

**ENCROACHMENT AGREEMENT
FOR THE INSTALLATION OF MONUMENTS WITHIN THE PUBLIC
RIGHT-OF-WAY**

This Encroachment Agreement ("Agreement") is dated 6/21, 2021 by and between the CITY OF BEAUMONT ("City") and FAIRWAY CANYON COMMUNITY ASSOCIATION, a California mutual benefit corporation ("HOA") and SDC FAIRWAY CANYON, LLC, a Delaware limited liability company. ("Developer").

RECITALS

WHEREAS, Developer is a Delaware limited liability company located at 4131 S. Main Street, Santa Ana CA, 92707 and is the developer of the Fairway Canyon Project ("Project") located in the City of Beaumont;

WHEREAS, HOA is the homeowners association responsible for, among other things, the operation, maintenance and repair of the common area within the Project;

WHEREAS, a third party predecessor developer previously constructed six entry monuments on both sides of the entryway to the Project ("Existing Monuments") and Developer plans to build an additional two entry monuments (together with the Existing Monuments the "Monuments") all of which are shown on Exhibit "A", attached hereto and made a part hereof;

WHEREAS, the intent of this Agreement is to reflect the City's acceptance of certain existing encroachments by the Existing Monuments on City rights of way, provide for the repair or maintenance of the Monuments and to, as between the City, the Developer and the HOA, allocate the responsibility for the Monuments to the HOA;

NOW, THEREFORE, in consideration of the recitals and the mutual covenants contained herein, City, Developer and HOA agree as follows:

A. DEFINITIONS

1. **"City"** means the City of Beaumont, a municipal corporation of the State of California.
2. **"Improvements"** means the entirety of the Monuments referred to in the Recitals as depicted in **Exhibit "A"**. The term Improvements includes without limitation the structure, fascia, foundations, footings, electrical equipment and conduits, and any and all related materials and equipment making up the Monuments.
3. **"Laws"** means any order, certificate, judicial decision, statute, constitution, ordinance, resolution, rule, tariff, administrative order, or other requirement of any

municipality, county, state, federal, or other agency having jurisdiction over the parties to this Agreement, in effect either at the time of execution of this Agreement or at any time during the location of the Improvements in the Public Right-of-Way including, without limitation, any regulation or order of an official entity or body. A reference to "Laws" shall include, without limitation, any provision of the Beaumont Municipal Code or any other City ordinance or regulation.

4. **"Public Right-of-Way"** means the surface, the air space above the surface, and the area below the surface of the public streets, roads, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements as the same now or hereafter may exist that are under the jurisdiction of the City. This term shall not include any property owned by any person or agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any person.

B. LIMITATIONS AND RESTRICTIONS

1. **Encroachment.** Subject to the provisions of this Agreement and all applicable Laws, City hereby authorizes HOA to maintain existing Improvements shown on Exhibit "A" within the City's Public Right-of-Way. Subject to the provisions of this Agreement and all applicable Laws, City hereby authorizes HOA to encroach upon City's Public Right-of-Way for the purpose of construction, installation, maintenance, removal and repair of the Improvements as described and shown in any applicable Permit, which by this reference is incorporated herein (the "Work"). Developer hereby certifies that the descriptions and drawings submitted to the City for the Improvements are true, complete and accurate. This permission granted under this Agreement is subject to the terms and conditions set forth in the Code of the City of Beaumont ("Code") including, but not limited to, **Title 12, Chapter 12.12**. Developer shall be responsible for construction, installation, maintenance and repair of Improvements until the same have been transferred to the HOA and accepted by the HOA as part of the common area of the Project as evidenced by a written agreement between Developer and HOA a copy of which shall be delivered to City in the form attached hereto as Exhibit "B".

2. **Permit.** Developer shall not commence any Work until Developer has first obtained a permit ("Permit") to do so. Permit applications and accompanying fees must be submitted and paid, respectively, in accordance with the provisions of City's policies, procedures, and rules. Developer is solely responsible for any permit fees or related costs.

