



AGREEMENT OF PURCHASE AND SALE AND
JOINT ESCROW INSTRUCTIONS

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**CITY OF ESCONDIDO
AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

This Agreement is made as of December 10, 2018 between the City of Escondido and **Touchstone MF Fund I, LLC**.

RECITALS

The City is the owner of unoccupied land located at 137 Valley Parkway, Escondido, California. The City desires to sell and Buyer desires to purchase the Property upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, City and Buyer agree that the terms and conditions of this Agreement and the instructions to Escrow Holder with regard to the escrow, created pursuant hereto are as follows:

Section 1 Definition of Terms

The following words in this Agreement shall have the significance attached to them in this Section unless otherwise apparent from their context.

- 1.1 **Agreement.** Agreement means this Agreement of Purchase and Sale and Joint Escrow Instructions.
- 1.2 **Approved Conditions of Title.** Approved Conditions of Title means only those conditions to title as provided in Section 5.2.
- 1.3 **Buyer.** Buyer means Touchstone MF Fund I, LLC, a Delaware Limited Liability Company and does not include its heirs, assigns, or successors in interest.
- 1.4 **City.** The City means the City of Escondido, a California general law City.
- 1.5 **Close of Escrow.** Close of Escrow means the date the City's Grant Deed is filed for record.
- 1.6 **Closing Date.** Closing Date shall be the date scheduled for Close of Escrow, and unless otherwise agreed to in writing by City and Buyer or as otherwise set forth in this Agreement, the Closing Date shall be forty five (45) days following City issuance of a building permit relating to the Entitlements or eighteen (18) months from the Effective Date, whichever occurs first. Buyer shall also have the right to accelerate the Closing Date on providing 10 days written notice to City, provided all obligations under this agreement are met prior to closing.
- 1.7 **Deposit.** Deposit means the deposit to be made by Buyer in accordance with

Section 3.1 below.

- 1.8 **Due Diligence Materials.** Due Diligence Materials shall mean those materials specifically described in **Exhibit A** attached hereto.
- 1.9 **Effective Date.** Effective Date means the date this Agreement is countersigned by the Real Property Manager.
- 1.10 **Entitlements.** Entitlements shall mean all necessary City, State, Federal or other governmental approvals including but not limited to a planned development, building permits, CEQA determinations, etc.
- 1.11 **Escrow Holder.** Escrow Holder means:
- Fidelity National Title Insurance Company
4400 MacArthur Blvd., Suite 200
Newport Beach, CA 92660
Attn: Valerie Rapp
Facsimile No.: 866-935-6314
Telephone No.: 949-477-3646
Email: valerierappteam@fnf.com
- 1.12 **First Deposit.** First Deposit shall refer to the original deposit as provided in Section 3.1.
- 1.13 **Feasibility Period.** Feasibility Period means the period commencing upon the Effective Date of this Agreement and expiring sixty (60) days thereafter.
- 1.14 **General and Special Real Estate Taxes.** General and special real estate taxes means all non-delinquent taxes and charges of the type customarily evidenced by a secured tax bill issued by the Tax Collector of the County, including, but not limited to, amounts allocated to (i) County or City general governmental purposes, (ii) bonded indebtedness of the County or City, (iii) bonded or other indebtedness and operating expenses of any school, college, sewer, water, irrigation, hospital, library, utility, county service, community facilities district or other district, and (iv) any other lawful purpose. The parties acknowledge that prior to the Close of Escrow the Property may not be subject to general and special real estate taxes because the Property is owned by a public entity, but such fact shall not be construed to release or relieve Buyer from the obligation to assume responsibility for general and special real estate taxes as of the Close of Escrow
- 1.15 **Grant Deed.** Grant Deed means the grant deed recorded by the City transferring ownership to the Buyer.
- 1.16 **Opening of Escrow.** Opening of Escrow means the date as provided in Section 4.1.
- 1.17 **Party.** Buyer or City may be referred to individually as Party or collectively as

Parties.

