

# Board of Directors San Simeon Community Services District



## SPECIAL BOARD MEETING PACKET

January 24, 2023  
Meeting Start Time 5:30 pm

Virtual Board Meeting via Zoom Webinar

Prepared by:



**GRACE**  
ENVIRONMENTAL SERVICES

**SPECIAL MEETING AGENDA  
SAN SIMEON COMMUNITY SERVICES DISTRICT  
BOARD OF DIRECTORS MEETING  
Tuesday, January 24, 2023  
5:30 pm**

Pursuant to San Simeon CSD Resolution 22-463 and in compliance with AB 361 this meeting shall occur as a virtual teleconference using the Zoom app.

**Internet Meeting Location – Via ZOOM**

**Join Zoom for the Board Session:**

<https://us02web.zoom.us/j/9270537206>

**Or One tap mobile:**

**US: +16699009128, 9270537206#**

**Or Telephone:**

**Dial (for higher quality, dial a number based on your current location):**

**US: +1 669 900 9128**

The following commands can be entered via DTMF tones using your **phone's** dial pad while in a **Zoom meeting**: \*6 - Toggle mute/unmute. \*9 - **Raise hand**.

**Meeting ID: 927 053 7206**

**NOTE:** On the day of the meeting, the virtual meeting room will be open 30 minutes prior to the meeting start time. If you wish to submit public comment in the written format you can email [admin@sansimeoncsd.org](mailto:admin@sansimeoncsd.org). Members of the public can also contact the District office at (805) 927-4778 with any questions or concerns related to this agenda or accessing the meeting.

**1. OPEN SESSION:**

A. Roll Call

**2. BUSINESS ACTION ITEMS:**

**Public Comment** – Public comment will be allowed for each individual business item.

Members of the public wishing to speak on business items may do so when recognized by the Chairperson. If a member of the public wishes to speak at this time, Public Comment is limited to three (3) minutes or less per person for each business item, with additional time at the discretion of the Chair.

**A. DIRECTION TO STAFF REGARDING HYBRID BOARD MEETINGS AND FINDING A LOCATION FOR IN-PERSON BOARD MEETINGS TO OCCUR.**

**B. REVIEW AND APPROVAL OF THE HEARST CORPORATION/SSCSD LIMITED TERM ENCROACHMENT EASEMENT AGREEMENT.**

**3. CLOSED SESSION:**

The Board will adjourn to Closed Session to address the following item:

**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

(Gov. Code, § 54957(b)(1))

Title: General Manager

**\*\*\*\*RECONVENE TO OPEN SESSION\*\*\*\***

**Report on Closed Session**

- 4. BOARD/STAFF GENERAL DISCUSSIONS AND PROPOSED AGENDA ITEMS** – Requests from Board members to Staff to receive feedback, prepare information, and/or place an item on a future agenda(s).

**5. ADJOURNMENT** –

All staff reports or other written documentation, including any supplemental material distributed to a majority of the Board within 72 hours of a regular meeting, relating to each item of business on the agenda are available for public inspection during regular business hours in the District office, 111 Pico Avenue, San Simeon. If requested, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by the Americans with Disabilities Act. To make a request for a disability-related modification or accommodation, contact the Office Administrator at 805-927-4778 as soon as possible and at least 48 hours prior to the meeting date. This agenda was prepared and posted pursuant to Government Code Section 54954.2.

**Business Action Item**

**2.A. DIRECTION TO STAFF REGARDING HYBRID BOARD MEETINGS  
AND FINDING A LOCATION FOR IN-PERSON BOARD MEETINGS TO  
OCCUR.**



## **BUSINESS ACTION ITEM STAFF REPORT**

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### **ITEM 2.A. DIRECTION TO STAFF REGARDING HYBRID BOARD MEETINGS AND FINDING A LOCATION FOR IN-PERSON BOARD MEETINGS TO OCCUR.**

#### Summary:

The teleconferencing provisions of AB 361 expired on January 1, 2024. However, Governor Newsom announced that the COVID-19 State of Emergency will end on February 28, 2023, meaning public agencies will no longer have the necessary authority to hold virtual meetings under the provisions of AB 361 after that date.

Currently the location available to hold in-person meetings is at the District office. Since the District office has limited capacity, the Board may wish to conduct these meetings via a hybrid set-up. The Board could also try to find another site within the District boundaries to hold Board meetings.

#### Recommendation:

GES Staff is recommending that the District hire an IT person, to review, provide technology recommendations and coordinate the potential transition to hybrid meetings.

**Business Action Item**

**ITEM 2.B. REVIEW AND APPROVAL OF THE HEARST  
CORPORATION/SSCSD LIMITED TERM ENCROACHMENT  
EASEMENT AGREEMENT.**



## **BUSINESS ACTION ITEM STAFF REPORT**

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### **ITEM 2.B. REVIEW AND APPROVAL OF THE HEARST CORPORATION/SSCSD LIMITED TERM ENCROACHMENT EASEMENT AGREEMENT.**

#### Summary:

The SSCSD Board previously approved this document at the January 2021 Board meeting. The attached agreement has been approved by the Wildlife Conservation Board, with minor modifications.