3. **Dig Alert.** HOA and Developer are hereby given notice of existing state law, Sec. 4215 et seq., Chapter 3.1, Division 5, Title 1 of the Government Code, as amended by A.B. 73, effective January 1, 1990, which requires owners of underground improvements

to join a regional notification center, e.g., USA, which requires contractors to contact such a regional notification center prior to excavation; requires facility owners to mark their underground improvements when notified; and sets civil penalties for failure to comply therewith. Prior to construction, Developer shall contact USA to verify the location of existing underground improvements¹.

4. Interference. Except as permitted by applicable Laws or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, neither Developer nor HOA shall interfere in any manner with the existence and operation of any and all of the following at any of the properties where the Improvements are located without the approval of the owner(s) of the affected property or properties: Public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property.

5. Compliance with Law. HOA and Developer shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Agreement. No repair or construction shall be performed except in accordance with the provisions of the Code pertaining to encroachments. Except as otherwise expressly provided herein, City reserves all of its rights under all Laws.

6. Type of Interest. This Agreement is not a grant by the City of any property interest but is made subject and subordinate to the prior and continuing right of the City to use all of the Public Right-of-Way in the performance of its duties, including, but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across, and in said Public Right-of-Way. The permission granted hereunder shall not in any event constitute an easement on or an encumbrance against City property or against the Public Right-of-Way. No right, title or interest (including franchise interest) in the Public Right-of-Way, or any part thereof, shall vest or accrue in HOA or Developer by reason of this Agreement or the issuance of any Permit or exercise of any privilege given thereby. Nothing in this Agreement shall be construed as granting or creating any franchise rights.

7. Existing Rights. This Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances, and claims of title which may affect the Public Right-of-Way which are in existence or recorded in the public record before the date of

¹ Since the defined term "Improvements" refers to the Monuments we think it is not applicable here

this Agreement, and it is understood that Developer, at its own cost and expense, shall obtain such permission as may be necessary and consistent with any other existing rights.

8. No Cost to City. The construction, installation, operation, maintenance, and removal of said Improvements shall be accomplished without cost or expense to City and subject to reasonable approval of the City in such a manner as not to endanger personnel or property, or unreasonably obstruct travel on any road, walk, or other access thereon within said Public Right-of-Way.

9. Work Standards; Repairs. The work associated with installing, maintaining, repairing and removing any Improvements shall be done in a good, workman-like and skillful manner, subject to the supervision and reasonable satisfaction of City. At all times that construction or excavation is being conducted by Developer or HOA under this Agreement Developer's or HOA's representative, as applicable, shall be physically present at the construction site. Work shall comply with all standards imposed by City Law and be conducted with the least possible hindrance or interference to the City Property. The Improvements shall be maintained in good and safe condition and repair and free from any defect, nuisance or other threat to health, safety and welfare, to the reasonable satisfaction of the City. Developer (with respect to Improvements prior to transfer to the HOA) and HOA (thereafter) shall be responsible for any damage to City street pavements, existing utilities, curbs, gutters, sidewalks or to any private property or improvements, including but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support, to the extent attributable to its installation, maintenance, repair or removal of its Improvements in the Public Right-of-Way and shall repair, replace and restore in kind any such damaged improvements at its sole expense and to the satisfaction of City – The foregoing is not intended to and shall not limit, waive, bar or eliminate any claim or cause of action, including for indemnity, the HOA may have against Developer with respect to any damage caused or created by Developer or resulting from any operation, work or services by Developer, whether such damage is to a City street or any other property or improvement. If Public Right-of-Way to be used by Developer or HOA has preexisting installation(s) placed in said Right-of-Way, Developer or HOA shall assume the responsibility to verify the location of the preexisting installation and notify City and any third party of the proposed installation. The cost of any work required of such third party or City to provide adequate space or required clearance to accommodate Developer's installation shall be borne solely by Developer.

10. Term and Extension. The term of this Agreement shall commence as of the Effective Date, and shall continue so long as the Improvements remain in place subject to the other terms of this Agreement.