- 1.18 **Project.** Project means a mixed use development with a minimum of 106 units on the Property and consistent with the City's Downtown Specific Plan.
- 1.19 **Promissory Note.** Promissory Note means a Promissory Note between the Buyer and the City for the amount of seventy-five percent (75%) of the Purchase Price together with any additional documents necessary to secure the Promissory Note by the Property.
- 1.20 **Property.** Property means the real property known as APN 229-421-26, located at 137 Valley Parkway, Escondido, CA 92025, as described in **Exhibit B**.
- 1.21 **Purchase Price.** Purchase Price means the purchase price for the Property described in Section 3.2 below.
- 1.22 **Report.** Report means a standard preliminary title report issued by the Title Company with respect to the Property within five (5) days following the Opening of Escrow.
- 1.23 **Second Deposit.** Second Deposit shall refer to the second deposit as provided in Section 3.1.
- 1.24 **Third Deposit.** Third Deposit shall refer to the third deposit as provided in Section 3.1.
- 1.25 **Title Insurer.** Title Insurer means the same entity as designated for the Escrow Holder.
- 1.26 **Title Policy.** Title Policy means the title policy as set forth in Section 5.1.

Section 2 Property

The City shall sell the Property to Buyer and Buyer shall purchase the Property from the City on the terms and conditions stated in this Agreement. City owns vacant real property with an address of 137 Valley Parkway, Escondido, CA 92025 as provided in **Exhibit B**.

Section 3 Purchase Price

- 3.1 **Deposit.** Concurrently with the opening of escrow, Buyer shall deliver to Escrow Holder the First Deposit sum of FIFTY THOUSAND DOLLARS (\$50,000) which shall be held by Escrow Holder until the expiration of the Feasibility Period, at which time it shall be delivered to City. At the expiration of the Feasibility Period, Buyer shall deposit the Second Deposit of FIFTY THOUSAND DOLLARS (\$50,000). Upon the issuance of the Building Permit, Buyer shall deposit the Third Deposit of TWO HUNDRED THOUSAND DOLLARS (\$200,000). Collectively, the First, Second and Third Deposits make up the entire Deposit. Buyer shall execute and deliver to Escrow Holder such instructions as may be requested by Escrow Holder to cause the Deposit to be released to City in a timely manner. The

Deposit shall be credited to the Purchase Price upon Close of Escrow. If either Party terminates this Agreement prior to the expiration of the Feasibility Period, then the First Deposit shall be returned to Buyer. Escrow shall be opened by the parties within five (5) days of the Effective Date.

- 3.2 Purchase Price. City agrees to sell and Buyer agrees to buy the Property for the Purchase Price of fair market value as determined by an independent appraiser, paid for by the Buyer. In the event that the Parties cannot agree on an appraiser, each Party shall hire its own appraiser and the two appraisers shall select the independent appraiser. The appraisal shall be completed within 30 days of the Effective Date. Each Party may reject the appraisal and terminate the escrow within the Feasibility Period.
- 3.3 Payment of Purchase Price. Buyer shall deposit with Escrow Holder in cash, or by a Promissory Note approved by the City, at least one business day before the Closing Date, the Purchase Price, less the amount of the Deposit and any reimbursement pursuant to Section 3.3. Such Promissory Note will have a maturity date of 36 months from Close of Escrow with an interest rate of 4% per annum.

Section 4 Escrow

- 4.1 Opening of Escrow. For purposes of this Agreement, the escrow shall be deemed opened on the date Escrow Holder receives the Deposit from Buyer and an executed counterpart of this Agreement from both Buyer and the City. Escrow Holder shall notify Buyer and City, in writing, of the date escrow is opened. Buyer and City agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control.
- 4.2 Close of Escrow. Close of escrow occurs when the Grant Deed conveying the Property to Buyer, is recorded in the Official Records of the Recorder of San Diego County, California. Close of escrow shall occur on Closing Date. Buyer and Seller may agree to change the Closing Date by joint written notice to Escrow Holder. If Escrow Holder cannot close escrow on or before the Closing Date, it will nevertheless close this escrow when all conditions have been satisfied or waived unless, after the Closing Date and prior to the Close of Escrow, Escrow Holder receives a written notice to terminate this escrow from a Party who, at the time the notice is delivered, is not in default under this Agreement.
- 4.3 Extension of Escrow. Buyer shall have two options to extend the Close of Escrow for an additional ninety (90) days. Each option shall require a \$20,000 non-

refundable extension deposit that will not be applied to the purchase price. The City Manager may extend escrow up to an additional fourteen (14) days in the City's sole discretion.

