

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of October 7, 2015 by and between STUCK IN THE ROUGH, LLC, a California limited liability company ("SITR"), on the one hand, and the CITY OF ESCONDIDO and the CITY COUNCIL OF THE CITY OF ESCONDIDO (collectively "City"), on the other (SITR and the City are each a "Party" to this Agreement and are collectively referred to as "Parties"), based on the following factual recitals:

### RECITALS

A. This Agreement concerns the property formerly known as the Escondido Country Club in Escondido, CA ("the Property"). The Property consists of the following San Diego County Assessor Parcel Numbers: 224-210-53; 224-211-05; 224-211-11; 224-211-12; 224-211-15; 224-230-36; 224-230-43; 224-430-04; 224-431-01; 224-431-02; 224-431-03; 224-490-05; 224-490-06; 224-491-01; and 224-811-28.

B. Prior to August 14, 2013, the Property was designated on the Land Use Map of the City's General Plan as "Urban I: Up to 5.5 du/acre."

C. Since at least the 1970's, the Property has been zoned R-1-7, which allows single family residences on minimum 7,000 square foot lots. The Property, however, was developed as a golf course and country club in conjunction with the surrounding properties and was used as a golf course pursuant to a conditional use permit issued by the City in the 1960's.

D. SITR acquired the Property on December 6, 2012. SITR closed the Escondido Country Club on April 1, 2013, after having publicly announced its intention to develop single family homes on the Property.

E. On April 17, 2013, a Notice of Intent to Circulate Petition was filed with the City Clerk, including the text of an Initiative Measure to be Submitted Directly to Voters ("the Initiative"). The Initiative proposed to change the General Plan land use designation of the Property from "Urban I" to "Open Space-Park (OS-P)," and included specific proposed amendments to the City's General Plan. The Initiative was filed with the City on July 10, 2013, and its signatures were verified by the County Registrar of Voters on July 30, 2013.

F. Faced with the alternatives presented by Elections Code Section 9215 of either submitting the Initiative to the voters or adopting it directly, on August 14, 2013, the City

Council adopted Ordinance No. 2013-10, "An Ordinance of the City of Escondido, California Adopting a Proposed Initiative Measure Amending the Escondido General Plan to Preserve the Escondido Country Club and Golf Course as an Ordinance of the City pursuant to California Elections Code Section 9215" ("the Ordinance").

G. On November 6, 2013, SITR filed its "Petition for Writ of Mandate and Complaint for Just Compensation, Declaratory Relief and Damages" against the City and the City Council in *Stuck in the Rough, LLC v. City of Escondido*, San Diego Superior Court Case No. 37-2013-00074375-CU-WM-NC ("the Lawsuit").

H. On December 2, 2013, SITR filed its "First Amended Petition for Writ of Mandate and Complaint for Just Compensation, Declaratory and Injunctive Relief, and Damages" ("First Amended Petition/Complaint") in the Lawsuit. The First Amended Petition/Complaint sought to invalidate the Ordinance and included various statutory and constitutional claims for compensation and damages.

I. On August 4, 2014, the City filed its Motion for Judgment on the Pleadings in the Lawsuit, seeking dismissal of the First Cause of Action (Writ of Mandate – CEQA), the Second Cause of Action (Writ of Mandate – Planning and Zoning), the Fourth Cause of Action (Writ of Mandate – Planning and Zoning), the Fifth Cause of Action (Takings), the Sixth Cause of Action (Due Process), the Seventh Cause of Action (Equal Protection), the Eighth Cause of Action (Declaratory Relief), and the Ninth Cause of Action (Injunctive Relief) in the First Amended Petition/Complaint.

J. On November 14, 2014, the Court granted in part the City's Motion for Judgment on the Pleadings as to the First, Second, and Fourth Causes of Action of the First Amended Petition/Complaint, as conceded by SITR. The Court denied the City's Motion for Judgment on the Pleadings as to the Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action of the First Amended Petition/Complaint.

K. On February 26, 2015, the Court heard SITR's Petition for Writ of Mandate on the Third Cause of Action in the First Amended Petition/Complaint. On March 13, 2015, the Court issued its Order granting SITR's Petition for Writ of Mandate and invalidated the Ordinance on grounds that it unfairly discriminated against SITR. Also on March 13, 2015, the Court issued its Writ of Mandate, a copy of which is attached to this Agreement as Exhibit A ("the Writ of Mandate"). The Writ of Mandate ordered the City (1) to vacate and set aside its actions

approving and adopting the Ordinance; and (2) to take no actions in furtherance of the Ordinance and to cease enforcing the Ordinance.

