

DISCUSSION DRAFT FOR COMMENT and
COMPETITIVE BID

PRIVATE ROAD MANAGER AGREEMENT
BETWEEN

AND
SAVE ELEVADO ROAD

The following draft Agreement for providing Road Manager Services is open for comment by interested parties and competitive bids by qualified service providers until Friday, December 13, 2019.

The Main Points include:

(i) One Time Set Up Fee Not To Exceed \$750.00

(ii) Monthly Service Fee Not To Exceed \$375.00

(iii) Services include all billing and collecting, monthly road inspections, supervising repairs, competitive bidding for contracts in excess of \$2,000 (all contractor selections subject to Owners' approval), annual budget and reports, managing homeowner requests for service, notices of damage claims against third parties (e.g. developers, utilities, contractors).

(iv) Agreement is for twelve months and renewed annually, subject to termination. Agreement may be cancelled at any time without cause upon three months' notice.

See attached draft for more information.

Competitive bids by qualified service providers must accept attached terms, or better. Please include details with references for all experience managing private roads in San Diego County.

Award will depend on both financial terms and bidder's qualifications. Agreement is subject to approval by Save Elevado Road and execution of final, definitive agreement.

Please submit all comments and proposals to "residents@elevado.info"

DISCUSSION DRAFT FOR COMMENT

PRIVATE ROAD MANAGER AGREEMENT
BETWEEN

AND
SAVE ELEVADO ROAD

THIS PRIVATE ROAD MANAGER AGREEMENT (“Agreement”) is made by and between _____ (“MANAGER”), a California Corporation, and Save Elevado Road (“CLIENT”), an unincorporated, California non-profit association, as of _____, 2019 (the "Effective Date").

WITNESSETH

Whereas, the CLIENT is an unincorporated association of owners of easements ("Owners") collectively known as Elevado Road (the "Road") located in northern San Diego County;

Whereas, the MANAGER represents that it is experienced in managing private roads, including repairs, damage claims, billing, collecting and communications among property owners, brokers and third parties who have an interest in, or liability for, Road repairs and maintenance;

Whereas, the individual properties granted easements to the Road, to the best of CLIENT'S knowledge, are identified in Attachment "A", annexed to this Agreement;

Whereas, due to the number and diverse interests of Owners, the CLIENT requires a third party to facilitate their collective obligation to maintain their easements;

Whereas, CLIENT intends to limit the scope of this Agreement strictly to claims for Road maintenance and repair as authorized by Cal. Civ. Code §845;

Whereas, CLIENT intends to implement a plan to meet the Owners' collective responsibility for anticipated repairs and maintenance for the Road (the "Maintenance Plan"), including its administration and governance;

Whereas, the CLIENT currently operates by consensus of its steering committee consisting of individual Owners who participate in CLIENT'S planning and decision making on a volunteer basis. This committee designates from time to time one or more individual members to act individually by subcommittees on its behalf (collectively "Governing Members").

Wherefor, in consideration of the mutual promises herein contained, the parties agree as follows:

ARTICLE I
General Conditions

1. Retention of Manager.

The CLIENT hereby retains MANAGER to assist in managing the Maintenance Plan, and provide the services stated herein, on the terms and conditions set forth in this Agreement, commencing on December ____, 2019, subject to the parties' rights to renewals and termination.

2. Status of Manager.

MANAGER shall be an agent acting on behalf of the CLIENT as a disclosed principal with respect to the matters covered by this Agreement; provided, however, MANAGER shall have no authority to execute or enter into contracts on behalf of the CLIENT, unless specifically directed to do so in writing by the Governing Members. The MANAGER shall have no authority to disburse funds from the CLIENT's bank account.