Section 5 Title

- 5.1 Policy. As a condition to the Close of Escrow, title shall be evidenced by the willingness of the Title Company to issue its ALTA Owner's Policy of Title Insurance with extended coverage, inclusive of any endorsements requested or required by Buyer or its lender, in the amount of the Purchase Price showing title to the Property vested in Buyer upon conveyance of the Grant Deed subject to the Approved Conditions of Title and such other exceptions to title as may be set forth in the Report and not objected to by Buyer.
- 5.2 Condition of Title. At the Close of Escrow, title to the Property shall be conveyed to Buyer by the City subject only to the following Approved Conditions of Title:
 - A. a lien to secure payment of real estate taxes and assessments, not delinquent;
 - B. the lien of supplemental taxes;
 - C. matters affecting title to the Property created by or with the written consent of Buyer or which are waived or deemed approved by Buyer;
 - D. all matters which would be disclosed by an inspection or survey of the Property as approved by Buyer; and
 - E. all exceptions which are disclosed by the Report, and which are approved by Buyer in accordance with this Agreement.
- 5.3 Title Exceptions. It is acknowledged and agreed by the City and Buyer that the listing of the Approved Conditions of Title shall be subject to Buyer's approval during the Feasibility Period. If Buyer (A) does not terminate the Agreement at or prior to the end of the Feasibility Period or (b) otherwise object thereto as set forth in any Buyer's notice pursuant to Section 7.3 given by Buyer to City, then Buyer's approval shall be deemed given to the City.

Section 6 Conditions to Close Escrow

- 6.1 Conditions to Buyer's Obligations. Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Buyer's benefit or Buyer's waiver thereof, on or prior to the dates designated below for the satisfaction of such conditions:
 - A. City's Obligations. As of the Close of Escrow, City shall have timely performed all of the obligations required to be performed by City under

this Agreement.

6.2 Conditions to City's Obligations. For the benefit of the City, the Close of Escrow shall be conditioned upon the occurrence and/or satisfaction of each of the following conditions (or City's waiver thereof, it being agreed that City may waive any or all of such conditions, in its sole and absolute discretion):

- A. Buyer's Obligations. Buyer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Buyer including, without limitation, the timely deposit of all monies required to be deposited by Buyer under this Agreement.

Section 7 Buyer's Obligations

7.1 Application for Entitlements. Buyer shall submit an application for Entitlements as provided in Section 12.

7.2 Entitlement Approval. The Buyer shall secure approval of the Entitlements.

7.3 Public Parking. Buyer agrees to provide a minimum of 76 parking spaces on the Property for public use as approved and determined by the City, with an allowance for overnight parking for residents at the Property. The City shall have the right to any future revenue from the public parking area. Maintenance of the public parking area will be the responsibility of Buyer and regulation of the public parking shall be the responsibility of the City. These obligations shall be recorded on the Property as deed restrictions in favor of the City.

7.4 Review of the physical condition and records.

- A. Buyer shall have the Feasibility Period, to satisfy itself in its sole and absolute discretion, with all physical, legal and investment aspects of the Property and its condition and suitability for Buyer (including, without limitation, zoning; the environmental and physical condition of the Property and any other portion of the Property).
- B. If, prior to the expiration of the Feasibility Period, Buyer notifies City and Escrow Holder in writing of Buyer's disapproval of the Property, such disapproval shall act to terminate this Agreement and the Escrow created pursuant hereto, in which event Buyer and City hereby direct Escrow Holder to pay the First Deposit to Buyer. If, prior to the expiration of the Feasibility Period, Buyer notifies City in writing of Buyer's approval of the Property, or if Buyer fails to notify City and Escrow Holder of Buyer's approval of the Property on or before the end of the Feasibility Period, such approval shall satisfy this condition. Upon satisfaction of this condition, Escrow Holder shall release Buyer's First Deposit to the City.