#### Recommendation:

The Board may wish to approve the limited term encroachment easement agreement for the RO facility.

Enc: Compare Limited Term Agreements – Redlined  
Limited Term Encroachment Easement – Clean  
Hearst Easement Area Map

RECORD AT REQUEST OF AND RETURN TO:

Hearst Holdings, Inc.  
5 Third Street, Suite 200  
San Francisco, CA 94103-3202  
Attn: Controller

No Fee Document – Per Govt. Code Sec. 6103 & 27383  
No County Transfer Tax Per R & T Code 11922

APNs: Portions of APNs 013-041-014 &  
013-011-024

Space Above This Line for Recorder’s Use

**GRANT OF LIMITED TERM ENCROACHMENT EASEMENT AND AGREEMENT**

This GRANT OF LIMITED TERM ENCROACHMENT EASEMENT AND AGREEMENT (the “**Agreement**”), dated \_\_\_\_\_ for reference purposes only, is made and entered into by and between **HEARST HOLDINGS, INC.**, a Delaware corporation (“**Hearst**” or “**Grantor**”), and **SAN SIMEON COMMUNITY SERVICES DISTRICT**, a California special district (“**District**” or “**Grantee**”).

**RECITALS**

A. Hearst owns certain real property located in San Luis Obispo County, California (the “**Conservation Property**”) encumbered by a conservation easement (the “**Conservation Easement**”) held by California Rangeland Trust, a California nonprofit public benefit corporation (“**Rangeland Trust**”), pursuant to that certain Deed of Conservation Easement and Agreement Concerning Easement Rights recorded on February 18, 2005 in the Official Records of San Luis Obispo County, California, as Instrument No. 2005013388, as assigned pursuant to that certain Assignment and Assumption of Conservation Easement and Related Grant Agreement (East Side Conservation Area) recorded on February 18, 2005 in the Official Records of San Luis Obispo County, California, as Instrument No. 2005013391 (as assigned, the “**Conservation Easement Agreement**”).

B. On or about March 16, 2015, Hearst provided a copy of the Conservation Easement Agreement to the District.

C. In or about October 2015, the District commenced construction of certain Potable Water Well Head Treatment Project (the “**Project**”) improvements including a reverse osmosis facility (collectively, the “**Water Treatment Facility**”), and completed construction of the Water Treatment Facility on or about April 2016. Since completion of the Water Treatment Facility, the District has been using the Water Treatment Facility for active water treatment operations and services as part of the Project (the “**Public Utilities Purposes**”).



D. In July 2020, Hearst and the District discovered that a portion of the Water Treatment Facility encroaches (the “**Encroachment**”) on an approximate 560 square foot portion of the Conservation Property (the “**Encroaching Facility Footprint**”).

E. As an interim measure, Hearst and the District entered into that certain Revocable Encroachment License Agreement effective as of October 26, 2020 (the “**License Agreement**”), by which Hearst granted to District a license to temporarily leave the existing Encroachment on the Encroaching Facility Footprint pending completion and recordation of this Agreement.

F. District desires to obtain from Hearst, and Hearst has agreed to grant to District, an easement to allow the existing Encroachment to remain on the Encroaching Facility Footprint within an approximate 2,693 square foot portion of the Conservation Property more particularly described in **Exhibit A** and depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the “**Encroachment Area**”) for so long as the District continues to use the Encroachment for the Public Utilities Purposes, on the terms and conditions set forth in this Agreement.

### **AGREEMENTS**

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Agreement, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Easement Terms.**

(a) **Grant of Easement.** Subject to the terms and conditions of this Agreement, Hearst hereby grants to the District an easement (the “**Easement**”) on, over and across the Encroachment Area for the sole and exclusive purpose of allowing the Encroachment to remain in its current location within the Encroaching Facility Footprint for so long as the District (i) continues to use the Encroachment for the Public Utilities Purposes in a manner substantially similar to the District’s manner of use thereof as of the date of this Agreement; and (ii) uses the remainder of the Encroachment Area (the “**Access Area**”) solely for access to and from the Encroachment as part of the Public Utilities Purposes, and the Access Area remains vacant and is not used for any other purpose including any storage or other improvements.

(b) **Term.** The term of the Easement and this Agreement (the “**Term**”) shall commence on the date that this Agreement is recorded in the Official Records of San Luis Obispo County, California (the “**Effective Date**”), and continue until the earlier of: (i) written notice by District to Hearst that the District has ceased to use the Easement for the Public Utilities Purposes as provided in Section 1(a) above; (ii) the District ceases to use the Easement for Public Utilities Purposes as provided in Section 1(a) above for a period of twelve (12) consecutive months; or (iii) any termination pursuant to Section 5 below.