3. Role of Manager.

MANAGER shall use its best efforts to perform its duties under this Agreement in accordance with the Governing Members' instructions. MANAGER shall act at all times in the best interests of CLIENT. MANAGER has a fiduciary duty to the CLIENT, including the duty to safeguard the CLIENT's property and receivables, and to diligently protect the CLIENT and its members from liability for claims arising from the Road's management, repair and maintenance. MANAGER shall be available at all reasonable times to confer with the Governing Members regarding performance of the services set forth herein.

4. Delivery of Records.

As soon as reasonably practicable after the Effective Date, at CLIENT's direction, MANAGER will cause to have delivered or pick up all documents and records relating to the management of the project that are not available on CLIENT's web site www.elevado.info, including, without limitation: a list of contribution balances for each Owner; maintenance records; outstanding bills; copies of service contracts; copies of CLIENT's insurance policies; a list of all contractors; copies of the Owners' easements; a list of the names, addresses and telephone numbers/email addresses (if available) of the Owners; any guaranties and/or warranties affecting CLIENT. After reviewing CLIENT'S records, MANAGER will advise the Governing Members whether the records need to be clarified or supplemented.

ARTICLE II
General Administration

5. Scope of Article

In consideration of the Base Monthly Fee under Article VI, MANAGER shall perform the following routine general administration services:

5.1. Owner Roster.

MANAGER shall maintain a current roster of the names, addresses and, to the extent readily available, the telephone numbers and email addresses of all Owners and tenants of Owners.

5.2. Office Hours And Contacts.

MANAGER shall maintain normal office hours for communications related to CLIENT business. Typical office hours are 9AM-5PM Monday-Friday, except bank holidays. MANAGER shall also maintain telephone number(s) and email addresses for communication during office hours, as well as contact numbers for after-hours emergencies.

ARTICLE III
Financial Duties of MANAGER

6. Scope of Article.

In consideration of the Base Monthly Fee under Article VI, MANAGER shall perform the following routine financial services:

6.1. Contribution Collection.

MANAGER shall invoice all Owners in accordance with the Maintenance Plan on forms and with cover instructions approved by CLIENT. MANAGER shall receive copies of all deposits into CLIENT'S bank account and maintain records in a form and format approved by CLIENT of all contributions, assessments, fees, charges, damage settlements and all other funds received by or on CLIENT's behalf.

6.2. Deposit of Collections.

All invoices shall be payable directly to CLIENT in accordance with its instructions and deposited in an account owned by CLIENT. CLIENT will promptly send copies of all deposits or otherwise report to MANAGER all collections received in CLIENT's account.

6.3. Disbursements.

MANAGER shall report timely on all expenses and obligations authorized by and on behalf of the CLIENT as set forth in this Agreement to avoid incurring late charges, interest and penalties. All disbursements shall be made solely by CLIENT. MANAGER shall have no authority to sign checks, authorize withdrawals or authorize transfers from CLIENT accounts.

6.4. Delinquency Management.

MANAGER shall be responsible for managing collection of delinquent contributions and other charges in accordance with the policies and procedures of the CLIENT. MANAGER shall maintain delinquent contribution records and submit to the Governing Members a monthly aged delinquent contribution list at each of their regular meetings, or as otherwise reasonably directed by them.

6.5. Collection Claims

MANAGER shall retain services of collection agents and counsel approved by CLIENT, and provide the information, testimony and records necessary to pursue collection of delinquent accounts and damage claims. CLIENT shall decide on a case by case basis when and in which court it will file its collection and other claims. At CLIENT's request, MANAGER shall file and appear in small claims actions on CLIENT's behalf, subject to additional charges that may apply in accordance with Article V. All interest and costs awarded by the court or agreed in any settlement shall be deposited in the CLIENT's account, and credited as appropriate.