- C. Buyer agrees not to disclose any confidential or proprietary information contained in any such document or material reviewed by or provided to Buyer except to the extent that such disclosure is required by any judicial proceeding (including a court order), federal, state or local law or is to Buyer's officers, attorneys, prospective lenders, agents or employees (provided that Buyer shall require each of the same to hold such information as confidential). Buyer's obligation under the immediately preceding sentence shall survive any termination of this Agreement. Buyer shall have until the end of the Feasibility Period to satisfy itself as to the review and approval of such documents and materials and the condition and suitability of the Property.
- D. Buyer hereby agrees to indemnify, defend, protect and hold the City, its agents, officers, and legislators, and the Property harmless from and against any and all claims, liabilities, obligations, costs, losses, damages and/or expenses, of any kind or nature (including, without limitation, reasonable attorneys' fees and costs), arising out of or resulting from any submittal(s) affecting the Property by or for Buyer and/or any such entry and/or activities upon the Property by Buyer, its employees, agents, contractors and/or subcontractors and Buyer agrees, at its sole cost and expense, to restore the Property to its condition existing prior to the conduct of any such activities upon the Property by Buyer, its employees, agents, contractors and/or subcontractors. The provisions of this section shall survive the termination of this Agreement and the Close of Escrow and delivery of the Grant Deed.

7.5 Buyer's Review of Title.

- A. Buyer shall have until the Feasibility Period to give City and Escrow Holder written notice of Buyer's disapproval or conditional approval of any matters shown in the Report. The failure of Buyer to give notice on or before the Feasibility Period shall be deemed to constitute Buyer's approval of the condition of title to the Property unless Buyer shall have terminated this Agreement.
- B. If Buyer disapproves or conditionally approves any matter of title shown in the Report, then on or before the expiration of thirty (30) days from the date of City's receipt of Buyer's notice, the City may elect to eliminate or ameliorate to Buyer's satisfaction the disapproved or conditionally approved title matters. City shall give Buyer written notice not later than thirty (30) days after City's receipt of Buyer's notice of those disapproved or conditionally approved title matters, if any, which City agrees to either eliminate from the Title Policy as exceptions to title to the Property or to ameliorate to Buyer's satisfaction by the Closing Date. If the City does not

elect to eliminate or ameliorate to Buyer's satisfaction any disapproved or conditionally approved title matters, or if City is unable to eliminate or ameliorate to Buyer's satisfaction all such disapproved matters prior to the Closing Date, then Buyer shall elect by written notice to City and Escrow Holder on or before the Feasibility Period, to: (1) waive its prior disapproval, in which event said disapproved matters shall be deemed approved; or (2) terminate this Agreement and the Escrow created pursuant hereto, in which event, Escrow Holder shall disburse the then amount of the First Deposit together with any interest accrued thereon to Buyer.

- 7.6 Deposit. Buyer shall deposit or cause to be deposited with Escrow Holder, the Deposit, as provided in Section 3.1.
- 7.7 Closing Statement. Buyer shall deposit or cause to be deposited with Escrow Holder, the Closing Statement, signed by Buyer.
- 7.8 Forms. Buyer shall deposit or cause to be deposited with Escrow Holder, any transfer tax form, affidavit or declaration required by any laws with respect to the transfer of title to the Property, signed by Buyer in form for filing with the applicable governmental authority.
- 7.9 Other Items. Buyer shall deposit or cause to be deposited with Escrow Holder, such other sums required hereunder or reasonably required by the Title Company for the Close of Escrow and such other documentation and/or instruments required hereunder or reasonably required by City or the Title Company for the Close of Escrow.

Section 8 City's Obligations

- 8.1 Due Diligence Materials. Within five (5) business days of the Opening of Escrow, City shall deliver to Buyer those certain documents and materials, if any, shown on **Exhibit A** attached hereto. Buyer acknowledges and agrees that such Due Diligence Materials have been prepared by third parties or are based on information provided by third parties, and City does not warrant the accuracy or completeness of such information contained therein. If this Agreement is terminated for any reason, Buyer shall return all Due Diligence Materials, and any copies thereof, to City.
- 8.2 Processing of Entitlements. City shall process Buyer's application for Entitlements as provided in Section 12.
- 8.3 Deposits by City. At least one (1) business day prior to the Close of Escrow, City shall deposit or cause to be deposited with Escrow Holder the following documents and instruments: Grant Deed, duly executed by City and acknowledged, in the form attached hereto as **Exhibit C**.