(c) **Acknowledgements and Release by District.** In addition to Section 7 below, District acknowledges and agrees that, in consideration of the grant of the Easement by Hearst to District as provided herein, District releases, relinquishes and waives any and all claims or rights that it may have with respect to the Encroachment Area, including without limitation

any claims or rights of inverse condemnation, adverse possession, or prescriptive easement pertaining to the Encroachment. For purposes of any requirement that Hearst must file a claim under the Government Claims Act (California Government Code Section 810-996.6) with respect to the Encroachment, District further acknowledges and agrees as follows: (1) no claim by Hearst accrued until August 18, 2020 when the Encroachment was confirmed by that certain survey report dated August 18, 2020, prepared by Wallace Group, a copy of which has previously been provided by Hearst to the District; and (2) Hearst shall not be required to file a claim until the later of (A) expiration of the required filing period under the Government Claims Act, or (B) thirty (30) days after written notice from District to Hearst.

(d) Encroachment Fee. As additional consideration for the grant of the Easement by Hearst to District as provided herein, commencing on the Effective Date, District covenants and agrees to pay to Hearst an annual encroachment fee (the “**Encroachment Fee**”) as provided in this Section 1(d). The Encroachment Fee shall be payable in advance on the Effective Date and thereafter on each anniversary of the Effective Date through the Term. The amount of the first Encroachment Fee payment shall be Five Thousand Dollars (\$5,000.00). Commencing on the first anniversary of the Effective Date, the amount of each annual Encroachment Fee shall automatically increase two percent (2%) over the Encroachment Fee for the immediately preceding year. For the avoidance of doubt and as an example of such automatic Encroachment Fee increase during the Term, the annual Encroachment Fee for the first three (3) years of the Term shall be as follows:

<i>Annual Encroachment Fee</i>		
<i>Payment No.</i>	<i>Due Date</i>	<i>Amount</i>
1	Effective Date	\$5,000.00
2	1 <sup>st</sup> Anniversary of Effective Date	\$5,100.00
3	2 <sup>nd</sup> Anniversary of Effective Date	\$5,202.50

(e) Reimbursement of Damages Resulting from Encroachment. As a direct result of the Encroachment, Hearst incurred damages as more particularly set forth in the License Agreement. Hearst and District acknowledge and agree that, as of the Effective Date, the payment obligations of District under the License Agreement (including, without limitation, Section 1(e) of the License Agreement) have been satisfied in full. As additional consideration for the grant of the Easement by Hearst to District as provided herein, District shall pay to Hearst all additional damages, including, without limitation, any and all liabilities of Hearst to Rangeland Trust under the Conservation Easement Agreement for impairment to Conservation Values (as defined in the Conservation Easement Agreement), incurred by Hearst during the Term as a result of the Encroachment promptly upon written demand by Hearst therefor (which demand shall include reasonable supporting documentation therefor). The payment obligations of the District under this Section 1(e) shall survive any termination of the Easement and this Agreement.

(f) Termination of License Agreement. Subject to and conditioned upon recordation of this Agreement as provided in Section 1(b) above, Hearst and the District hereby agree that this Agreement shall replace the License Agreement, and the License Agreement shall terminate as of the Effective Date.

2. **Additional Covenants and Acknowledgements by the District.**

(a) Compliance with Conservation Easement. District acknowledges and agrees that: (i) the Encroachment Area is encumbered by the Conservation Easement; (ii) this Agreement, including but not limited to the District's rights pursuant to Section 1 above, is subordinate and subject to the Conservation Easement Agreement; and (iii) in performing its activities and obligations under this Agreement (including, without limitation, removal and reclamation pursuant to Section 6(a) below), District shall comply with all applicable provisions of the Conservation Easement Agreement. The parties acknowledge and agree that the District's acceptance of the grant of the Easement as provided herein does not constitute an assumption of any of the affirmative obligations of Hearst with respect to the Encroachment Area under the Conservation Easement Agreement; provided, however, District shall cooperate with Hearst, at District's sole cost and expense, in connection with Hearst's performance of its affirmative obligations with respect to the Encroachment Area under the Conservation Easement Agreement.

(b) Compliance with Laws. District shall perform its activities and obligations under this Agreement in a good and workmanlike manner, shall keep the Encroachment Area in neat, clean, orderly and safe condition at all times, and shall, at its sole cost and expense, comply with all applicable federal, state or local laws, regulations, decisions or orders of courts, administrative bodies or governmental agencies, ordinances, codes, permits or permit conditions, currently existing and as amended, enacted, issued, adopted or imposed in the future.

(c) Mechanic's Liens. District shall keep the Encroachment Area free and clear of all mechanic's liens or other liens resulting from the District's exercise of its rights pursuant to this Agreement and will promptly pay and discharge any such liens; provided, however, District will have the right to contest the correctness or the validity of any such lien, if immediately on demand of Hearst, District procures and records a lien release bond that meets the requirements of California Civil Code Section 8424 and will provide for the payment of such sum that the claimant may recover on the claim (together with costs of suit, if it recovers in the action).