6.6. Invoice Approval.

MANAGER shall submit all invoices to the Governing Members within seven (7) days of receipt, including MANAGER's recommendations concerning both budgeted and unbudgeted expenditures, along with MANAGER's report on all discrepancies or irregularities. When specifically directed by the Governing Members in writing, MANAGER shall use its best efforts to settle and compromise all disputed invoices. It shall be the CLIENT's responsibility to make all payments after receipt of MANAGER's recommendations concerning the original or compromised invoice. Under no circumstances shall MANAGER be required to advance any of its own funds to settle an invoice owed by CLIENT.

6.7. Financial and Report Preparation.

MANAGER shall maintain complete and accurate financial books and records for general ledger and subsidiary journals utilizing a double entry method of accounting, based on uniform coding procedures developed by MANAGER in accordance with industry best practices, and approved by CLIENT. Such records shall be separate and apart from those of any other entity. MANAGER shall prepare and submit monthly financial reports of the CLIENT by no later than the end of the following month. MANAGER shall make reasonable efforts to provide CLIENT reports that meet expectations of Board. Financial Report will include, at least, Balance

Sheet, Income Statement, Income and Expense Registers, Aged Delinquency Report, Reconciled Bank Statements.

6.8. Tax Return, Review, and Audit Preparation.

MANAGER shall assist the CLIENT and its bookkeeper, certified public accountant, or other financial consultant to apply for tax exempt status and prepare tax returns, audits and financial reviews. MANAGER shall prepare the year-end financial review for posting on the CLIENT's web site within 120 days after the close of the CLIENT's fiscal year or as otherwise required by law. CLIENT hereby agrees to allow MANAGER to align CLIENT'S fiscal year with calendar year.

6.9. Annual Budget Report.

MANAGER shall prepare an Annual Budget in accordance with the Maintenance Plan for CLIENT's approval.

6.10. Liability for Use of Financial Statements.

The CLIENT shall have sole responsibility for the content and use of financial statements, budgets, reserve studies and other financial documents prepared by or at the direction of the CLIENT. The CLIENT hereby agrees to indemnify and hold MANAGER harmless from all claims, expenses, actions, liabilities, penalties and damages, (collectively "Claims") arising out of the content or use of any or all such documents, provided however that CLIENT shall not have any liability for Claims due to MANAGER's negligence or breach of this Agreement.

6.11. Segregation of Accounts.

All monies owed to CLIENT shall be deposited directly in CLIENT's account(s), which must be separate and apart from the funds of any other person or entity. MANAGER shall establish a system of controls to ensure monies are deposited without loss or undue delay.

6.12. Depository Bank Account

CLIENT shall select the depository bank, which shall be FDIC insured, does business in California, and meets all applicable regulations, for CLIENT's funds.

6.13. Compliance With Laws

The MANAGER shall at all times comply with all applicable local, state and federal laws. MANAGER shall furnish to CLIENT promptly after receipt any notice of CLIENT's violation of any such law.

ARTICLE IV
Duties of Manager
Property Management

7. Scope of Article.

In consideration of the Base Monthly Fee under Article VI, MANAGER shall perform the following routine property management services:

7.1. Meetings

MANAGER shall attend the Annual Meeting of the Owners and, when requested, the meetings of CLIENT's Governing Members, but in no event shall MANAGER be required to attend meetings more frequently than once per month. If requested by CLIENT, the MANAGER shall issue notices in a form and format approved by CLIENT to all Owners of CLIENT's annual meetings.

7.2. Correspondence.

MANAGER shall receive and review CLIENT correspondence to or from Governing Members, Owners, residents, government agencies and third parties concerning the Road and CLIENT's Maintenance Plan, and shall prepare and send such correspondence as may be appropriate, in accordance with CLIENT's instructions.

7.3. Record and File Maintenance.

MANAGER shall maintain the records and files relating to the repair and maintenance of the Road, including the records described in Article VII.

7.4. Site Inspections.

MANAGER shall perform monthly inspection of the Road and report its findings to the Governing Members.