- 8.4 Settlement Statement. City shall deposit or cause to be deposited with Escrow Holder, a closing statement prepared (or approved) by the Title Company and approved by City and Buyer, signed by City.
- 8.5 Transfer Tax Documentation. City shall deposit or cause to be deposited with Escrow Holder, any transfer tax form, affidavit or declaration required by any laws with respect to the transfer of title to the Property, signed by City in form for filing with the applicable governmental authority.
- 8.6 Other Documentation. City shall deposit or cause to be deposited with Escrow Holder, such other documentation and/or instruments required hereunder or reasonably required by Buyer or the Title Company for the Close of Escrow (it being understood that City and Buyer shall not be required to execute or deliver any document or instrument that materially increases any of either party's obligations or materially decreases either party's rights under the terms and provisions of this Agreement).

Section 9 Right to Enter onto the Property

- 9.1 Right to Enter the Property. Buyer and its employees, agents and independent contractors may, prior to the Close of Escrow, reasonably go upon the Property to, at Buyer's sole cost, inspect, survey and test the Property and other similarly related activities after receiving written approval from the City. Should Buyer's right to purchase the Property terminate, Buyer will, immediately after such termination, at Buyer's sole cost, return the Property to its physical condition immediately before such damage or as close thereto as reasonably possible. Buyer shall not conduct any borings or other invasive testing on or about the Property without first obtaining the prior written consent of City, which consent shall not be unreasonably withheld; provided, however, that Buyer shall provide City with copies of all tests and reports received by Buyer in connection therewith and Buyer shall return the Property to its former condition at the conclusion of such tests and borings.

Section 10 Indemnification and Insurance

- 10.1 Indemnification. Buyer will indemnify, defend and hold City and the Property harmless from any claim, loss, cost, damage, liability, lien, action or judgment (including, without limitation, City's reasonable attorneys' fees and court costs) arising in connection with the acts or omissions of Buyer or any its employees, agents or independent contractors. Termination of this Agreement will not terminate Buyer's obligations hereunder.
- 10.2 Prevailing Wages. The City shall have no liability to the Buyer or any other person for, and Buyer shall indemnify, defend, protect and hold harmless the City from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature,

including reasonable attorneys' fees and disbursements, which the City may suffer or incur or to which the City may become subject as a result of or allegedly caused by the payment or lack of payment of prevailing wages for any construction related to the Property. Termination of this Agreement will not terminate Buyer's obligations hereunder.

- 10.3 Insurance. Buyer must have insurance in the following amounts prior to entry on the Property and at all times until Close of Escrow:
- A. General liability insurance with at least \$1 Million combined single-limit coverage per occurrence for bodily injury and property damage; and
 - B. Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage; and
 - C. Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship.
 - D. Each policy must name the City specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.
 - E. Buyer agrees to deposit with City, prior to entry to the Property, one Certificate of Insurance for each of the policy or policies necessary to satisfy the insurance provisions of the Feasibility Period and to keep such insurance in effect during the entire Feasibility Period. Said Certificate of Insurance shall be reviewed by, and acceptable to, the City Attorney, prior to entry. Buyer will also deposit with the City prior to entry, an Additional Insured Endorsement naming City specifically and separately as a "additional insured," with the exception of the worker's compensation policy.

Section 11 Costs

- 11.1 City's Charges. City shall pay (i) any documentary transfer tax imposed by the County, (ii) the CLTA Standard owner's title policy premium or its equivalent (but not the added premium for an extended coverage ALTA policy), (iii) one-half (1/2) of Escrow Holder's fee, and (iv) usual City's document-drafting and recording charges.
- 11.2 Buyer's Charges. Buyer will pay (i) one-half (2) of Escrow Holder's fee, (ii) the extra premium for any ALTA title policy or any added endorsements (ordered by Buyer in the manner permitted by the terms of this Agreement) over and above that of the premium of the CLTA Standard owner's title policy or its equivalent, (iii) the premium for City's Title Policy insuring the validity and priority of the lien of the Deed of Trust, and (iv) usual Buyer's document-drafting and recording charges.

- 11.3 Broker. Each party represents that no person, corporation, or partnership acting as a real estate broker, finder or real estate agent has brought about this Agreement.