L. On April 15, 2015, the City filed its "Return to Peremptory Writ of Mandamus." In the Return, the City represented that it had not yet determined whether or not to appeal the Order granting the Peremptory Writ of Mandamus.

M. On May 6, 2015, SITR submitted an application for a development permit and a vesting tentative map, with supporting materials, to build 270 single family residences on the Property on minimum 7,000 square foot lots ("the 2015 Application").

N. On June 4, 2015, the City advised SITR by letter of the City's determination that the 2015 Application was not complete.

O. On July 22, 2015, SITR submitted additional materials to the City and responded to the City's June 4, 2015 incompleteness determination.

P. On August 20, 2015, the City advised SITR by letter of the City's continued determination that the 2015 Application was not complete.

Q. On August 28, 2015, SITR filed an appeal with the City of the City's incompleteness determination under Gov't Code §65943, the Escondido Municipal Code, and all applicable law ("the Incompleteness Appeal").

R. SITR and the City now desire to settle the Lawsuit, and provide for the withdrawal of the 2015 Application, on the grounds set forth in this Agreement.

## **AGREEMENT**

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES:

1. Incorporation of Recitals

The foregoing Recitals are true and correct and are hereby incorporated into the Agreement.

2. Stipulation for Entry of Judgment in the Lawsuit

Concurrently with execution of this Agreement, SITR and the City shall execute and exchange duplicate originals of the Stipulation for Entry of Judgment ("Stipulation")

attached as Exhibit B. SITR shall promptly file the executed Stipulation and the [Proposed] Judgment with the Court for entry. Upon entry, SITR shall serve and file a Notice of Entry of Judgment in the Lawsuit.

3. Waiver of Rights to Appeal

The City and SITR hereby waive any rights they may have to appeal from the Judgment entered in the Lawsuit pursuant to the Stipulation referenced in paragraph 2 above.

4. Effect of the Ordinance

The Writ of Mandate previously issued by the Court ordered the City Council to repeal the Ordinance. The Writ of Mandate as incorporated into the Judgment is modified to provide that the Ordinance shall have no further force and effect such that an actual repeal of the Ordinance by the City Council is rendered superfluous and unnecessary. The Parties agree that upon entry of the Judgment pursuant to the Stipulation, the Property will revert to its pre-Ordinance status and will have a General Plan land use designation of "Urban I: Up to 5.5 du/acre" and a zoning classification of R-1-7.

5. Withdrawal of the 2015 Application and Future Applications

Within two days of entry of Judgment in the Lawsuit pursuant to the Stipulation, SITR shall withdraw the 2015 Application, and the City shall refund, or at SITR's request credit, the application fees paid by SITR when it submitted the 2015 Application. SITR intends to work with a homebuilder to act as the lead representative on any future development application for the Property, either within the parameters of the existing general plan designation and zoning, or in connection with a new general plan or zoning designation such as a Specific Plan or Planned Development. Upon entry of Judgment in the Lawsuit, the selected developer acting on SITR's behalf may submit a new application to change the general plan designation, change the zoning, or to develop the Property without changing its general plan designation and zoning, at its sole discretion.

At present, SITR is negotiating with KB Home, Zephyr, and California West Communities to act as the developer. SITR agrees that it will not be the applicant on any future development application, but retains the right to determine the selected developer (either from

the foregoing entities or another experienced developer of residential communities) and such developer will act on its behalf in submitting and processing any land use applications, including interface with the City, neighborhood outreach, and community involvement regarding the application. The Parties recognize the importance of community involvement in a successful development, and shall engage in reasonable efforts to facilitate such involvement. SITR and the selected developer retain discretion to control any new application for development of the Property, but shall consider proposals from the community for economically feasible development of the Property in the course of preparing and processing any land use applications. The City shall fairly and promptly process any such applications, in accordance with all applicable laws and shall retain its full range of police power and authority as provided by law over the development of the Property. The Parties acknowledge that the processing and consideration of any development application must adhere to the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, and all other applicable laws.

6. Dismissal of the Remaining Claims in the Lawsuit

As provided in the Stipulation referenced in paragraph 2 above, SITR agrees that the First, Second, Fourth, Fifth, Sixth and Seventh Causes of Action in the First Amended Petition/Complaint shall be dismissed with prejudice. SITR and the City agree that they shall each bear their own attorneys' fees and costs incurred in the prosecution or defense of the Lawsuit.