7.5. Procedures For Complaints and Service Requests.

The Governing Members may adopt procedures and guidelines to handle Owner complaints and requests for information, maintenance, repairs, alterations, and other services. MANAGER shall implement and administer the procedures and guidelines established by the Governing Members, and regularly report on the status of such matters. MANAGER agrees to make an initial response to all such requests no later than the following business day and to use its best efforts to resolve them timely; CLIENT agrees that requests must be prioritized and not all problems can be resolved during the initial response. In the event MANAGER is unable to

resolve an Owner's request for services within thirty (30) days, MANAGER shall report the issue to the Governing Members and the steps necessary to achieve its resolution.

7.6. Contractor Selection

The Governing Members or their designated supervisor (the "Supervisor") shall select all contractors.

7.7. Specifications And Bid Preparation for Major Repairs.

MANAGER, when requested by the Governing Members, shall obtain competitive bids for repairs and maintenance work whenever such work is estimated to equal or exceed \$2,000 in cost ("Major Repairs"), and submit said bids to the Governing Members. The Governing Members shall then decide which company or professional to hire to do Major Repairs.

7.8. Supervision of Repairs.

MANAGER shall coordinate and monitor contractors' work in progress for all repairs. For all repairs under \$2,000, MANAGER shall supervise their performance and report on their satisfactory completion to the Governing Members. For repairs equal to or in excess of \$2,000, the CLIENT's Supervisor who shall act as CLIENT's representative for all such repairs. MANAGER have no liability for all work performed in accordance with CLIENT's Supervisor's instructions.

7.9. Claims For Road Damage.

MANAGER shall inform all parties preparing, commencing or after completion of work that might damage, or has damaged the Road, in a form approved by CLIENT, of their liability to restore the Road to good order and condition. MANAGER shall assert written notice of claims for Road damage against Owners and third parties, including utilities, developers and contractors, in a form approved by CLIENT, and supervise all repairs performed in satisfaction of such claims. It shall be the CLIENT's responsibility to resolve all disputes arising from such claims.

7.10. Sale Of Owners' Properties

MANAGER shall send written notices, in a form approved by CLIENT, to all Owners and their brokers when listing their property for sale. MANAGER shall timely answer all inquiries from Owners and their brokers concerning CLIENT's Maintenance Plan. MANAGER shall send a welcome letter to all new Owners after completion of their purchase, in a form approved by CLIENT, informing them of the existence of CLIENT's Maintenance Plan. However, subject to the terms of any recorded Judgment, MANAGER is prohibited from making any statement that the amount owed under the Maintenance Plan constitutes a lien on the Owner's property.

7.11. Accountant Review

MANAGER shall assist accountants acting on CLIENT's behalf in reviewing all of CLIENT's records, by making all such records available when requested and answering all questions posed by CLIENT's financial service providers.

ARTICLE V
Contract Extension To Include Side Roads

8. Side Roads

At CLIENT'S request, the MANAGER's services under this Agreement shall be extended to include one or more private roads branching off the Road, provided the MANAGER's compensation shall be increased proportionately (based on the number of Owners with easements to the side road as compared to the Road) to cover such added service, and that the Owners of any such side road bear all of the costs of such extensions.

ARTICLE VI
Compensation

9. Fixed Compensation.

Unless otherwise agreed in writing, MANAGER shall be compensated under this Agreement solely as provided in this Article ("Compensation").

10. Base Monthly Fees.

The CLIENT shall pay MANAGER a flat monthly fee of Three Hundred Seventy-Five Dollars (\$375.00) per month for those services specified in Articles I through IV, and Article VII, plus direct expenses as provided herein. Payment of this fee will begin on the first day of the month following CLIENT's execution of this Agreement.

11. Start Up Fee.

In addition to the monthly fee, immediately upon execution of this Agreement, MANAGER shall be paid a one-time fixed fee in the amount of \$750.00 for the initial setup and consultation with the Governing Members concerning implementation of the practices and procedures described in this Agreement.