Section 12 Entitlements

- 12.1 Application. Buyer shall submit to the City a complete application (Master and Precise Development Plan, Tentative Subdivision Map if processing a condo map) for the Property to permit the construction and operation of the Project within ninety (90) days from the execution of this Agreement. For purposes of this section, a "complete application" does not include any deficiency due to a proposed density transfer program or ordinance. Buyer agrees to use its best efforts to process and obtain the City's approval of the Entitlements as soon as possible. Nothing in this Agreement shall be construed to require the City to approve such Entitlements. If, despite Buyer's best efforts, the Entitlements are not approved by the City within eighteen (18) months following the submission of a complete application, then Buyer shall have the right, at its option, to terminate this Agreement by delivery of written notice thereof to City. Should this Agreement be terminated as a result of Buyer's failure to obtain approval of the Entitlements, then Buyer and City shall each execute escrow cancellation instructions whereby Buyer and City terminate this Agreement and release one another, the Property and Escrow Holder from any obligations under this Agreement with respect to the Property, except those indemnity and corrective obligations of Buyer relating to Buyer's inspection of the Property and any other agreements expressly intended to survive such termination. If Buyer terminates this Agreement as provided herein, Buyer's First and Second Deposit will remain with the City, or distributed to the City if not already distributed, unless such failure to approve the Entitlements is due to the City's failure to process the application in accordance with standard City procedures regarding the time of processing, in which case all deposits shall be returned to Buyer.
- 12.2 No Effect on Police Powers. Buyer acknowledges that the Entitlements involve the need for staff and the City Council to act in the public interest and according to applicable legal requirements without regard for this Agreement. Nothing in this Agreement shall in any manner affect the City Council or Planning Commission's sole and absolute discretion to disapprove, modify, or otherwise take any action regarding an application or request for any of the Entitlements to the extent such Entitlement is considered by either the City Council or the Planning Commission.
- 12.3 Submittals. Buyer shall bear all costs, fees, charges and expenses attributable to, or incurred or otherwise payable in connection with, any such submittal(s) for Entitlements. Buyer hereby agrees, that upon any termination of this Agreement in accordance with the provisions hereof all reports, plans, drawings, studies and other documents associated with the submittal(s) which Buyer prepares or causes to be

prepared with respect to the Property shall be delivered to, and become the property of, the City.

Section 13 Termination

- 13.1 Breach. Time is expressly stated to be of the essence of each and every provision of this Agreement wherein time for performance is set forth. In all other respects, the parties hereto covenant to perform their obligations in an expeditious manner. Failure to comply with this provision shall be a material breach of this Agreement.
- 13.2 Termination. This Agreement must be executed by Buyer within 30 days of the approval of this Agreement by the City Council.
- 13.3 Liquidated Damages. BUYER AND CITY AGREE THAT THE DEPOSIT IS A REASONABLE ESTIMATE OF CITY'S DAMAGES IF ESCROW FAILS TO CLOSE DUE TO THE DEFAULT OF BUYER. IN THE EVENT THE CLOSE OF ESCROW DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT BY BUYER, BUYER AND CITY AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH CITY MAY SUFFER. THEREFORE, BUYER AND CITY HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT CITY WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE AN AMOUNT EQUAL TO THE LIQUIDATED DAMAGES AMOUNT. EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS SECTION, SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER OF ITS OBLIGATION TO PURCHASE THE PROPERTY. UPON SUCH DEFAULT BY BUYER, CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE TERMINATED AND CITY SHALL HAVE THE RIGHT TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER AND/OR ESCROW HOLDER. IN ADDITION TO SUCH LIQUIDATED DAMAGES, CITY SHALL BE ENTITLED TO (I) ENFORCE ITS REMEDIES UNDER ANY INDEMNIFICATION CONTAINED IN THIS AGREEMENT, AND (II) COLLECT ANY ATTORNEYS' FEES OR OTHER COSTS INCURRED IN ENFORCING THE PROVISIONS OF THIS PARAGRAPH.



Buyer's Initials



City's Initials

Section 14 Sole Reliance.

Except as expressly set forth herein, Buyer represents and warrants that it is relying solely upon its own inspection, investigation and analyses of the Property in purchasing the Property and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information, documentation or material furnished by City or its representatives, whether oral or written, express or implied, or arising by operation of law, of any nature whatsoever regarding any of the foregoing matters.

Section 15 As is, Where is.

