

SAVE ELEVADO ROAD ASSOCIATION  
ROAD MAINTENANCE AGREEMENT

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**DRAFT**

**PUBLISHED FOR COMMENTS**

For those residents interested in a formal Road Maintenance Agreement, please review the attached document.

It is being published now to give the community an opportunity to comment before executed agreements are accepted.

Please send your comments by August 31 to [bernie@elevado.info](mailto:bernie@elevado.info).

**DO NOT SIGN THE AGREEMENT NOW!**

We will notify you when the Agreement has been finalized after all comments have been considered.

**ROAD MAINTENANCE AGREEMENT**  
**FOR ELEVADO ROAD**

THIS ROAD MAINTENANCE AGREEMENT (the "Agreement"), is entered into by and among the Save Elevado Road Association, an unincorporated, non-profit association (the "Association"), and the individual owners of contiguous easements known as Elevado Road who sign this Agreement (individually an "Owner", and collectively the "Owners").

**RECITALS**

WHEREAS, Owners hold title to individual parcels of real property in an unincorporated area of San Diego County, State of California, which parcels have appurtenant easements collectively known as Elevado Road for ingress and egress to the nearest public road (individually, a "Property" and, collectively, "Properties").

WHEREAS, pursuant to California Civil Code 845(b) Owners intend to establish a road maintenance agreement for the purpose of maintaining and repairing Elevado Road.

WHEREAS, the Association was formed for the purpose of administering Owners' collective obligations to maintain and repair the portion of Elevado Road between Vista Grande and Flametree (the "Road").

WHEREAS, to provide continuity for management of the Owners' continuing obligations, the Association anticipates becoming a non-profit corporation, whose responsibility and authority is limited to that granted to the Association under this Agreement.

**ARTICLE I.**

## EFFECTIVE DATE

Section 1. This Agreement shall be effective with respect to each Owner when executed by said Owner and countersigned by the Association (the "Effective Date"). By signing this Agreement, the Owner binds all other current owners of the Owner's Residential Property, including trustees under a revocable trust.

## ARTICLE II ROAD MAINTENANCE COMMITTEE

Section 2. Establishment Of Association Road Maintenance Committee.

(a). The Association and Owners' responsibilities for reasonable repair and maintenance of the Road shall be performed by a Road Maintenance Committee (the "Committee") elected by the Owners. The Committee shall consist of a minimum of three and a maximum of five members ("Directors"), as determined by the number of eligible Owners willing to serve. Directors shall be Owners of properties having a permanent dwelling ("Residential Property") whose Contributions have been paid in full. One Director shall own a Residential Property whose easements connect to the Road within its first half mile from Vista Grande, one Director shall own a Residential Property whose easements connect to the Road within the second half mile, one Director shall own a Residential Property whose easements connect to the Road more than a mile from Vista Grande, and the remaining two Directors, if additional Owners are willing to serve, shall be elected at large.

(b). Each Director shall be elected for a term of two years. The first meeting of Owners to elect Directors shall be held on October 1, 2020, and every two years thereafter on the first day of October.

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(c). The Owner(s) of each Parcel shall have one vote for each Director's seat eligible for election, and all votes shall be counted equally. Each Director shall be elected by a plurality of the votes cast. A vote may be made in person or by submission of a written ballot signed by the Owner. Until the election is conducted, an Owner may rescind their written ballot by attending the meeting and voting in person.

(d). Until the first election, the initial Directors shall be appointed by the pre-existing Elevado Road Steering Committee.

(e). Each Director appointed or elected shall continue to serve until their resignation or replacement is duly elected. A Director can be removed from office only for good cause by a vote of two thirds of all Owners of record during a properly called special meeting for election of a replacement to complete the Director's term. For purposes of this provision, only Owners of Residential Properties may vote on removal. If a Director ceases to be an Owner, or in the event of their resignation, disability or removal from office, the Committee may appoint their successor to complete their term.

(f). In addition to the biennial meetings to elect Directors, a special meeting of the Owners can be held at any time when called by the Committee or by a petition signed by a majority of all Owners of Residential Properties.

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(g). Notice of Owners' meetings and the agenda must be given at least fourteen (14) days prior to the meeting date. Notices of all Owners' meetings, including the proposed agendas, shall be posted on the Association web site and circulated by email to the most recent email address provided by each Owner.

(h). The Committee shall designate an Owner to act as secretary (the "Secretary") for conducting, receiving and tabulating all votes by Owners on every matter. The Secretary shall report in writing the results of votes to the Committee as soon as reasonably practicable for incorporation in the Committee minutes, and keep all records related to the votes for a period of six months thereafter.