12. Inflation Adjustment Of Base Monthly Fee.

Commencing on the third anniversary of the Effective Date, the monthly fee shall be adjusted according to any yearly increase in the in the US Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers (CPI) for Pacific Cities, or as otherwise agreed to by the parties in writing.

13. Fees For Additional Services.

MANAGER may, at the CLIENT's express written request, perform additional or special services for additional compensation. These additional services will be charged at \$100.00 per hour for Jim Murrey and \$50.00 per hour for additional accountant's services, if requested by CLIENT, plus reimbursement of actual out-of-pocket costs. CLIENT and MANAGER may mutually agree to an all-inclusive fixed-price in lieu of hourly charges. These services shall include any services not specifically designated in Articles I through IV or Article VII, including, without limitation, the following:

13.1. Participating in the prosecution or defense of any type of claim, lawsuit or administrative proceeding relating to CLIENT business, CLIENT property or collection of delinquent contributions. In all such cases MANAGER shall be paid a fixed fee limited to \$50 for each hearing and deposition in lieu of all other compensation related to such claim. This charge shall include preparation and attendance at the hearing and deposition. This charge applies whether or not the CLIENT obtains a recovery.

13.2. Participating in the preparation of specifications, schematics, construction estimates, RFP, construction drawings and/or contracts for major renovation or repair;

13.3. When specifically requested by the Governing Members to provide services after business hours that could have been handled the following business day, unless a failure to act might incur unreasonable loss of usage or damage. All such after-hours services requiring MANAGER travel will be billed at a two-hour minimum. If travel is not required, it will be a one-hour minimum charge.

14. Expense Reimbursements.

Any and all reasonable out-of-pocket expenses incurred by MANAGER solely on behalf of the CLIENT will be paid in a timely manner. Without limitation, reasonable expenses include 3rd party expenses for the distribution of mailings and tangible items purchased solely for the benefit of the CLIENT in accordance with this Agreement. All expenses in excess of \$100, either individually or in the aggregate per month, must be approved by CLIENT, in advance. CLIENT shall not be responsible for reimbursing MANAGER for any of its general and administrative overhead expenses.

15. When Compensation is Due.

The CLIENT shall pay MANAGER the basic fee for routine services monthly in advance on the 1st day of the month during which such services are to be performed, and for special services within 21 days following the submission of a statement for items of additional compensation as provided in this Article. MANAGER shall receive the Base Monthly Fee in accordance with this Agreement without additional approval by the Governing Members.

16. No Rebates, Discounts, or Commissions.

MANAGER, and its affiliates, shall not collect or charge any undisclosed fee, rebate, discount, or commission in connection with any business of the CLIENT. Any such fee, rebate, discount or commission, if received, shall be the property of the CLIENT, shall be immediately credited to the CLIENT's account and shall be made an agenda item by the MANAGER for the next Board meeting. MANAGER shall use its best efforts to obtain for CLIENT all rebates, discounts and credits which may be due or offered to CLIENT.

ARTICLE VII
Books, Records, Inspection, and Audit

17. Books and Records.

MANAGER shall maintain a complete system of books and records (including communications) in a manner satisfactory to the CLIENT and as set forth in this Agreement. Copies of contracts, filings with public agencies and financial books and records shall be maintained at the principal office of the MANAGER. Originals of all books and records may be maintained in MANAGER's custody; however, they shall be the property of the CLIENT and delivered to the CLIENT or its representative immediately upon demand. MANAGER shall maintain copies of all correspondence received concerning the Road, including digital communications, in a form and format that is easily retrieved and transferred to CLIENT in accordance with CLIENT's instructions.

18. Inspection.

MANAGER's responsibility for inspection of books and records by individual Owners concerning CLIENT's financial affairs shall be limited to the account of the individual Owner. All other Owner inquiries concerning financial matters shall be referred to the Governing Members or their agents.