3. **Indemnity.** District agrees to wholly indemnify, protect, defend and hold harmless Hearst, its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, assigns, and insurers, from and against all liability, claims and demands arising out of the existence of the Encroachment on the Encroachment Area and District's use of the Encroachment Area and the undertaking of the Project. District agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at its sole expense, or, at the option of Hearst, agrees to pay Hearst or reimburse Hearst for the defense costs incurred by Hearst in connection with any such liability, claims or demands. District also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

4. **Insurance.** At all times during the Term, District shall, at its sole cost and expense, maintain a commercial general liability in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence, naming Hearst and its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, and assigns as an additional insured for ongoing and completed operations and Rangeland Trust as an additional insured for claims arising out of the Encroachment and District's exercise of its rights granted under this Agreement on a primary and noncontributory basis. District shall also, at its sole cost and expense, maintain workers compensation insurance with statutory limits and employer's liability coverage of One Million (\$1,000,000) per accident, One Million (\$1,000,000) per employee for injury by disease, and One Million (\$1,000,000) policy aggregate; automobile liability coverage of not less than Two Million Dollars (\$2,000,000); property insurance for the District's real and personal property; and environmental liability insurance for any first party or third party clean-up. A waiver of subrogation shall be included on all policies in favor of Hearst and its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, and assigns. On or before the Effective Date, District shall deliver to Hearst a certificate verifying that such insurance has been obtained. Further, at any time during the Term, Hearst may request of District, and District shall deliver to Hearst within five (5) days, evidence satisfactory to Hearst that the insurance required hereunder is still in full force and effect. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Agreement. Not less frequently than every five (5) years, Hearst and the District shall cooperate in determining an appropriate increase, to adjust for inflation, in the limit of the insurance coverage maintained by the District under this Agreement. Thereafter, the District shall obtain and maintain in effect such increased coverage until the next such adjustment.

5. **Default by District; Hearst Remedies and Right to Terminate.**

(a) In the event District fails to perform any of its obligations as required under this Agreement, or breaches any covenant, condition or term of this Agreement (including, without limitation Section 1(a) above), Hearst shall, in addition to any other remedies available at law or in equity, have the right to immediately terminate the Easement and this Agreement.

(b) If District fails to make any payment to Hearst when due as provided in under this Agreement, then:

(i) the outstanding amount shall bear interest at the maximum rate allowed by law until paid in full ("**Default Interest**"); and

(ii) a late charge by way of damages shall be immediately due and payable to Hearst. District recognizes that any default by District in paying such amounts when due will result in Hearst incurring additional expenses and in Hearst's loss of the use of the money due. District agrees that, if for any reason District fails to pay any amount owed under this Agreement when due, Hearst shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. District therefore agrees that an amount equal to Five Cents (\$0.05) for each dollar the District fails to pay when due (the "**Late Charge**") is a reasonable estimate of said damages to Hearst, which sum District agrees to pay on demand.

Hearst's right to payment of such Default Interest and Late Charge as provided in this Section 5(b) shall be in addition to, and not in substitution for, any other remedies available to Hearst by reason of any default, including, without limitation, Hearst's right set forth in this Agreement to be paid its costs and expenses as provided in Section 18 below.

(c) District shall not be in default of any of its obligations under this Agreement unless Hearst first provides to District written notice of default and District thereafter fails within five (5) days after receipt of such notice of default to either cure such default or diligently commence such actions reasonably necessary to cure such default within such five (5) day period, and thereafter cures such default not later than thirty (30) days after receipt of such notice of default.

6. **District Obligations Upon Termination.**

(a) **Removal and Reclamation.**

(i) Within twelve (12) months (the "**Removal Period**") after any termination of the Easement and this Agreement as provided in this Agreement (the "**Termination**"), ~~Grantee~~District shall, at its sole cost and expense, remove all improvements and facilities from the Encroachment Area (the "**Removal**"). The Removal shall include, without limitation, removal of all above-ground structures and the upper portion of foundations, and removal of all below-ground structures to a depth of thirty-six (36) inches below grade or greater if ~~Grantor~~Hearst has a valid reason that would require removal of structures greater than 36 inches; provided that any of the foregoing that contain any materials then known to be harmful to the environment or health shall be completely removed, regardless of the depth. Foundations shall be ground to thirty-six (36) inches below grade, unless ~~Grantor~~Hearst has a valid reason that would require removal greater than 36 inches, and the foundation sites re-graded, as applicable. Cables and conduits more than thirty-six (36) inches below grade may be abandoned in place provided they do not contain any materials then known to be harmful to the environment or health, unless ~~Grantor~~Hearst has a valid reason that would require removal greater than 36 inches. All unsalvageable materials shall be disposed of by ~~Grantee~~District at authorized sites in accordance with all applicable present or future federal, state or local laws, statutes, codes, ordinances, rules regulations, decrees, orders and other such requirements. Site reclamation shall be based on site-specific requirements and techniques commonly employed at the time the area shall be reclaimed, including grading and removal of gravel. The failure of ~~Grantee~~District to remove, raze or demolish any improvement within the Removal Period as provided herein shall be deemed an abandonment of the improvements to ~~Grantor~~Hearst, and ~~Grantor~~Hearst shall have the right to keep such improvements and to charge ~~Grantee~~District, and ~~Grantee~~District agrees to reimburse ~~Grantor~~Hearst, for all costs and expenses incurred by ~~Grantor~~Hearst to remove, raze or demolish the improvements or any part thereof to the standard set forth above. In such event, ~~Grantor~~Hearst shall be entitled to the entire salvage value of the improvements, without accounting to ~~Grantee~~District for such value. All Removal and reclamation shall be conducted and completed in compliance with all applicable present or future federal, state or local laws, statutes, codes, ordinances, rules regulations, decrees, orders and other such requirements and all applicable provisions of agreements of record as of the Effective Date, including, without limitation, the Conservation Easement.