7. General Release and Civil Code Section 1542 Waiver

A. Release. As further consideration for this Agreement, the Parties hereby release and forever discharge each other, as well as their officers, employees, attorneys and representatives, of and from any and all claims, demands, actions or causes of action of every kind and character, known or unknown, which they may now have in connection with, or arising out of, the events alleged in the First Amended Petition/Complaint in the Lawsuit, other than the rights and obligations created by or arising under this Agreement or the Judgment to be entered in the Lawsuit. No Party to this Agreement shall be entitled to any monetary/damages award

under the Third, Eighth, and/or Ninth Causes of Action of the First Amended Petition/Complaint. The claims released hereby are hereinafter referred to as the "Released Claims."

B. Section 1542 Waiver. With respect to the Released Claims, the Parties specifically waive the provisions of California Civil Code section 1542, which provides as follows:

Section 1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties expressly waive and release any right or benefit which they have or may have under section 1542 of the California Civil Code, to the fullest extent that they may waive all such rights and benefits pertaining to the Released Claims. In connection with this waiver, the Parties acknowledge that they are aware that they may in the future discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, regarding the matters released in this Agreement. Nevertheless, it is their intention, through this Agreement, and with the advice of counsel, to fully, finally and forever settle and release the Released Claims. This release shall remain in effect as a full and complete release of the Released Claims notwithstanding the discovery or existence of any such additional or different claims or facts relative to those matters.

8. Miscellaneous Terms

(a) This Agreement shall bind and inure to the benefit of the Parties hereto, as well as each and all of their respective successors, grantees, and assigns.

(b) This Agreement constitutes the entire agreement and understanding between the Parties with respect to the matters contained herein, and there are no prior oral or written promises, representations, warranties, conditions, provisions, or terms related thereto other than those set forth in this Agreement. No modification to the terms of this Agreement shall be made other than by a written modification signed by all Parties. The Parties further represent and acknowledge that, in entering into this Agreement, they do not rely upon and have not relied upon any representation or statements beyond those contained in this Agreement.

(c) This Agreement has been made and executed in the State of California and shall be interpreted and construed in accordance with the laws of the State of California.

(d) This Agreement is a compromise of disputed claims and has been entered into to avoid the time, expense, uncertainty, and inconvenience of further contested litigation. This Agreement does not constitute an adjudication or finding on the merits of any of the Parties' unresolved allegations or defenses in the Lawsuit.

(e) The terms, covenants, and conditions of this Agreement are intended to benefit only the Parties to this Agreement. There is no intent to benefit any non-parties to this Agreement or to create third party beneficiary claims by any such non-party.

(f) Each of the Parties hereto represents and warrants that its signatory to this Agreement is fully authorized to execute and deliver this Agreement on its behalf and that all requisite action on the part of that Party has been taken in order to authorize the execution and delivery of this Agreement and to legally bind the Party to the terms of this Agreement. Each Party represents that it has full power and authority to enter into this Agreement and to carry out its obligations hereunder.

(g) The Parties hereto jointly participated in the preparation of this Agreement and each Party has had the opportunity to review, comment upon, and redraft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any Party or in favor of any Party and any uncertainty or ambiguity shall not be interpreted against any Party in favor of the other.

(h) The Parties shall cooperate to effectuate the purposes of this Agreement and shall execute reasonable and customary documents and take reasonable and customary actions that may be necessary or appropriate to give full force and effect to the terms of this Agreement.

(i) Paragraphs, titles, or captions contained in this Agreement are inserted as a matter of convenience and for reference only; they may not be used to interpret this Agreement and in no way define, limit, extend or describe the scope of this Agreement or any provisions in it.

(j) This Agreement may be executed in one or more counterparts, and with counterpart signature pages, each of which shall be deemed an original, and all of which together

shall have the same force and effect as the original. Facsimile signatures and electronic or scanned signatures (PDF) will have the same force and effect as originals.

(k) This Agreement shall be final and binding upon execution by both parties.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

Dated: October 2, 2015

STUCK IN THE ROUGH, LLC

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

APPROVED AS TO FORM:

MANATT, PHELPS & PHILLIPS, LLP

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

Edward G. Burg  
*Attorneys for Petitioner/Plaintiff*  
STUCK IN THE ROUGH, LLC



Dated: October 7, 2015

CITY OF ESCONDIDO

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

Dated: October 7, 2015

CITY COUNCIL OF THE CITY OF ESCONDIDO


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

ATTEST

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

By:  \_\_\_\_\_  
Robert S. Bower  
*Attorneys for Respondents/Defendants*  
CITY OF ESCONDIDO and CITY  
COUNCIL OF THE CITY OF  
ESCONDIDO

# **EXHIBIT A**

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**F I L E D**  
Clark of the Superior Court  
**MAR 13 2015**  
BY Noreen McKinley, Deputy

Superior Court of the State of California  
County of San Diego, North County Division