11. Reservation of Rights. The City reserves any and all rights it may have now or in the future to legally regulate or otherwise condition the use of the Improvements and related activities. The City's agreement hereto is not a waiver of and is without prejudice to any right, power or authority the City may have under law. City reserves any and all rights it may have under applicable Laws concerning the subject matter of this Agreement.

12. Removal and Relocation. Developer (with respect to Improvements prior to transfer to the HOA) and HOA (thereafter) shall remove or relocate, without cost or expense to City, any Improvements installed, used, and maintained under this Agreement which are located on Public Rights-of-Way if and when made necessary by any City required relocation, widening, change of grade or realignment of any street, and/or the construction, maintenance, or operation of any other City underground or aboveground Improvements including but not limited to City-owned sewer, storm drain, conduits, streetlamps, traffic signals, gas, water, electric or other utility system, or pipes owned by City or any other public agency. In the event all or any portion of said Public Right-of-Way occupied by said Improvements shall be needed by City, or in the event the existence of said Improvements shall be considered detrimental to City governmental activities, including, but not limited to, interference with the safe passage of traffic or pedestrians, interference with City construction projects, or conflicts vertically and/or horizontally with any proposed City installation, Developer/HOA, as applicable, shall remove or relocate said Improvements to such other location or locations on said Public Right-of-Way as may be designated by City. Said removal or relocation shall be completed in accordance with applicable law and City ordinances within ninety (90) days of notification by City, unless exigencies dictate a shorter period for removal, relocation and/or abandonment, and such shorter period is stated in the written request (the "RRA Notice Period"). The RRA Notice Period shall be no less than thirty (30) days in advance. In the event said Improvements are not removed or relocated within the period of time specified in the preceding sentence, City may cause the same to be done at the sole expense of Developer (with respect to Improvements prior to transfer to the HOA) or HOA (thereafter).

13. Abandonment. If any portions of the Improvements covered under this Agreement are no longer used by HOA, or are abandoned for a period in excess of one (1) year, Developer (with respect to Improvements prior to transfer to the HOA) and HOA (thereafter) shall notify City and shall promptly vacate and remove the Improvements at its own expense. When removal or relocation are required under this Agreement, Developer (with respect to Improvements prior to transfer to the HOA) and HOA (thereafter) shall, after the removal or relocation of the Improvements, at its own cost, repair and return the Public Right-of-Way or public utility or service easements on which the Improvements were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City according to its standard practice. Should Developer or HOA remove the Improvements

from the Public Right-of-Way, the party that removed the Improvements shall, within ten (10) days after such removal, give notice thereof to City specifying the right-of-way affected and the location thereof as well as the date of removal. Before proceeding with removal or relocation work, Developer (with respect to Improvements prior to transfer to the HOA) and HOA (thereafter) shall obtain all permits from the City required under its Laws including, but not limited to, an encroachment permit.

14. Construction Permit and Fees. Developer (with respect to Improvements prior to transfer to the HOA) and HOA (thereafter) shall apply for an encroachment permit for all work and each job within the Public Right-of-Way². And Developer shall furnish detailed plans and specifications for the work and other such information as required by the City and shall pay all processing, field marking, engineering, and inspection fees prior to issuance of a permit in accordance with the rates in effect at the time of submission of the permit. Said improvements shall be constructed and installed in accordance with the City Law, existing easements and right-of-way grants benefiting other utility companies, and as further provided for in the provisions of this Agreement.

15. Performance Bond. Prior to the issuance of an Encroachment Permit, Developer (with respect to Improvements prior to transfer to the HOA) and HOA (thereafter) shall provide City with a performance bond naming City as obligee in the amount equal to one hundred percent (100%) of the value of the work to be performed by or on behalf of Developer/HOA within and affecting the Public Right-of-Way to guarantee and assure the faithful performance of Developer/HOA obligations under this Agreement. City shall have the right to draw against the surety bond in the event of a default by Developer/HOA in the event that Developer/Developer fails to meet and fully perform any of its obligations; provided that Developer/HOA is first given written notice of any intent to draw against the bond and an opportunity to cure. Following completion of the work by Developer/HOA and its inspection and acceptance by the City, the performance bond shall remain in effect to the extent of ten percent (10%) of the value of the work to guarantee and assure that faithful performance of Developer's/HOA's obligations under this Agreement for a period of one (1) year from the City's acceptance of the work. City shall have the right to draw against the bond in the event of a default by Developer/HOA or in the event that Developer/HOA fails to meet and fully perform any of its obligations. The form of the performance bond shall be furnished and reasonably approved by the City.