(ii) In the event of the Termination as provided above, then notwithstanding any other term or provision of this Agreement, and notwithstanding such ~~Termination~~ of this Agreement, until ~~Grantee's~~District's completion of the Removal as provided in the preceding subsection 6(a)(i) then: (A) ~~Grantee~~District shall remain bound by and obligated under the terms, covenants and provisions of this Agreement, and (B) ~~Grantee's~~District's rights under this Agreement shall extinguish, except that ~~Grantee~~District shall have the continued license and right to access the Encroachment Area solely for the purpose of completing the Removal.

(b) Recordation of Quitclaim. Upon the Termination as provided above, ~~Grantee~~District shall execute, acknowledge and deliver to ~~Grantor~~Hearst, within ten (10) business days after written demand from ~~Grantor~~Hearst to ~~Grantee~~District, any quitclaim deed, termination agreement, cancellation and surrender agreement, affidavit, petition, or other document required by any reputable title company selected by ~~Grantor~~Hearst, licensed to operate in ~~the~~ California, to remove any cloud or encumbrance on the Conservation Property created by this Agreement. ~~Grantee~~District irrevocably appoints ~~Grantor~~Hearst as attorney-in-fact of ~~Grantee~~District, with full powers, at ~~Grantee's~~District's cost and expense, to perform the obligations of ~~Grantee~~District under this paragraph upon the expiration of the ten (10) business day period described in this paragraph. ~~Grantee's~~District's obligations under this paragraph shall survive the Termination.

7. **District's Use and Liability; Release of Hearst.** District hereby releases Hearst from any liability arising from the District exercising its rights under this Agreement and the District's undertaking of the Project. Furthermore, District agrees to assume responsibility for any damages to the Encroachment Area caused by reason of the District's use of the Easement and Encroachment Area under this Agreement. With respect to the release provided in this Section by the District, the District acknowledges that it has been advised by legal counsel and that the District waives the provisions of California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

District, on behalf of itself and for its successors and permitted assigns, expressly, knowingly, and voluntarily waives and relinquishes all rights and benefits afforded by California Civil Code Section 1542 and any analogous state or federal law or regulation, and in so doing, understands and acknowledges the significance and consequence of such specific waiver.

8. **Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Agreement in writing shall be given in the manner set forth below, addressed to the party to be served at the addresses set forth below or at such other address for which that party may have given notice under the provisions of this Section-, with a courtesy copy of same to be delivered to Rangeland Trust. Any notice, demand, approval, consent, or other communication given by: (a) mail shall be deemed to have been given on the second (2nd) business day immediately following the date it was deposited in the United States

mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) electronic transmission shall be deemed to have been given on the date of transmission of the entire communication, provided that (i) such transmission occurs during 8:00 a.m. and 5:00 p.m., Pacific Time, on normal business days, and (ii) the receiving party receives delivery of a hard copy of the original transmitted document(s) not later than the first (1st) business day following such transmission.

To Hearst:

Hearst Holdings, Inc.  
5 Third Street, Suite 200  
San Francisco, CA 94103-3202  
Attn: Controller

~~Email: \_\_\_\_\_@hearst.com~~ Email: [klotoole@hearst.com](mailto:klotoole@hearst.com)

To District:

San Simeon Community Services District  
111 Pico Avenue  
San Simeon, CA 93452  
Attn: Chairperson

~~Email: [admin@sansimeoncsd.org](mailto:admin@sansimeoncsd.org)~~ Email: [admin@sansimeoncsd.org](mailto:admin@sansimeoncsd.org)

[To Rangeland Trust:](#)

[California Rangeland Trust](#)  
[1225 H Street](#)  
[Sacramento, CA 95814](#)  
[Attn: Stewardship Director](#)  
[Email: jflatt@rangelandtrust.org](mailto:jflatt@rangelandtrust.org)

9. **Time of the Essence; Dates.** Time is of the essence in the performance of each of the parties' respective obligations contained in this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or other day on which public agencies and major banks in San Luis Obispo County, California, are not open for business (each a "**Non-Business Day**"), such date shall be deemed to be the succeeding business day. For purposes of this Agreement, a "business day" shall mean a day other than a Non-Business Day.