STUCK IN THE ROUGH, LLC;	)	CASE NO. 37-2013-00074375-CU-WM-NC
	)	
Petitioners/Plaintiffs,	)	WRIT OF MANDATE
	)	
v.	)	
	)	
CITY OF ESCONDIDO; CITY COUNCIL OF)	)	
THE CITY OF ESCONDIDO; and DOES 1)	)	
THROUGH 100, INCLUSIVE.	)	
	)	
Respondents/Defendants.	)	
	)	

TO RESPONDENTS CITY OF ESCONDIDO AND THE CITY COUNCIL OF THE CITY OF ESCONDIDO:

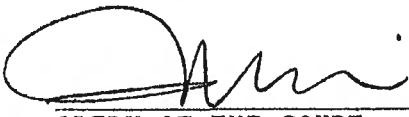
Pursuant to the Order Granting Writ of Mandate in this action determining that City of Escondido Ordinance No. 2013-10, adopted by the City Council on August 14, 2013, is invalid, YOU ARE HEREBY ORDERED to vacate and set aside your actions approving and adopting Ordinance No. 2013-10.

YOU ARE FURTHER HEREBY ORDERED to take no actions in furtherance of Ordinance No. 2013-10 and to cease enforcing Ordinance No. 2013-10.

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YOU ARE FURTHER HEREBY ORDERED to file a return to this writ within 30 days of the date it is served on you setting forth what you have done to comply with this writ.

Dated: 3/13, 2015



CLERK OF THE COURT  
**NOREEN B. MCKINLEY**

# **EXHIBIT B**

1 MANATT, PHELPS & PHILLIPS, LLP  
2 MICHAEL M. BERGER, Bar No. 043228  
3 mmberger@manatt.com  
4 EDWARD G. BURG, Bar No. 104258  
5 eburg@manatt.com  
6 11355 West Olympic Boulevard  
7 Los Angeles, CA 90064-1614  
8 (310) 312-4000 Telephone  
9 (310) 312-4224 Facsimile

10 Attorneys for Petitioner/Plaintiff  
11 STUCK IN THE ROUGH, LLC

12 SUPERIOR COURT OF CALIFORNIA  
13 COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

14 STUCK IN THE ROUGH, LLC,  
15 a California limited liability company,

16 Petitioner/Plaintiff,

17 v.

18 CITY OF ESCONDIDO; CITY COUNCIL OF  
19 THE CITY OF ESCONDIDO; and DOES 1  
20 through 100, inclusive,

21 Respondents/Defendants.

Case No. 37-2013-00074375-CU-WM-NC

Hon. Earl H. Maas III (Dept. N-28)

[IMAGED FILE]

Complaint Filed: November 6, 2013  
Trial Date: None

22 STIPULATION FOR ENTRY OF JUDGMENT  
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**STIPULATION FOR ENTRY OF JUDGMENT**

This Stipulation for Entry of Judgment is made by and between Plaintiff/Petitioner Stuck in the Rough, LLC ("SITR") and Defendants/Respondents City of Escondido and the City Council of the City of Escondido (collectively "the City"), with the approval of their counsel of record, as follows:

1. The [Proposed] Judgment attached to this Stipulation shall be submitted to the Court for entry forthwith.

2. SITR and the City hereby waive any further trial or Statement of Decision.

3. SITR and the City waive any rights to appeal from the Judgment or from any order entered in this action.

4. SITR and the City agree that they will both bear their own attorneys' fees and costs incurred in the prosecution or defense of this action.

5. This Stipulation may be executed in counterparts and by facsimile or scanned signatures, each of which shall be considered an original, but all of which together shall constitute one stipulation.

6. The signatories to this Stipulation represent and warrant that they are fully authorized by the parties for whom they are signing to execute and deliver this Stipulation, and all necessary approvals or authorizations to sign for, and to bind, the parties for whom they are signing have been obtained.

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Dated: October \_\_, 2015 CITY OF ESCONDIDO

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

Dated: October \_\_, 2015 CITY COUNCIL OF THE CITY OF ESCONDIDO

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

ATTEST

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

By: \_\_\_\_\_  
Robert S. Bower  
*Attorneys for Respondents/Defendants*  
CITY OF ESCONDIDO and CITY  
COUNCIL OF THE CITY OF  
ESCONDIDO

Dated: October \_\_, 2015 STUCK IN THE ROUGH, LLC

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

APPROVED AS TO FORM:

MANATT, PHELPS & PHILLIPS, LLP

By: \_\_\_\_\_  
Edward G. Burg  
*Attorneys for Petitioner/Plaintiff*  
STUCK IN THE ROUGH, LLC

315253945.1



**ATTACHMENT**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

STUCK IN THE ROUGH, LLC,  
a California limited liability company,  
  
Petitioner/Plaintiff,

v.