19. Archiving Records

MANAGER shall maintain the original, current year, and previous year's records in MANAGER's office and store them at MANAGER's expense. At MANAGER'S request, CLIENT shall arrange with MANAGER, at CLIENT's expense, to assume custody and safekeeping of all other records.

ARTICLE VIII
Insurance

20. Maintenance of Insurance by CLIENT.

Subject to its availability, CLIENT agrees to purchase and maintain a policy of comprehensive general liability insurance with a limit of no less than \$1,000,000, with the MANAGER named as additional insured, provided that the MANAGER shall pay for the increased cost in premium, if any, for its inclusion.

21. Maintenance of Insurance by MANAGER.

Regardless of the provisions of indemnification set forth herein, MANAGER shall maintain in force, during the term of this Agreement, comprehensive general liability insurance issued by a carrier having a rating by A.M. Best of A, or better, that shall have a limit not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate for all claims arising or related to MANAGER's services under this Agreement, including personal injury, property damage and contractual liability. Prior to execution of this Agreement, MANAGER shall provide CLIENT with both a certificate of insurance and a legible copy of the policy which shall include (i) CLIENT as an additional insured, (ii) ten (10) day notice to CLIENT of any suspension or termination of coverage and (iii) a waiver of subrogation against CLIENT, including its Governing Members and Owners, and (iv) in the event of any overlap in coverage, MANAGER'S policy shall be the primary policy.

ARTICLE IX
Term And Renewal

22. Initial Term and Renewal.

This Agreement is for a period of one year from the Effective Date, and shall automatically renew on each anniversary of the Effective Date (the "Renewal Date") for subsequent one-year periods unless cancelled by either party at least Sixty (60) days prior to the next Renewal Date.

23. Termination Without Cause

The Agreement may be cancelled at any time by CLIENT without cause upon ninety (90) days' written notice, provided CLIENT pays MANAGER all outstanding fees and reimbursements owed to MANAGER, including those that accrue during the ninety (90) day notice period.

24. Termination For Cause

In the event of termination for cause, which includes willful or gross misconduct, failure to perform, or breach of fiduciary duty, either party may cancel upon thirty (30) Days written

notice specifying the cause and providing the party receiving the notice an opportunity to cure the breach prior to the effective date of termination. In the event of termination for cause by CLIENT, no further fees shall be owed to the MANAGER.

ARTICLE X
Miscellaneous

25. Final Agreement And Amendment.

This writing is intended by the parties as a full expression of their Agreement, and all negotiations and representations between the parties have been incorporated herein. No variation, modification, or changes of the Agreement shall be effective or binding unless made in writing and executed by authorized representatives of both parties.

26. Liability of MANAGER

MANAGER shall indemnify and hold CLIENT, including its Governing Members and Owners, from any and all Claims (including attorney's fees and litigation costs) caused in whole or in part by MANAGER's breach of this Agreement, negligence, or intentional act or omission, including those of its agents and servants.

27. Liability of CLIENT.

The CLIENT shall indemnify and hold MANAGER harmless from all Claims:

(i) caused in whole or in part by CLIENT's breach of this Agreement, negligence or intentional act or omission of the CLIENT, the Governing Members, or any other party acting at the direction or under the supervision of the CLIENT, except to the extent the same are caused by the breach, negligence or intentional act or omission of MANAGER, its employees or agents; and

(ii) Claims asserted or threatened on CLIENT's behalf, or any other party acting at the direction or under the supervision of the CLIENT, or any Owner, arising out of or related to any act committed by MANAGER in good faith while carrying out its duties in accordance with this Agreement or at the CLIENT's instructions.

Notwithstanding the foregoing, CLIENT's liability to MANAGER under (i) shall not exceed the coverage and limits provided by CLIENT's insurance. In no such event shall CLIENT have any liability to MANAGER independent of or in excess of CLIENT's insurance coverage.