10. **Further Assurances.** Each of the parties agrees to perform any and all further acts and to execute and deliver any documents that may reasonably be necessary to carry out the provisions of this Agreement.

11. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

12. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Hearst and the District pertaining to the subject matter contained in it and, subject to Section 1(f) above, supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement may be amended, modified or supplemented only by written agreement of Hearst and the District and prior written consent of Rangeland Trust. No waiver of any of the provisions of this Agreement shall be deemed or shall

constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Hearst and the District, and no provision contained in this Agreement nor any acts of the parties shall be deemed to create any relationship between Hearst and the District.

14. **No Assignment.** District's rights and obligations under this Agreement are personal to District, and District shall not assign this Agreement without the express written consent of Hearst, which consent may be withheld for any reason or for no reason.

15. **Binding on Successors.** This Agreement shall be binding upon the parties, permitted assigns and other successors in interest.

16. **Drafting.** The parties to this Agreement agree that this Agreement is the product of joint authorship and negotiation and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each such party to this Agreement waives the effect of such statute.

17. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in Superior Court in San Luis Obispo County, California, and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding. Each party irrevocably and unconditionally waives any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

18. **Legal Costs.** If any party to this Agreement shall take any action to enforce this Agreement or bring any action or commence any proceeding for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' and experts' fees and costs incurred in taking such action, bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' and experts' fees and costs due hereunder, and such provision shall be determined by a court of competent jurisdiction and not by a jury. For the purposes of this Section, attorneys' and experts' fees and costs shall include, without limitation, fees incurred in the following: (a) postjudgment motions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals.



19. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties authorize each other to detach and combine, or cause to be detached and combined, original signature pages and consolidate them into a single identical original for recordation of this Agreement in the Official Records of San Luis Obispo County, California.

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

**HEARST:**

HEARST HOLDINGS, INC., a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

**DISTRICT:**

SAN SIMEON COMMUNITY SERVICES DISTRICT, a California special district

By: \_\_\_\_\_  
Name:  
Title:

**CONSENT OF CONSERVATION EASEMENT HOLDER**

Rangeland Trust, as holder of the Conservation Easement under the Conservation Easement Agreement, hereby consents to and approves of the grant of the Easement as set forth in the foregoing Agreement, in accordance with the Conservation Easement Agreement. Capitalized terms used in this Consent shall have the meanings ascribed to them in the foregoing Agreement.

**RANGELAND TRUST:**

CALIFORNIA RANGELAND TRUST, a  
California nonprofit public benefit  
corporation

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Name:  
Title:

\*\*\*\*\*

**CERTIFICATE OF ACCEPTANCE**

STATE OF CALIFORNIA                    )  
COUNTY OF SAN LUIS OBISPO    )SS.

Certificate of Acceptance

This is to certify that the SAN SIMEON COMMUNITY SERVICES DISTRICT, a California special district, hereby accepts the interest in real property conveyed by the foregoing Grant of Limited Term Encroachment Easement and Agreement and consents to the recordation thereof.

Dated: \_\_\_\_\_

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

\*\*\*\*\*

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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_

(Seal)

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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_

(Seal)

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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_

(Seal)

**DESCRIPTION OF ENCROACHMENT AREA**

The real property referred to in this Agreement as the “Encroachment Area,” is located in San Luis Obispo County, California, and more particularly described as follows:

(See attached)

~~*[Review Note: Legal description as Exhibit A and plat map as Exhibit B to be finalized and included.]*~~

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RECORD AT REQUEST OF AND RETURN TO:

Hearst Holdings, Inc.  
5 Third Street, Suite 200  
San Francisco, CA 94103-3202  
Attn: Controller

No Fee Document – Per Govt. Code Sec. 6103 & 27383  
No County Transfer Tax Per R & T Code 11922

APNs: Portions of APNs 013-041-014 &  
013-011-024

Space Above This Line for Recorder’s Use

**GRANT OF LIMITED TERM ENCROACHMENT EASEMENT AND AGREEMENT**

This GRANT OF LIMITED TERM ENCROACHMENT EASEMENT AND AGREEMENT (the “**Agreement**”), dated \_\_\_\_\_ for reference purposes only, is made and entered into by and between **HEARST HOLDINGS, INC.**, a Delaware corporation (“**Hearst**” or “**Grantor**”), and **SAN SIMEON COMMUNITY SERVICES DISTRICT**, a California special district (“**District**” or “**Grantee**”).

