

SETTLEMENT AND TRADEMARK CONSENT AGREEMENT

This Settlement and Trademark Consent Agreement ("Agreement"), dated as of May 3, 2019, 2019 ("Effective Date"), is made by and between Lexington Medical, Inc., a Delaware corporation, with its principal place of business at 11 Executive Park Drive, Billerica, MA 01862 (hereafter "LEXINGTON"), and MagnebotiX AG., a Swiss corporation, with its principal place of business at Wagistrasse 21, Schlieren (hereafter "MagnebotiX"). Each Party may be referred to as "Party" herein, or collectively as the "Parties."

WHEREAS, MagnebotiX is the owner of U.S. Trademark Registration No's. 4,853,082 (for the mark AEON PHOCUS) and 4,848,405 (for the mark AEON SCIENTIFIC) (herein collectively referred to as the "MagnebotiX REGISTRATIONS") having acquired the assets from the original registrant (aeon scientific AG) via bankruptcy proceedings in Europe;

WHEREAS, the goods offered under the marks covered by the MagnebotiX REGISTRATIONS are *products for the magnetic (remote, non-contact) control and guidance of catheters or endoscopes, including during surgical interventions* (hereinafter "MagnebotiX GOODS")

WHEREAS, LEXINGTON filed U.S. Trademark Application Serial No. 87/826,390 on March 8, 2018 seeking registration of the standard character mark AEON for surgical staplers and surgical staples (the "LEXINGTON APPLICATION");

WHEREAS, on June 20, 2018, the Examining Attorney issued an office action in connection with the LEXINGTON APPLICATION refusing registration under Section 2(d) of the Trademark Act citing the MagnebotiX REGISTRATIONS;

WHEREAS, on July 17, 2018, LEXINGTON responded to the Examining Attorney's office action arguing that no likelihood of confusion exists;

WHEREAS, on August 13, 2018, the Examining Attorney issued a final office action again refusing registration of LEXINGTON's AEON mark under Section 2(d) and citing the MagnebotiX REGISTRATIONS and raising no other issues;

WHEREAS, on or about February 19, 2019 Lexington filed a petition to cancel the MagnebotiX REGISTRATIONS (Cancellation No. 92070607);

WHEREAS, USPTO proceedings related to the LEXINGTON APPLICATION have been suspended pending disposition of Cancellation No. 92070607;

WHEREAS, the Parties believe that their respective marks and applications and current registrations related thereto can co-exist and will not create an actual or likelihood of confusion, as used and registered in accordance with the terms and condition of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Consent to Use and Registration. Subject to the terms and conditions of this Agreement, MagnebotiX agrees not to oppose, remove, contest or otherwise challenge the use or registration by LEXINGTON of the AEON mark for endomechanical devices that are not amenable to remote guidance through the use of externally applied magnetic fields. Endomechanical devices are used in minimally invasive surgical procedures that require little to no cutting. Rather, they are typically inserted via a body cavity or hollow organ. Staplers, Laparoscopes and endoscopes are some better known examples of such devices. MagnebotiX also consents to LEXINGTON's registration of the AEON mark based on the LEXINGTON APPLICATION for the goods recited therein, and for goods and services substantially similar thereto with the exclusion of goods and services employing magnetic guidance.
2. No Likelihood of Confusion. The Parties acknowledge and agree that, subject to each Party's compliance with the terms and conditions of this Agreement, there is and will be no likelihood of consumer confusion resulting from the simultaneous use and registration of the Parties' respective marks as identified herein in the United States and subject to the restrictions identified herein, for the Parties' respective goods and services as set forth herein because of, among other things, the differences in the Parties' respective goods or services, the differences in the Parties' respective channels of trade, the differences in the Parties' respective marketing and promotional channels, and the sophisticated nature of the consumers of the Parties' respective products.
3. Further Efforts to Avoid Confusion. Each Party agrees that it will not advertise or promote its respective goods or services under their respective marks in a manner that implies that such Party or its goods or services are affiliated or connected with the other Party or the other Party's goods or services.
4. Cooperation in the Event of Actual Confusion. In the unlikely event that a Party becomes aware of any actual consumer confusion resulting from the simultaneous use of the marks as permitted by this Agreement: (a) such Party shall advise the other Party promptly of the details of such confusion, and (b) the Parties shall take commercially

reasonable steps to clarify the true position with regard to proprietorship and prevent future occurrence of confusion.

5. Dismissal of Opposition. Conditional upon the withdrawal by the USPTO of the refusal to grant LEXINGTON an registration based on the LEXINGTON APPLICATION, the Parties agree to a dismissal of Cancellation No. 92070607. Such dismissal will be without prejudice.

6. Abandonment. If MagnebotiX abandons the marks covered by the MagnebotiX REGISTRATIONS under applicable law, without an intent to resume use of such marks within a reasonable time, then LEXINGTON shall no longer be bound by this Agreement. If LEXINGTON abandons its AEON mark under applicable law, without an intent to resume use of the AEON mark within a reasonable time, then MagnebotiX shall no longer be bound by this Agreement.

7. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the United States and Commonwealth of Massachusetts without effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction.

(b) This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

(c) This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

(d) If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(e) This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto, and any of the terms thereof may be waived only by a written document signed by the Party or Parties waiving compliance. Except as otherwise set forth in this Agreement, no failure to exercise or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(f) This Agreement may be executed in multiple counterparts and by facsimile signature, each of which shall be deemed an original and all of which together shall constitute one instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(g) Each Party shall bear its own fees, costs, and expenses in connection with this Agreement.

(h) This Agreement is for the territory of the United States of America and for any other jurisdiction where corresponding MagnebotiX REGISTRATIONS are cited against corresponding LEXINGTON APPLICATIONS.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

LEXINGTON MEDICAL, INC.

MagnebotiX AG.

By: _____

By: David Sargent _____

Name: Leon Amariglio _____

Name: David Sargent _____

Title: CEO _____

Title: CEO _____