28. Governing Law And Jurisdiction.

This Agreement shall be construed in accordance with the laws of the State of California as it applies to contracts executed within California by residents of California. Subject to the mediation and arbitration provisions of this Agreement, the exclusive venue for all actions between the parties shall be the North County Branch of the Superior Court for the County of San Diego, located in the City of Vista.

29. Mediation

Any controversy or claim arising out of or relating to this Agreement shall first be submitted in a mandatory “meet and confer” between the parties as a precondition before resorting to binding arbitration, as provided below. If a party has a dispute, it shall notify, in writing, the other party as soon as possible of the nature of the controversy and the requested resolution. Within 30 days of such notification, unless the parties agree otherwise in writing, the parties shall make a good faith effort to resolve the dispute without the use of outside legal counsel for either party.

30. Binding Arbitration

30.1. Appointment Of Arbitrator

If the “meet and confer” does not result in a mutual amicable resolution, the parties shall submit the dispute to binding arbitration before a sole arbitrator and not by commencement of civil proceedings, except as provided by California law for judicial enforcement and review of arbitration proceedings. The arbitration shall be conducted in Vista, CA, in accordance with Title 9 of the California Code of Civil Procedure. Arbitration shall be initiated by written demand which shall include a statement of the matter to be arbitrated and the name of the proposed arbitrator. If the parties cannot agree on the arbitrator within thirty days of the demand, either party may petition the court for an order to compel arbitration and the appointment of an arbitrator. The arbitrator shall be an attorney with at least twenty-five years of experience in litigating residential property management disputes.

30.2. Arbitration Procedure

Arbitration hearings on the merits shall commence within ninety (90) days after the arbitrator's appointment and shall be pursued to conclusion as quickly as reasonably possible according to a schedule determined by the arbitrator. The parties shall have the right to discovery in accordance with Code of Civil Procedure Section §1283.05.

30.3. Exclusions

The following matters are excluded from arbitration: (i) an action for bodily injury or wrongful death; (ii), an action or proceeding to compel arbitration including an action to impose sanctions for frivolous or bad faith activity designed to delay or frustrate arbitration; and

(iii) a cross-complaint in any action commenced by a third party against either party to this Agreement.

31. Attorney's Fees

If any arbitration or legal action is necessary to enforce the terms of this Agreement, each party shall pay their own legal fees and expenses. The arbitrator is authorized to award costs to the prevailing party.

32. Notices.

All notices to the CLIENT shall be in writing and mailed postage prepaid to the CLIENT's Governing Member designated by CLIENT in writing for this purpose, or if no such individual is designated, to one the CLIENT's Governing Members identified by his signature below; all notices to MANAGER shall be in writing and mailed postage prepaid to the business address of the MANAGER. Either party may designate a new address and recipient by written notice to the other.

33. Assignment

CLIENT may assign or transfer this Agreement to its successor in interest. In the event CLIENT incorporates, whether by conversion or merger, this Agreement shall be logically revised to reflect CLIENT's change in entity status. In that event, and strictly by way of example, all references to Governing Members shall be replaced by Board of Directors. MANAGER may not assign, delegate or subcontract any of its duties under this Agreement without CLIENT's written consent, and any such action without CLIENT's consent shall be void. Due to the importance of the personal services offered by MANAGER, any change in MANAGER's senior management or ownership without CLIENT's consent will be deemed an assignment.

34. Waiver

A failure to protest or assert claims for a breach of this Agreement shall not be deemed a waiver of such breach, or any other breach of this Agreement. All waivers of any rights or forbearance under this Agreement must be in writing, make express reference to this provision, and signed by the party making the waiver.

Private Road Manager Agreement

Save Elevado Road
_____, 2019

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

Executed By:

_____,
_____ CLIENT

DATED: _____, 2019

Executed By:

_____,
_____ CLIENT

DATED: _____, 2019

Executed By:

[MANAGER]

DATED: _____, 2019

Initial: _____