16. Hold Harmless and Indemnification.

Developer for itself, its agents, contractors and employees, agrees to indemnify, defend and hold harmless City, its officers, employees, and agents and any successors to City's

² New Monuments will be built prior to dedication of public rights of way

interest from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense to the extent arising directly out of the Developer's breach of this Agreement, except to the extent arising from the City's or its officers', employees', agents', contractors' and subcontractors' willful actions or negligent acts or omissions.

HOA for itself, its agents, contractors and employees, agrees to indemnify, defend and hold harmless City, its officers, employees, and agents and any successors to City's interest from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense to the extent arising directly out of the HOA's breach of this Agreement, except to the extent arising from the City's or its officers', employees', agents', contractors' and subcontractors' willful actions or negligent acts or omissions.

17. Insurance³. HOA shall obtain and maintain at all times during the term of this Agreement comprehensive general and automobile liability insurance protecting HOA in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence, including bodily injury and property damage, as a combined single limit or equivalent. Such insurance shall include City, as defined above, as additional insured parties, as its or their interest may appear. Coverage shall be in accordance with the limits specified and the provisions indicated herein. Claims made policies are not acceptable. When an umbrella or excess coverage is in effect, it must follow the form of the underlying coverage. HOA shall file the required original Certificate of Insurance with endorsements with City, subject to City's reasonable approval, and shall clearly state the policy number; name of insurance company; name, address and telephone number of the agent or authorized representative; name, address and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts. That any cancellation notice is unqualified as to the acceptance of liability for failure to notify City; and that HOA's insurance is primary. HOA shall obtain and maintain at all times during the term of this Agreement statutory Workers Compensation and employer's liability insurance as required by law but at least in an amount not less than One Hundred Thousand Dollars (\$100,000) and shall furnish City with a certificate showing proof of such coverage. Insurance companies must be admitted or authorized to do business in California and

³ We do not believe the Developer should be included here since it is required to maintain insurance pursuant to other requirements of the City and there is no activity under this Agreement to be undertaken by the Developer (basically, just complying with existing laws) which should require additional insurance.

rated at least B+: IX in Best's Insurance Guide. Non-admitted insurance companies will be considered if they are rated at least A-X in the latest Best's Insurance Guide. Prior to the execution of this Agreement, any deductibles or self-insured retentions must be stated on Certificates of Insurance, and the Certificate of Insurance must be sent to and reasonably approved by the City. Current certificates shall be provided to City at all times during the term of this Agreement complying with the terms of this Agreement.

C. TERMINATION

1. **Termination.** The City may terminate this Agreement or the right to maintain any Improvement in the event that such Improvement or Improvements interfere with or are inconsistent with any City program or adversely impact the health safety and welfare.

2. **Termination for Breach.** This Agreement may be terminated by the City in the event HOA or Developer breaches any of their obligations under this Agreement, City notifies HOA and Developer of such breach in writing, and HOA or Developer fails to fully cure any such breach within thirty (30) days after receipt of such notice, or, if such cure cannot reasonably be effected within said thirty (30) days, HOA or Developer fails to commence such cure within said thirty (30) days period and thereafter diligently continues to cure the default until completion thereof. Each Party shall be entitled to exercise all rights and remedies in the event of a breach, including, in the case of a default and material breach by HOA or Developer, the City's right, at its sole discretion, to withhold issuance of any new permits and/or commence enforcement proceedings against Developer or HOA pursuant to the Beaumont Municipal Code including but not limited to Title 12, Chapter 12.12.160.

