quality Title Company ("AQTC") in connection with AQTC serving as the escrow agent for the enclosed documents and funds (as and when received), holding the documents to be delivered prospectively by the City (if the Ordinance is passed) and then to hold, disburse, record or return documents and funds as described in Section 3.8 of the TSA.



August 7, 2019

Page 3

If the Settlement Closing occurs, the \$100 deposit from the City shall be delivered to the Developer Parties and credited towards the Developer Parties' responsibility for the costs of AQTC pursuant to these joint instructions.

These instructions can be modified or changed only with the written consent of the City and the Developer Parties. All capitalized terms herein shall have the meanings as set out in the TSA.

These instructions may be executed in counterparts, each of which shall be deemed an original (including copies sent by electronic means) but which together shall constitute one and the same instrument. Notwithstanding this provision, original documents of the documents being placed in escrow are required in connection with Settlement Closing of the transaction as described in the TSA.

Please acknowledge below your receipt of this letter and return a signed copy to each of the City ([David.Bushek@cityofls.net](mailto:David.Bushek@cityofls.net)), the Developer Parties and Aaron March ([amarch@rousepc.com](mailto:amarch@rousepc.com)), ([s.singh@thegrove-ls.com](mailto:s.singh@thegrove-ls.com)) and ([2welldunn@comcast.net](mailto:2welldunn@comcast.net)).

**CITY:**

The City of Lee's Summit, Missouri  
City Hall  
220 SE Green Street  
Lee's Summit, MO 64063

The City of Lee's Summit

By: \_\_\_\_\_  
Stephen A. Arbo, City Manager

**WESTCOTT INVESTMENT GROUP, LLC**

2100 Geng Road, Suite 210  
Palo Alto, CA 94803

By: \_\_\_\_\_  
Robert Dunn, Manager

August 7, 2019

Page 4

**THE GROVE AT LEES SUMMIT**

2100 Geng Road, Suite 210

Palo Alto, CA 94803

By: \_\_\_\_\_

Robert Dunn, Manager

The undersigned hereby acknowledges receipt of the foregoing instructions and documents and agrees to comply all of the provisions hereof.

**ASSURED QUALITY TITLE COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: August \_\_, 2019

**EXHIBIT D**  
**Release of Option and Deed of Release**

(Above Space Reserved for Recorder of Deeds)

Document Title:	Release of Option and Deed of Release
Document Date:	August ____, 2019
Grantor Names:	City of Lee's Summit, Missouri
Grantee Name:	Westcott Investment Group, LLC
Grantee Address:	P.O. Box 3102 San Rafael, CA 94912
Legal Description:	See body of document below
Reference Document:	Memorandum of Option Agreement First Amendment to Option Agreement
Reference Book and Page:	Instrument No. 2011E0056563 Instrument No. 2011E0114613

**RELEASE OF OPTION AND DEED OF RELEASE**

**WHEREAS**, the City of Lee's Summit, Missouri, has an option to purchase certain real property located within the City of Lee's Summit, Jackson County, Missouri ("City"), legally described below (the "Property"). The City's option to purchase was granted in that certain Option Agreement dated June 15, 2011, between Exergonix, Inc. and City, a Memorandum of which was recorded on June 17, 2011 as Instrument No. 2011E0056563, and in that certain First Amendment to Option Agreement, dated September 2, 2011, between Exergonix, Inc. and City, a Memorandum of which was recorded on December 8, 2011 as Instrument No. 2011E0114613 (the "Option"); and

**WHEREAS**, the City entered into an Assignment and First Amended and Restated Development Agreement with Exergonix, Inc. and Westcott Investment Group dated June 13,

2016, the terms of which released and discharged Exergonix, Inc. from its rights, duties and obligations under the recorded agreements, and the City and Westcott agreed the amended Option remained in full force and effect.

**WHEREAS**, the City desires to not exercise its Option to purchase that certain real Property located within the City of Lee's Summit, Jackson County, Missouri and forever release its option rights granted pursuant to the Agreements referenced in this Release of Option and Deed of Release.

**THEREFORE, THE CITY**, in consideration of the sum of Ten Dollars (\$10) and other good and valuable consideration set forth in the Termination of Rights, Duties, Obligations and Settlement Agreement between the City, Westcott and The Grove at Lee's Summit dated August 13, 2019, the receipt of which is hereby acknowledged, do by these presents, REMISE, RELEASE AND FOREVER QUIT CLAIM unto the said party, Westcott Investment Group, and its affiliates, their heirs, personal representatives, successors and assigns, the all of their rights, title, and interest, including without limitation, the Option, in and to the following described real estate situated in the County of Jackson and State of Missouri to wit:

**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  $87^{\circ}-53'-51''$  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  $29^{\circ}-25'-41''$  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  $29^{\circ}-25'-41''$  EAST, A DISTANCE OF 1323.59 FEET, TO A POINT IN THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER; THENCE NORTH  $87^{\circ}-32'-55''$  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  $2^{\circ}-36'-20''$  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  $87^{\circ}-49'-43''$  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 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.

**THE CITY OF LEE’S SUMMIT, MISSOURI**

BY: \_\_\_\_\_  
Stephen A. Arbo, City Manager

STATE OF MISSOURI            )  
  ) ss.  
COUNTY OF JACKSON        )

On this \_\_\_\_ day of August, 2019, before me appeared Stephen A. Arbo, to me 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 constitutional charter city and political subdivision, that such instrument was executed for the purposes stated therein on behalf of the City of Lee’s Summit, Missouri by authority of its governing body, and acknowledged such instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Notary Commission Expires:  
\_\_\_\_\_