Except as expressly set forth herein, Buyer represents and warrants that it is acquiring the Property on an "as is," "where is," and "with all faults" basis without representation or warranty by City whatsoever including, without limitation, in connection with hazardous materials, substances or conditions; the water, soil, and geology, and the suitability thereof and of the Property for any and all activities and uses which Buyer may elect to conduct thereon; habitability, merchantability, or fitness for a particular purpose of the Property; the manner, construction, condition, and state of repair or lack of repair of the improvements or any other portion of the Property; compliance with laws, statutes, codes, ordinances, orders, decisions, rules and/or regulations; the leases and superior instruments and/or other restrictions, obligations, rights of way or conditions affecting the ownership, use, operation, development or operation of the Property. Further, and without limiting any of the foregoing, Buyer represents and warrants that no patent or latent condition affecting the Property in any way, discoverable or hereafter discovered, shall affect Buyer's obligation to purchase the Property or any of Buyer's other obligations contained in this Agreement, nor shall any such condition give rise to any right of damages, rescission or otherwise against City. Further, and without limiting any of the foregoing, Buyer acknowledges that City has not warranted and does not hereby warrant that any improvements will meet or comply with the requirements of any health, fire, building, zoning, or safety code, ordinance or regulation of the state of California, or any other authority or jurisdiction and that City has not warranted and does not hereby warrant that the Property will meet or satisfy any particular use, purpose, development or operation, and that City has not made any warranty and does not hereby make any warranty regarding solid waste as defined in the U.S. Environmental Protection Agency Regulations at 40 C.F.R. Pt. 261, or the disposal or existence in, on or emanating from the Property, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated there under. Further, and without limiting any of the foregoing, Buyer hereby releases City from all risks and liability (and agrees that City shall not be liable for any special, direct, indirect, consequential, or other damages) resulting or arising from or relating to the ownership, use, condition, location, maintenance, repair or operation of the Property and City shall under no circumstances be liable for any special, indirect or consequential damages in the event of any breach by City. The provisions of this section shall survive closing hereunder. Nothing in this section shall in any manner be construed as any representation, assurance or warranty of any kind by City.

Section 16 Attorney's Fees, Costs and Expenses

In the event legal action is brought to enforce the terms of or to declare a termination of this Purchase and sale Agreement for reason of breach thereof, the unsuccessful Party shall pay all of the successful Party's costs of such action, together with reasonable attorney's fees, in an amount to be fixed by the court.

Section 17 Assignment

Neither party may assign or delegate its rights or obligations pursuant to this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned, or delayed. It shall be unreasonable for Seller to deny consent to such assignment if the proposed assignee of Buyer has the same or better financial strength and real estate development experience as Buyer. Seller shall respond in writing to Buyer's request for consent within thirty (30) days of the request or, if the City requests additional information, 30 days from the date that the additional information is provided to the City.. Seller's failure to timely respond shall be deemed an approval of such assignment..

Section 18 Notice

All notices between the City and Buyer pursuant to the Agreement shall be in writing and shall be given by personal delivery, overnight delivery service, certified or registered mail, facsimile or telecopy to the addresses set forth below. The addresses may be changed by giving (ten) 10 days written notice.

City
City of Escondido
Attention: City Manager
201 N. Broadway
Escondido, CA 92025

with a copy to:

Michael McGuinness, Esq.
City Hall, Second Floor
201 N. Broadway
Escondido CA 92025
Fax: (760) 741-7541

Buyer
Touchstone MF Fund I, LLC
C/O Touchstone Communities, LLC
Attention: Kerry Garza and Addison Garza
9909 Mira Mesa Blvd., Suite 150

San Diego, CA 92131
Phone: (858) 248-4951

with a copy to:

David W. Ferguson, Esq.
Lounsbury Ferguson Altona & Peak, LLP
960 Canterbury Place, Suite 300
Escondido, CA 92025-3836
Phone: (760) 743-1201

Section 19 Miscellaneous

- 19.1 Applicable Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the North County Division of the San Diego County Superior Court or federal courts located in San Diego County, California.
- 19.2 Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.
- 19.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
- 19.4 Captions. Any captions to, or headings of, the sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.
- 19.5 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties thereto, to any person or entity other than the parties hereto.
- 19.6 Exhibits and Schedules. The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference.
- 19.7 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.
- 19.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.
- 19.9 Fees and Other Expenses. Except as otherwise provided herein, each of the parties

shall pay its own fees and expenses in connection with this Agreement.