CITY OF ESCONDIDO; CITY COUNCIL OF  
THE CITY OF ESCONDIDO; and DOES 1  
through 100, inclusive,  
  
Respondents/Defendants.

Case No. 37-2013-00074375-CU-WM-NC

Hon. Earl H. Maas III (Dept. N-28)

[IMAGED FILE]

Complaint Filed: November 6, 2013  
Trial Date: None

[PROPOSED] JUDGMENT

1 JUDGMENT

2 Pursuant to the Stipulation for Entry of Judgment by and between  
3 Plaintiff/Petitioner Stuck in the Rough, LLC ("SITR") and Defendants/Respondents City  
4 of Escondido and the City Council of the City of Escondido (collectively "the City"), and  
5 GOOD CAUSE APPEARING, Judgment is hereby entered in this action as follows:

6  
7 Background

8 A. This Judgment concerns the property formerly known as the Escondido  
9 Country Club in Escondido, CA ("the Property"). The Property consists of the following  
10 San Diego County Assessor Parcel Numbers: 224-210-53; 224-211-05; 224-211-11; 224-  
11 211-12; 224-211-15; 224-230-36; 224-230-43; 224-430-04; 224-431-01; 224-431-02; 224-431-03;  
12 224-490-05; 224-490-06; 224-491-01; and 224-811-28.

13 B. Prior to August 14, 2013, the Property was designated on the Land Use  
14 Map of the City's General Plan as "Urban I: Up to 5.5 du/acre."

15 C. Since at least the 1970's, the Property has been zoned R-1-7, which allows  
16 single family residences on minimum 7,000 square foot lots. The Property, however,  
17 was developed as a golf course and country club in conjunction with the surrounding  
18 properties and was used as a golf course pursuant to a conditional use permit issued by  
19 the City in the 1960's.

20 D. SITR acquired the Property on December 6, 2012. SITR closed the  
21 Escondido Country Club on April 1, 2013, after having publicly announced its intention  
22 to develop single family homes on the Property.

23 E. On April 17, 2013, a Notice of Intent to Circulate Petition was filed with the  
24 City Clerk, including the text of an Initiative Measure to be Submitted Directly to Voters  
25 ("the Initiative"). The Initiative proposed to change the General Plan land use  
26 designation of the Property from "Urban I" to "Open Space-Park (OS-P)," and included  
27 specific proposed amendments to the City's General Plan. The Initiative was filed with  
28 the City on July 10, 2013, and its signatures were verified by the County Registrar of

1 Voters on July 30, 2013.

2 F. Faced with the alternatives presented by Elections Code 9215 of either  
3 submitting the Initiative to the voters or adopting it directly, on August 14, 2013, the  
4 City Council adopted Ordinance No. 2013-10, "An Ordinance of the City of Escondido,  
5 California Adopting a Proposed Initiative Measure Amending the Escondido General  
6 Plan to Preserve the Escondido Country Club and Golf Course as an Ordinance of the  
7 City pursuant to California Elections Code Section 9215" ("the Ordinance").

8 G. On November 6, 2013, SITR filed its "Petition for Writ of Mandate and  
9 Complaint for Just Compensation, Declaratory Relief and Damages" in this action  
10 against the City and the City Council.

11 H. On December 2, 2013, SITR filed its "First Amended Petition for Writ of  
12 Mandate and Complaint for Just Compensation, Declaratory and Injunctive Relief, and  
13 Damages" ("First Amended Petition/Complaint") in this action. The First Amended  
14 Petition sought to invalidate the Ordinance and included various statutory and  
15 constitutional claims for compensation and damages.

16 I. On August 4, 2014, the City filed its Motion for Judgment on the Pleadings,  
17 seeking dismissal of the First Cause of Action (Writ of Mandate – CEQA), the Second  
18 Cause of Action (Writ of Mandate – Planning and Zoning), the Fourth Cause of Action  
19 (Writ of Mandate – Planning and Zoning), the Fifth Cause of Action (Takings), the Sixth  
20 Cause of Action (Due Process), the Seventh Cause of Action (Equal Protection), the  
21 Eighth Cause of Action (Declaratory Relief), and the Ninth Cause of Action (Injunctive  
22 Relief) in the First Amended Petition.