Section 3. Committee Meetings.

(a). Directors of the Committee shall serve without compensation.

(b). Directors shall have no liability whatsoever except for acts constituting gross negligence or malfeasance. Liability for nonfeasance is expressly excluded, except when specifically prohibited by law. The Association shall indemnify and hold the Directors harmless from all liability and all costs of defense to the fullest extent permissible under the law. If available, the Committee may acquire liability insurance to indemnify the Directors for all responsibility assumed on the Association's behalf, at the Association's expense.

(c). After every election, the Directors shall elect a Chairman who shall be responsible for scheduling and conducting meetings. The Directors shall determine and allocate their remaining roles and responsibilities in accordance with their authority under Section 4 ("Committee Authority"), in their reasonable discretion.

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(d). The Secretary shall draft minutes of the Committee's meetings, subject to the Committee's amendment and adoption by email within fourteen (14) days after the meeting. All minutes once adopted, as well as all minutes of Owners' meetings, shall be posted on the Association's web site.

(e). A vote by a majority of Directors shall determine all questions raised or put before the Committee.

(f). Committee meetings may be called by any two Directors or by the Chairman of the Committee by giving a minimum of (7) days prior written notice to each Director, unless waived. Notices of all Committee' meetings, including the proposed agendas, shall be posted on the Association web site and circulated by email to the most recent email address provided by each Owner. Meetings of the Committee shall be open to all Owners who shall be entitled to be heard on any matter, except when the Committee adjourns to closed session to consider litigation or negotiation of contracts with third parties, within reasonable rules determined solely by the Chairman.

(g). All meetings of Owners and the Committee shall be held at the Chairman's residence, unless another location is designated by the Chairman or Secretary.

Section 4. Committee Authority. Subject to the limits of the Association's financial resources, the Committee shall have the power, in their reasonable discretion, to:

- (a). Enforce the provisions of this Agreement;
- (b). Convert or merge the Association into a nonprofit corporation whose purpose and authority is limited to that granted to the Association under this Agreement or at law;
- (c). Maintain bank accounts in the Association's name;

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(d). Contract and pay for reasonable repair and maintenance of the Road, provided that competitive bids shall be solicited from qualified contractors on all contracts in excess of \$5,000;

(e). Commence and defend legal actions concerning maintenance of the Road, or refrain from any such action, as deemed prudent by the Directors;

(f). Settle any legal or equitable claims which may exist against persons or organizations improperly using, altering or causing damage to the Road;

(g). Post and maintain signs as may be deemed advisable by the Committee related to the Road's use and maintenance;

(h). Purchase and maintain insurance and fidelity bonds for the protection of the Association, the Owners, the Committee or its Directors;

(i). Take all action necessary to protect the Association's service marks from unauthorized use of similar names;

(j). Contract with qualified service providers to supervise inspections and repairs, coordinate communications and notices with third parties concerning matters affecting Owners' rights and responsibilities, manage the collection of annual Contributions, maintain the Committee's books and records, and any other function the Committee in its sole discretion deems appropriate.

(k). Submit applications for treatment of the Association as a tax-exempt organization, if deemed feasible, and make all necessary filings with the governing tax authorities as required by law;

(l). Take any other action reasonably necessary for the exercise of its authority under this Agreement.

Section 5. Records. In addition to the minutes of all meetings, the Committee shall maintain records of all financial transactions on Owners' behalf, including collections, expenses, contractual agreements with third parties and a current roster of Owners and

their addresses. These records shall be open to inspection to all Directors and Owners after receipt of a written request at a reasonable time and place, at such requesting party's expense, if any.

### **ARTICLE III CONTRIBUTIONS**

Section 6. Contributions. Each Owner hereby covenants and agrees to pay the annual Contribution set forth on Attachment "A" for each Property owned by them for performance of reasonable repair and maintenance of the Road in accordance with Ca. Civ. Code §845. Repairs and maintenance under this Agreement shall include, but is not limited to, filling of potholes (a/k/a "chuckholes"), repairing of cracks, repairing and resurfacing of roadbeds, repairing and maintaining drainage structures, removing debris, maintaining signs, markers, striping, and any other work reasonably necessary or proper to repair or preserve passage on the easement for customary all weather road conditions within the funds available. It is understood and agreed that "repair and maintenance" does not include improvements.

Section 7. Payment. Contributions are due on October 1 of each year, commencing after the Effective Date.

Section 8. Adjustments. From time to time, the Committee may revise Attachment "A" to include newly created Properties due to lot splits, subdivisions and all other additions of Properties having legal or de facto appurtenant easements to the Road.