3. **Termination for Threat to Public Safety.** Notwithstanding the notice and cure periods set forth in this Agreement, in the event that the City finds that the Improvements or any of them poses a threat to the public health, welfare and safety, the City may so notify HOA or Developer (as to Improvements prior to transfer to the HOA) in writing and may, without providing HOA or Developer an opportunity to cure, take immediate steps to mitigate the threat, including but not limited to removal and/or relocation of the Improvements, the reasonable and documented cost of such work to be borne solely by HOA or Developer, as applicable. The Parties agree to attempt in good faith to work cooperatively with one another to neutralize and mitigate any threat to public health, welfare and safety caused by or exacerbated by the Improvements.

4. **Post Termination Removal.** Upon Termination for any reason, the City may require Developer (as to Improvements prior to transfer to the HOA) or HOA (thereafter) to remove the Improvements and restore the City Property according to the requirements of the Permit and the Code.

D. MISCELLANEOUS

1. **Assignment.** This Agreement shall not be assigned by HOA or Developer without the prior written approval of the City Council.
2. **Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understanding (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.
3. **Severability.** If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such covenant or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this agreement.
4. **Notices.** All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States mail or by private delivery systems if followed by United States mail or private delivery systems as follows:

To City at: City of Beaumont
c/o City Manager
550 E. Sixth Street
Beaumont, CA 92223

To HOA at: Fairway Canyon Community Association
c/o FirstServiceResidential
Attn: Community Manager
15241 Laguna Canyon Road
Irvine, CA 92618

To DEVELOPER at: SDC Fairway Canyon LLC
c/o Argent Management Inc.
4131 S. Main Street
Santa Ana CA 92707

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the date and year first written herein:

“CITY”

THE CITY OF BEAUMONT

By: _____

Mayor

By: _____

City Clerk

APPROVED AS TO FORM

City Attorney

“HOA”

Fairway Canyon Community Association, a California mutual benefit corporation

By: Michelle Hays

By: [Signature]

“DEVELOPER”

SDC FAIRWAY CANYON LLC, a Delaware limited liability company

By: ~~Argent Management, its manager~~

By: [Signature] Dale Strickland

Its Authorized Signatory

Attached: Encroachment Agreement for the
Installation of Monuments within the
Public Right-of-Way

ACKNOWLEDGMENT

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 Riverside

On June 24, 2021 before me, Coral Guerrero, Notary Public
(here insert name and title of the officer)

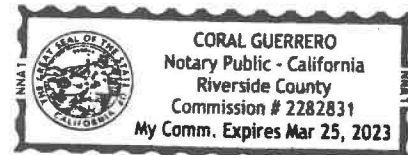
personally appeared Michael Hughes and Brett Hughes

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 Coral Guerrero



(Seal)

ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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 Orange }

On June 21, 2021 before me, Susan E. Morales, Notary Public,
(Here insert name and title of the officer)

personally appeared Dale Strickland,
 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.

Susan E. Morales
 Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

SDC Fairway Canyon, LLC
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

Individual (s)
 Corporate Officer

(Title)

Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other Authorized Signatory

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/~~she/they~~, is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

By: _____

EXHIBIT "A"
(attach map)

EXHIBIT “B”

(form of letter)

Fairway Canyon Community Association, a California mutual benefit corporation

To: City Manager

City of Beaumont

550 E. Sixth Street

Beaumont, CA 92223

This is to notify the City of Beaumont that the entry monuments located at ____ and ____ have been completed to the satisfaction of the Fairway Canyon Community Association, and the Fairway Canyon Community Association hereby accepts the same as part of the common area of the Association. This will also confirm that the Association is responsible from the date of this letter for the obligations relative to the entry monuments under that certain Encroachment Agreement dated ____ between the City of Beaumont, the Association and SDC Fairway Canyon LLC.

This letter has been authorized by all required actions of the Fairway Canyon Community Association, a California mutual benefit corporation, in accordance with its CC&Rs, Bylaws and applicable law and the undersigned has been duly appointed to execute this Letter on behalf of the Fairway Canyon Community Association.