23 J. On November 14, 2014, the Court granted in part the City's Motion for  
24 Judgment on the Pleadings as to the First, Second, and Fourth Causes of Action of the  
25 First Amended Petition/Complaint, as conceded by SITR. The Court denied the City's  
26 Motion for Judgment on the Pleadings as to the Fifth, Sixth, Seventh, Eighth, and Ninth  
27 Causes of Action of the First Amended Petition/Complaint.  
28

1           K.     On February 26, 2015, the Court heard SITR's Petition for Writ of Mandate  
2 on the Third Cause of Action in the First Amended Petition/Complaint. On March 13,  
3 2015, the Court issued its Order granting SITR's Petition for Writ of Mandate and  
4 invalidated the Ordinance on grounds that it unfairly discriminated against SITR. Also  
5 on March 13, 2015, the Court issued its Writ of Mandate.

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NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
AS FOLLOWS:

1.     Judgment is entered in favor of SITR on the Third Cause of Action (Writ of  
Mandate) on the grounds set forth in the Order filed herein on March 13, 2015. The  
Court modifies and incorporates into this Judgment the Writ of Mandate issued herein  
on March 13, 2015, as follows:

TO RESPONDENTS CITY OF ESCONDIDO AND THE CITY COUNCIL  
OF THE CITY OF ESCONDIDO:

Pursuant to the Order Granting Writ of Mandate in this action determining  
that City of Escondido Ordinance No. 2013-10, adopted by the City Council on  
August 14, 2013, is invalid, YOU ARE HEREBY ORDERED to take no actions in  
furtherance of Ordinance No. 2013-10 and to cease enforcing Ordinance No.  
2013-10 in any manner.

2.     Judgment is entered in favor of SITR on the Eighth Cause of Action  
(Declaratory Relief). The Court declares that City of Escondido Ordinance No. 2013-10 is  
invalid and may not be enforced in any manner by the City or any of its officials or  
employees. The Court further declares that upon entry of this Judgment, the Property  
will revert to its pre-Ordinance status and will have a General Plan land use designation  
of "Urban I: Up to 5.5 du/acre" and a zoning classification of R-1-7.

1           3.     Judgment is entered in favor of SITR on the Ninth Cause of Action  
2 (Injunctive Relief). The City, including any of its officials or employees, is hereby  
3 permanently enjoined from enforcing City of Escondido Ordinance No. 2013-10 in any  
4 manner.

5           4.     Pursuant to the Minute Order entered herein on November 14, 2014, as  
6 conceded by SITR, the First, Second, and Fourth Causes of Action in the First Amended  
7 Petition/Complaint shall be, and hereby are, dismissed with prejudice.

8           5.     Pursuant to the voluntary request of SITR, the Fifth, Sixth, and Seventh  
9 Causes of Action in the First Amended Petition/Complaint shall be, and hereby are,  
10 dismissed with prejudice.

11          6.     Both SITR and the City shall bear their own attorneys' fees and costs  
12 incurred in the prosecution or defense of this action.

13          7.     Both SITR and the City waive any further trial or Statement of Decision in  
14 this action.

15          8.     Both SITR and the City waive any rights they may have to appeal from this  
16 Judgment or from any order entered in this action.

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19 Dated: \_\_\_\_\_, 2015 \_\_\_\_\_

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HON. EARL H. MAAS, III

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1 MANATT, PHELPS & PHILLIPS, LLP  
2 MICHAEL M. BERGER, Bar No. 043228  
3 mberger@manatt.com  
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10 Attorneys for Petitioner/Plaintiff  
11 STUCK IN THE ROUGH, LLC

12 SUPERIOR COURT OF CALIFORNIA  
13 COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

14 STUCK IN THE ROUGH, LLC,  
15 a California limited liability company,

16 Petitioner/Plaintiff,

17 v.

18 CITY OF ESCONDIDO; CITY COUNCIL OF  
19 THE CITY OF ESCONDIDO; and DOES 1  
20 through 100, inclusive,

21 Respondents/Defendants.

Case No. 37-2013-00074375-CU-WM-NC

Hon. Earl H. Maas III (Dept. N-28)

[IMAGED FILE]

Complaint Filed: November 6, 2013  
Trial Date: None

22 STIPULATION FOR ENTRY OF JUDGMENT  
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## STIPULATION FOR ENTRY OF JUDGMENT

This Stipulation for Entry of Judgment is made by and between Plaintiff/Petitioner Stuck in the Rough, LLC ("SITR") and Defendants/Respondents City of Escondido and the City Council of the City of Escondido (collectively "the City"), with the approval of their counsel of record, as follows:

1. The [Proposed] Judgment attached to this Stipulation shall be submitted to the Court for entry forthwith.

2. SITR and the City hereby waive any further trial or Statement of Decision.

3. SITR and the City waive any rights to appeal from the Judgment or from any order entered in this action.

4. SITR and the City agree that they will both bear their own attorneys' fees and costs incurred in the prosecution or defense of this action.