**RECITALS**

A. Hearst owns certain real property located in San Luis Obispo County, California (the “**Conservation Property**”) encumbered by a conservation easement (the “**Conservation Easement**”) held by California Rangeland Trust, a California nonprofit public benefit corporation (“**Rangeland Trust**”), pursuant to that certain Deed of Conservation Easement and Agreement Concerning Easement Rights recorded on February 18, 2005 in the Official Records of San Luis Obispo County, California, as Instrument No. 2005013388, as assigned pursuant to that certain Assignment and Assumption of Conservation Easement and Related Grant Agreement (East Side Conservation Area) recorded on February 18, 2005 in the Official Records of San Luis Obispo County, California, as Instrument No. 2005013391 (as assigned, the “**Conservation Easement Agreement**”).

B. On or about March 16, 2015, Hearst provided a copy of the Conservation Easement Agreement to the District.

C. In or about October 2015, the District commenced construction of certain Potable Water Well Head Treatment Project (the “**Project**”) improvements including a reverse osmosis facility (collectively, the “**Water Treatment Facility**”), and completed construction of the Water Treatment Facility on or about April 2016. Since completion of the Water Treatment Facility, the District has been using the Water Treatment Facility for active water treatment operations and services as part of the Project (the “**Public Utilities Purposes**”).

D. In July 2020, Hearst and the District discovered that a portion of the Water Treatment Facility encroaches (the “**Encroachment**”) on an approximate 560 square foot portion of the Conservation Property (the “**Encroaching Facility Footprint**”).

E. As an interim measure, Hearst and the District entered into that certain Revocable Encroachment License Agreement effective as of October 26, 2020 (the “**License Agreement**”), by which Hearst granted to District a license to temporarily leave the existing Encroachment on the Encroaching Facility Footprint pending completion and recordation of this Agreement.

F. District desires to obtain from Hearst, and Hearst has agreed to grant to District, an easement to allow the existing Encroachment to remain on the Encroaching Facility Footprint within an approximate 2,693 square foot portion of the Conservation Property more particularly described in **Exhibit A** and depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the “**Encroachment Area**”) for so long as the District continues to use the Encroachment for the Public Utilities Purposes, on the terms and conditions set forth in this Agreement.

## AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Agreement, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### 1. Easement Terms.

(a) Grant of Easement. Subject to the terms and conditions of this Agreement, Hearst hereby grants to the District an easement (the “**Easement**”) on, over and across the Encroachment Area for the sole and exclusive purpose of allowing the Encroachment to remain in its current location within the Encroaching Facility Footprint for so long as the District (i) continues to use the Encroachment for the Public Utilities Purposes in a manner substantially similar to the District’s manner of use thereof as of the date of this Agreement; and (ii) uses the remainder of the Encroachment Area (the “**Access Area**”) solely for access to and from the Encroachment as part of the Public Utilities Purposes, and the Access Area remains vacant and is not used for any other purpose including any storage or other improvements.

(b) Term. The term of the Easement and this Agreement (the “**Term**”) shall commence on the date that this Agreement is recorded in the Official Records of San Luis Obispo County, California (the “**Effective Date**”), and continue until the earlier of: (i) written notice by District to Hearst that the District has ceased to use the Easement for the Public Utilities Purposes as provided in Section 1(a) above; (ii) the District ceases to use the Easement for Public Utilities Purposes as provided in Section 1(a) above for a period of twelve (12) consecutive months; or (iii) any termination pursuant to Section 5 below.

(c) Acknowledgements and Release by District. In addition to Section 7 below, District acknowledges and agrees that, in consideration of the grant of the Easement by Hearst to District as provided herein, District releases, relinquishes and waives any and all claims or rights that it may have with respect to the Encroachment Area, including without limitation

any claims or rights of inverse condemnation, adverse possession, or prescriptive easement pertaining to the Encroachment. For purposes of any requirement that Hearst must file a claim under the Government Claims Act (California Government Code Section 810-996.6) with respect to the Encroachment, District further acknowledges and agrees as follows: (1) no claim by Hearst accrued until August 18, 2020 when the Encroachment was confirmed by that certain survey report dated August 18, 2020, prepared by Wallace Group, a copy of which has previously been provided by Hearst to the District; and (2) Hearst shall not be required to file a claim until the later of (A) expiration of the required filing period under the Government Claims Act, or (B) thirty (30) days after written notice from District to Hearst.