Section 9. Annual Escalation. Commencing on January 1, 2025, the amount of the contribution owed by each property shall increase at the rate approved by the Committee, but not to exceed 1% per annum.

Section 10. Owners' Approval for All Increases in Contributions. All other increases in Contributions must be approved by an affirmative vote of 65% of the Owners of Residential Properties at a properly called meeting.

**ARTICLE IV  
NONPAYMENT OF CONTRIBUTIONS**

Section 11. Any Contribution required under this Agreement which is not paid when due is delinquent. After giving written notice of the delinquency, and an opportunity of no less than thirty days (30) to cure by payment, the Committee may commence collection proceedings at any time in any court of competent jurisdiction, either individually or collectively together with other parties liable for outstanding Contributions, in the Committee's sole discretion. In such cases, the Association shall be entitled to recovery of attorneys' fees, costs and interest at the legal rate from the date the Contribution was due. The Committee is further authorized to take all other legal actions and remedies under the law, including the enforcement of judgments rendered in such matters.

**ARTICLE V  
GENERAL PROVISIONS**

Section 12. Term. The term of this Agreement shall be from the Effective Date until January 1 of the first year following the Effective Date, and thereafter shall renew automatically on January 1 of each year (the "Renewal Date") for an additional year, unless and until:

- (a) the Association or its successor in interest is dissolved or disbanded; or
- (b) the Owner gives written notice of termination, which notice to be valid must be delivered to the Association a minimum of sixty (60) days prior to the next Renewal

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Date. Owner's notice of termination shall not be valid unless all of Owner's obligations under this Agreement as of the termination date have been paid in full.

(c). the Owner ceases to be an Owner of a Residential Property.

Section 13. Reservation of Rights. This Agreement does not affect the Association's or the Owners' rights to recover from all other parties, including former Owners, for contributions to maintenance and repair of the Road as authorized by law. By entering into this Agreement the Owner authorizes the Committee with the sole authority to bring all actions on the Owners' collective behalf for collection of contributions to maintain the Road. In the event the Committee fails to take such action, after notice and demand, any Owner shall be free to do so on its own behalf.

Section 14. Side Roads. The Owners of Properties having easements to other roads which connect directly, or indirectly to the Road (collectively "Side Roads") are free to adopt this Agreement to maintain such roads and delegate to the Committee responsibility for managing any such Side Road, on terms and conditions to be agreed between the Committee and the Owners of easements to each such Side Road, including but not limited to the amount of additional Contributions necessary for their maintenance. All Directors who have an easement to a Side Road under consideration for the Association's management may not vote on the terms negotiated by the Committee for the maintenance of their Side Road.

Section 15. Assignments and Successors in Interest. In the event the Association is converted or merged into a corporate entity, (i) the Directors then in office shall become the corporation's Board of Directors, who shall then appoint its officers until the next election of Directors, (ii) this Agreement shall be deemed assigned to the surviving entity and, (iii) in the event of any express conflict between the terms of Article II of this

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Agreement and the bylaws or operating agreement of such merged entity, the terms of the surviving entity shall control. All assets, liabilities and contracts entered into by the Association shall be assumed by the surviving entity.

Section 16. Mediation and Dispute Resolution. Except for claims by the Association for Contributions, resolution of all disputes between any Owner and the Association must first be submitted to non-binding mediation. The party making the claim shall initiate mediation by making a written demand on the other party, specifying the factual basis for the claim. The party receiving the demand shall respond within thirty (30) days after receipt of the demand, specifying the factual basis for its objection to the claim. Once the respondent's statement has been received, the dispute shall be referred to mediation. The mediator shall be an Owner agreed upon by the parties. If the respondent fails to submit a factual response, or if the parties fail to agree on the mediator within fourteen (14) days after the respondent's factual response, the claimant may proceed directly to judicial resolution. The mediator shall determine the conduct of all proceedings, and issue a written recommendation within sixty (60) days after receiving the respondent's factual response. Subject to this provision, the sole and exclusive venue for all disputes shall be the Superior Court, County of San Diego, North County Branch. In the event suit is brought prior to mediation, the respondent may petition to have the matter stayed pending compliance with this provision.

Section 17. Amendments. The Committee has no authority to accept amendments to this Agreement by individual Owners, which shall be deemed null and void. This Agreement may be amended only by the affirmative assent or vote of not less than sixty-five percent (65%) of all Owners of Residential Properties.

OWNER:

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Name: \_\_\_\_\_ [print]

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

email: \_\_\_\_\_

APN(s)

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

SAVE ELEVADO ROAD ASSOCIATION

Name: \_\_\_\_\_ [print]

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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