5. This Stipulation may be executed in counterparts and by facsimile or scanned signatures, each of which shall be considered an original, but all of which together shall constitute one stipulation.

6. The signatories to this Stipulation represent and warrant that they are fully authorized by the parties for whom they are signing to execute and deliver this Stipulation, and all necessary approvals or authorizations to sign for, and to bind, the parties for whom they are signing have been obtained.



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Dated: October 7, 2015

CITY OF ESCONDIDO

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

Dated: October 7, 2015

CITY COUNCIL OF THE CITY OF ESCONDIDO


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

ATTEST

  
City Clerk

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

By:   
Robert S. Bower  
*Attorneys for Respondents/Defendants*  
CITY OF ESCONDIDO and CITY  
COUNCIL OF THE CITY OF  
ESCONDIDO

Dated: October 7, 2015

STUCK IN THE ROUGH, LLC

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

APPROVED AS TO FORM:

MANATT, PHELPS & PHILLIPS, LLP

By: \_\_\_\_\_  
Edward G. Burg  
*Attorneys for Petitioner/Plaintiff*  
STUCK IN THE ROUGH, LLC

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Dated: October \_\_, 2015

CITY OF ESCONDIDO

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

Dated: October \_\_, 2015

CITY COUNCIL OF THE CITY OF ESCONDIDO

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

ATTEST

\_\_\_\_\_  
City Clerk

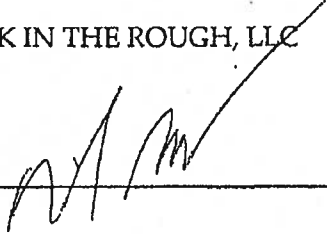
APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

By: \_\_\_\_\_  
Robert S. Bower  
*Attorneys for Respondents/Defendants*  
CITY OF ESCONDIDO and CITY  
COUNCIL OF THE CITY OF  
ESCONDIDO


Dated: October 2, 2015

STUCK IN THE ROUGH, LLC

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

APPROVED AS TO FORM:

MANATT, PHELPS & PHILLIPS, LLP

By:  \_\_\_\_\_  
Edward G. Burg  
*Attorneys for Petitioner/Plaintiff*  
STUCK IN THE ROUGH, LLC

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**ATTACHMENT**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

STUCK IN THE ROUGH, LLC,  
a California limited liability company,

Petitioner/Plaintiff,

v.

CITY OF ESCONDIDO; CITY COUNCIL OF  
THE CITY OF ESCONDIDO; and DOES 1  
through 100, inclusive,

Respondents/Defendants.

Case No. 37-2013-00074375-CU-WM-NC

Hon. Earl H. Maas III (Dept. N-28)

[IMAGED FILE]

Complaint Filed: November 6, 2013  
Trial Date: None

[PROPOSED] JUDGMENT

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## JUDGMENT

Pursuant to the Stipulation for Entry of Judgment by and between Plaintiff/Petitioner Stuck in the Rough, LLC ("SITR") and Defendants/Respondents City of Escondido and the City Council of the City of Escondido (collectively "the City"), and GOOD CAUSE APPEARING, Judgment is hereby entered in this action as follows:

### Background

A. This Judgment concerns the property formerly known as the Escondido Country Club in Escondido, CA ("the Property"). The Property consists of the following San Diego County Assessor Parcel Numbers: 224-210-53; 224-211-05; 224-211-11; 224-211-12; 224-211-15; 224-230-36; 224-230-43; 224-430-04; 224-431-01; 224-431-02; 224-431-03; 224-490-05; 224-490-06; 224-491-01; and 224-811-28.

B. Prior to August 14, 2013, the Property was designated on the Land Use Map of the City's General Plan as "Urban I: Up to 5.5 du/acre."

C. Since at least the 1970's, the Property has been zoned R-1-7, which allows single family residences on minimum 7,000 square foot lots. The Property, however, was developed as a golf course and country club in conjunction with the surrounding properties and was used as a golf course pursuant to a conditional use permit issued by the City in the 1960's.

D. SITR acquired the Property on December 6, 2012. SITR closed the Escondido Country Club on April 1, 2013, after having publicly announced its intention to develop single family homes on the Property.

E. On April 17, 2013, a Notice of Intent to Circulate Petition was filed with the City Clerk, including the text of an Initiative Measure to be Submitted Directly to Voters ("the Initiative"). The Initiative proposed to change the General Plan land use designation of the Property from "Urban I" to "Open Space-Park (OS-P)," and included specific proposed amendments to the City's General Plan. The Initiative was filed with the City on July 10, 2013, and its signatures were verified by the County Registrar of

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Voters on July 30, 2013.

