

**FIRST AMENDMENT TO  
PURCHASE AND SALE AGREEMENT**

This First Amendment to Purchase and Sale Agreement (this "Amendment") is made and entered into as of \_\_\_\_\_, 2023 ("Effective Date") by and between the City of Escondido, a California general law city ("Seller") and Touchstone MF Fund I, a California limited liability company, its successors and assigns] ("Buyer"), with reference to the following:

**RECITALS**

The following Recitals are for informational purposes only and in the event of any conflict between the Recitals and the Amendment, the provisions of the Amendment shall control:

- A. Seller and Buyer are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions, dated as of December 10, 2018 (the "Purchase Agreement"), relating to the sale and purchase of the Property as defined therein.
- B. Buyer and Seller wish to amend the Purchase Agreement pursuant to the terms of this Amendment.

**TERMS**

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

- 1. Incorporation of Recitals: Definitions. The foregoing Recitals are incorporated herein by reference. All capitalized terms, when used in this Amendment without separate definition, shall have the same respective meanings as contained in the Purchase Agreement.
- 2. Definitions. Section 1 of the Purchase Agreement is hereby amended as follows:
  - a. Section 1.6 is hereby deleted in its entirety and replaced as follows:

“**Closing Date.** 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 issuance of a building permit for the Project or twenty-four (24) months after the Effective Date of this Amendment, whichever is earlier; provided, however, the Closing Date may be extended pursuant to Section 4.3 and shall be tolled pending the resolution of any third-party legal challenges to the Project or this Agreement, this Amendment or any subsequent amendment thereto. Buyer shall also have the right to accelerate the Closing Date by providing ten (10) days’ written notice to City, provided all obligations under this Agreement are met prior to closing.”
  - b. Section 1.10 is hereby deleted in its entirety and relaced as follows:

**“Entitlements.** Entitlements shall mean the land use approvals required for Buyer’s intended development of the Property, which may or may not include: planned development, specific plan amendment, CEQA determination, and development agreement.”

- c. Section 1.18 is hereby deleted in its entirety and replaced as follows:

**“Project.** Project means a residential or mixed use development with a minimum of 116 residential units on the Property and consistent with the City’s Downtown Specific Plan, as the Downtown Specific Plan exists as of the date the Project is approved.”

- 3. **Purchase Price.** Section 3 of the Purchase Agreement is hereby amended as follows:

- a. Section 3.2 is hereby deleted in its entirety and relaced as follows:

**“Purchase Price.** City agrees to sell and Buyer agrees to buy the Property for the Purchase Price of ONE MILLION EIGHT HUNDERED AND SIXTEEN THOUSAND FOUR HUNDRED AND SEVENTY FIVE DOLLARS (1,815,475.00).”

- 4. **Conditions to Close Escrow.** Section 6.2(B) is hereby added as follows:

- a. B. Buyer’s Indemnity under the Surplus Lands Act. In the event the CA Department of Housing and Community Development (“HCD”) finds this Agreement is subject to the Surplus Lands Act (“SLA”) and that this Agreement constitutes a violation thereof, City may terminate this Agreement unless Buyer agrees to indemnify City against any and all fines, fees, or other charges imposed by HCD as a result of any such violation

- 5. **Buyer’s Obligations.** Section 7 of the Purchase Agreement is hereby amended as follows:

- a. Section 7.3 is hereby deleted in its entirety.

- 6. **Entitlements.** Section 12 is hereby amended as follows:

- a. Section 12.1 is hereby deleted in its entirety and replaced as follows:

- b. **“Entitlements.** Buyer and Seller hereby authorize KB Escondido LLC, or such other entity approved by the City Manager in writing, to use commercially reasonable efforts to process and obtain City’s approval of the Entitlements as soon as practicable. Nothing in this Agreement shall be construed to require City to approve such Entitlements. If, despite Buyer’s commercially reasonable efforts, Buyer has not closed escrow by the Closing Date (including any extensions pursuant to Section 4.3 or any tolling due to third-party legal challenges), then City shall have the right, at its option, to terminate this Agreement by delivery of written notice thereof to Buyer. Should this Agreement be terminated as a result of Buyer’s failure to close escrow, then,

and following such written notice, 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 either party terminates this Agreement as provided herein for any reason other than Buyer's default, all of Buyer's deposits shall be returned to Buyer."

7. Application(s). An application for the Entitlements shall be submitted to the City to permit the construction and operation of the Project within ninety (90) days from the Effective Date of this Amendment. Buyer shall be permitted multiple applications for the Entitlements prior to the Closing Date.
8. Assignor's Extension Deposit. Upon execution of this Amendment, the Escrow Holder shall immediately return to Touchstone the \$20,000 extension deposit that Touchstone previously deposited into escrow pursuant to Section 4.3 of the Purchase Agreement and Buyer shall be deemed to have not yet utilized any extensions under the Purchase Agreement.
9. Miscellaneous.

9.1. Effect and Ratification. Except as expressly amended or supplemented hereby, the Purchase Agreement shall remain in full force and effect without change and is hereby ratified and confirmed.

9.2. Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the State of California.

9.3. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement.

9.4. Binding Agreement. This Amendment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

9.5. Headings. The captions and headings herein are for convenience and reference only and in no way define or limit the scope or content of this Amendment or in any way affect its provisions.

9.6. Entire Agreement; Amendments. The Purchase Agreement, and the Exhibits and Schedules attached thereto, as amended and supplemented by this Amendment, set forth all of the promises, covenants, agreements, conditions and undertakings between and among the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements and conditions, express or implied, oral or written, except as contained herein. No extension, alteration, modification or other

amendment of or to the Purchase Agreement shall be valid or binding unless made in writing and signed by all parties hereto.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

**SELLER:**

**BUYER:**

City of Escondido

Touchstone MF Fund I, LLC

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

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

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

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

Name: Kerry Garza

Title: President

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

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

Title: City Clerk

Approved as to form:

Office of the City Attorney  
City of Escondido,  
a California general law city

By: \_\_\_\_\_  
MICHAEL R. MCGUINNESS, City Attorney