- 19.10 Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and City as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.
- 19.11 Partial Invalidity. If any portion of this Agreement as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way effect the validity or enforceability of the remaining portions of this Agreement.
- 19.12 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- 19.13 Preparation of Agreement. Buyer and City acknowledge that the provisions and language of this Agreement have been negotiated, and agree that no provision of this Agreement shall be construed against either party by reason of such party having drafted such provision or this Agreement.
- 19.14 Execution of Agreement. This Agreement is transmitted for examination only and does not constitute an offer, and the Agreement shall not become effective until a fully executed original hereof shall be delivered to Buyer and City.
- 19.15 No Equitable Ownership. Prior to the conveyance of title to the Property to Buyer, Buyer shall not acquire, assume or otherwise obtain any equitable ownership claim or interest in the Property in any manner whatsoever.
- 19.16 Administrative Decisions. Where this Agreement may require approvals, interpretations, or other decisions, the City Manager or designee may make said decisions in accordance with the terms and conditions of this Agreement and City policies and procedures

IN WITNESS WHEREOF, the Parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

TOUCHSTONE MF FUND I, LLC

BY: TOUCHSTONE COMMUNITIES, LLC

ITS: MANAGER

By:

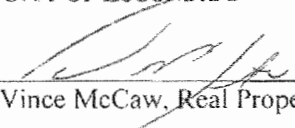
Date: 10/10/19


Signature

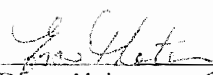
Kerry Garza, Manager
Name, Title

CITY OF ESCONDIDO

Date: 12/10/18



Vince McCaw, Real Property Manager

Date: 12-10-18


Diane Halverson, City Clerk
Eva Hater, Interim City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By: 

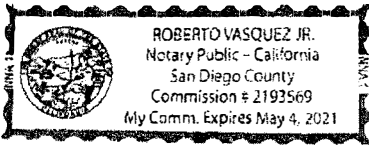
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of San Diego }
On 10/10/2018 before me, Roberto Vasquez Jr. Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Kerry Garcia
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
<input type="checkbox"/> Corporate Officer – Title(s): _____	<input type="checkbox"/> Corporate Officer – Title(s): _____
<input type="checkbox"/> Partner – <input type="checkbox"/> Limited <input type="checkbox"/> General	<input type="checkbox"/> Partner – <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact	<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian of Conservator	<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian of Conservator
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
Signer is Representing: _____	Signer is Representing: _____

EXHIBIT A

Within five business days of the Opening of Escrow, Seller will, to the extent the same are within Seller's possession or control, deliver to Buyer copies of the following:

Phase I report
Phase II report
Engineering Studies
Improvement Plans
Consultant Reports
ALTA Surveys
Appraisals
Market Research
Financial Projections
Site & Landscape Plans

EXHIBIT B

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOTS 21 THROUGH 24 INCLUSIVE IN BLOCK 68 OF ESCONDIDO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 336, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1886.

PARCEL 2:

LOTS 25 AND 26 IN BLOCK 68 OF ESCONDIDO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 336 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO, JULY 10, 1886.

PARCEL 3:

LOTS 27 AND 28 IN BLOCK 68 OF ESCONDIDO, IN THE CITY OF ESCONDIDO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 336, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1886.

PARCEL 4:

LOTS 29 THROUGH 33, INCLUSIVE, BLOCK 68 OF ESCONDIDO IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 336, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1886.

APN 229-421-26

EXHIBIT C

RECORDING REQUESTED BY

And When Recorded Mail To:
City Clerk
City of Escondido
201 North Broadway
Escondido, CA 92025

APN: 229-421-26

No recording fee required; this document
exempt from fee pursuant to Section 27383
of the California Government Code.

**CITY OF ESCONDIDO
GRANT DEED**

ESC. DOCUMENT NO. M-_____

This deed exempt from tax - Section 11922 of the California Revenue and Taxation Code

THE CITY OF ESCONDIDO, a municipal corporation, for a
valuable consideration, DOES HEREBY GRANT to

Touchstone MF Fund I, LLC, a Delaware Limited Liability Company

all that real property described as follows:

LEGAL DESCRIPTION ATTACHED

IN WITNESS WHEREOF, the City of Escondido has caused this
deed to be executed by its Real Property Manager, pursuant to City
Council Resolution No. 2018-98, adopted September 19, 2018,
authorizing such execution, this _____ day of _____, 2018.

THE CITY OF ESCONDIDO

By: _____
Vince McCaw
Real Property Manager