F. Faced with the alternatives presented by Elections Code 9215 of either submitting the Initiative to the voters or adopting it directly, on August 14, 2013, the City Council adopted Ordinance No. 2013-10, "An Ordinance of the City of Escondido, California Adopting a Proposed Initiative Measure Amending the Escondido General Plan to Preserve the Escondido Country Club and Golf Course as an Ordinance of the City pursuant to California Elections Code Section 9215" ("the Ordinance").

G. On November 6, 2013, SITR filed its "Petition for Writ of Mandate and Complaint for Just Compensation, Declaratory Relief and Damages" in this action against the City and the City Council.

H. On December 2, 2013, SITR filed its "First Amended Petition for Writ of Mandate and Complaint for Just Compensation, Declaratory and Injunctive Relief, and Damages" ("First Amended Petition/Complaint") in this action. The First Amended Petition sought to invalidate the Ordinance and included various statutory and constitutional claims for compensation and damages.

I. On August 4, 2014, the City filed its Motion for Judgment on the Pleadings, seeking dismissal of the First Cause of Action (Writ of Mandate – CEQA), the Second Cause of Action (Writ of Mandate – Planning and Zoning), the Fourth Cause of Action (Writ of Mandate – Planning and Zoning), the Fifth Cause of Action (Takings), the Sixth Cause of Action (Due Process), the Seventh Cause of Action (Equal Protection), the Eighth Cause of Action (Declaratory Relief), and the Ninth Cause of Action (Injunctive Relief) in the First Amended Petition.

J. On November 14, 2014, the Court granted in part the City's Motion for Judgment on the Pleadings as to the First, Second, and Fourth Causes of Action of the First Amended Petition/Complaint, as conceded by SITR. The Court denied the City's Motion for Judgment on the Pleadings as to the Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action of the First Amended Petition/Complaint.

1 K. On February 26, 2015, the Court heard SITR's Petition for Writ of Mandate  
2 on the Third Cause of Action in the First Amended Petition/Complaint. On March 13,  
3 2015, the Court issued its Order granting SITR's Petition for Writ of Mandate and  
4 invalidated the Ordinance on grounds that it unfairly discriminated against SITR. Also  
5 on March 13, 2015, the Court issued its Writ of Mandate.

6  
7 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
8 AS FOLLOWS:

9 1. Judgment is entered in favor of SITR on the Third Cause of Action (Writ of  
10 Mandate) on the grounds set forth in the Order filed herein on March 13, 2015. The  
11 Court modifies and incorporates into this Judgment the Writ of Mandate issued herein  
12 on March 13, 2015, as follows:

13  
14 TO RESPONDENTS CITY OF ESCONDIDO AND THE CITY COUNCIL  
15 OF THE CITY OF ESCONDIDO:

16 Pursuant to the Order Granting Writ of Mandate in this action determining  
17 that City of Escondido Ordinance No. 2013-10, adopted by the City Council on  
18 August 14, 2013, is invalid, YOU ARE HEREBY ORDERED to take no actions in  
19 furtherance of Ordinance No. 2013-10 and to cease enforcing Ordinance No.  
20 2013-10 in any manner.

21  
22 2. Judgment is entered in favor of SITR on the Eighth Cause of Action  
23 (Declaratory Relief). The Court declares that City of Escondido Ordinance No. 2013-10 is  
24 invalid and may not be enforced in any manner by the City or any of its officials or  
25 employees. The Court further declares that upon entry of this Judgment, the Property  
26 will revert to its pre-Ordinance status and will have a General Plan land use designation  
27 of "Urban I: Up to 5.5 du/acre" and a zoning classification of R-1-7.

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3. Judgment is entered in favor of SITR on the Ninth Cause of Action (Injunctive Relief). The City, including any of its officials or employees, is hereby permanently enjoined from enforcing City of Escondido Ordinance No. 2013-10 in any manner.

4. Pursuant to the Minute Order entered herein on November 14, 2014, as conceded by SITR, the First, Second, and Fourth Causes of Action in the First Amended Petition/Complaint shall be, and hereby are, dismissed with prejudice.

5. Pursuant to the voluntary request of SITR, the Fifth, Sixth, and Seventh Causes of Action in the First Amended Petition/Complaint shall be, and hereby are, dismissed with prejudice.

6. Both SITR and the City shall bear their own attorneys' fees and costs incurred in the prosecution or defense of this action.

7. Both SITR and the City waive any further trial or Statement of Decision in this action.

8. Both SITR and the City waive any rights they may have to appeal from this Judgment or from any order entered in this action.

Dated: \_\_\_\_\_, 2015 \_\_\_\_\_  
HON. EARL H. MAAS, III

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