(d) Encroachment Fee. As additional consideration for the grant of the Easement by Hearst to District as provided herein, commencing on the Effective Date, District covenants and agrees to pay to Hearst an annual encroachment fee (the “**Encroachment Fee**”) as provided in this Section 1(d). The Encroachment Fee shall be payable in advance on the Effective Date and thereafter on each anniversary of the Effective Date through the Term. The amount of the first Encroachment Fee payment shall be Five Thousand Dollars (\$5,000.00). Commencing on the first anniversary of the Effective Date, the amount of each annual Encroachment Fee shall automatically increase two percent (2%) over the Encroachment Fee for the immediately preceding year. For the avoidance of doubt and as an example of such automatic Encroachment Fee increase during the Term, the annual Encroachment Fee for the first three (3) years of the Term shall be as follows:

<i>Annual Encroachment Fee</i>		
<i>Payment No.</i>	<i>Due Date</i>	<i>Amount</i>
1	Effective Date	\$5,000.00
2	1 <sup>st</sup> Anniversary of Effective Date	\$5,100.00
3	2 <sup>nd</sup> Anniversary of Effective Date	\$5,202.50

(e) Reimbursement of Damages Resulting from Encroachment. As a direct result of the Encroachment, Hearst incurred damages as more particularly set forth in the License Agreement. Hearst and District acknowledge and agree that, as of the Effective Date, the payment obligations of District under the License Agreement (including, without limitation, Section 1(e) of the License Agreement) have been satisfied in full. As additional consideration for the grant of the Easement by Hearst to District as provided herein, District shall pay to Hearst all additional damages, including, without limitation, any and all liabilities of Hearst to Rangeland Trust under the Conservation Easement Agreement for impairment to Conservation Values (as defined in the Conservation Easement Agreement), incurred by Hearst during the Term as a result of the Encroachment promptly upon written demand by Hearst therefor (which demand shall include reasonable supporting documentation therefor). The payment obligations of the District under this Section 1(e) shall survive any termination of the Easement and this Agreement.

(f) Termination of License Agreement. Subject to and conditioned upon recordation of this Agreement as provided in Section 1(b) above, Hearst and the District hereby agree that this Agreement shall replace the License Agreement, and the License Agreement shall terminate as of the Effective Date.

2. **Additional Covenants and Acknowledgements by the District.**

(a) Compliance with Conservation Easement. District acknowledges and agrees that: (i) the Encroachment Area is encumbered by the Conservation Easement; (ii) this Agreement, including but not limited to the District's rights pursuant to Section 1 above, is subordinate and subject to the Conservation Easement Agreement; and (iii) in performing its activities and obligations under this Agreement (including, without limitation, removal and reclamation pursuant to Section 6(a) below), District shall comply with all applicable provisions of the Conservation Easement Agreement. The parties acknowledge and agree that the District's acceptance of the grant of the Easement as provided herein does not constitute an assumption of any of the affirmative obligations of Hearst with respect to the Encroachment Area under the Conservation Easement Agreement; provided, however, District shall cooperate with Hearst, at District's sole cost and expense, in connection with Hearst's performance of its affirmative obligations with respect to the Encroachment Area under the Conservation Easement Agreement.

(b) Compliance with Laws. District shall perform its activities and obligations under this Agreement in a good and workmanlike manner, shall keep the Encroachment Area in neat, clean, orderly and safe condition at all times, and shall, at its sole cost and expense, comply with all applicable federal, state or local laws, regulations, decisions or orders of courts, administrative bodies or governmental agencies, ordinances, codes, permits or permit conditions, currently existing and as amended, enacted, issued, adopted or imposed in the future.

(c) Mechanic's Liens. District shall keep the Encroachment Area free and clear of all mechanic's liens or other liens resulting from the District's exercise of its rights pursuant to this Agreement and will promptly pay and discharge any such liens; provided, however, District will have the right to contest the correctness or the validity of any such lien, if immediately on demand of Hearst, District procures and records a lien release bond that meets the requirements of California Civil Code Section 8424 and will provide for the payment of such sum that the claimant may recover on the claim (together with costs of suit, if it recovers in the action).

3. **Indemnity.** District agrees to wholly indemnify, protect, defend and hold harmless Hearst, its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, assigns, and insurers, from and against all liability, claims and demands arising out of the existence of the Encroachment on the Encroachment Area and District's use of the Encroachment Area and the undertaking of the Project. District agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at its sole expense, or, at the option of Hearst, agrees to pay Hearst or reimburse Hearst for the defense costs incurred by Hearst in connection with any such liability, claims or demands. District also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

4. **Insurance.** At all times during the Term, District shall, at its sole cost and expense, maintain a commercial general liability in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence, naming Hearst and its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, and assigns as an additional insured for ongoing and completed operations and Rangeland Trust as an additional insured for claims arising out of the Encroachment and District's exercise of its rights granted under this Agreement on a primary and noncontributory basis. District shall also, at its sole cost and expense, maintain workers compensation insurance with statutory limits and employer's liability coverage of One Million (\$1,000,000) per accident, One Million (\$1,000,000) per employee for injury by disease, and One Million (\$1,000,000) policy aggregate; automobile liability coverage of not less than Two Million Dollars (\$2,000,000); property insurance for the District's real and personal property; and environmental liability insurance for any first party or third party clean-up. A waiver of subrogation shall be included on all policies in favor of Hearst and its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, and assigns. On or before the Effective Date, District shall deliver to Hearst a certificate verifying that such insurance has been obtained. Further, at any time during the Term, Hearst may request of District, and District shall deliver to Hearst within five (5) days, evidence satisfactory to Hearst that the insurance required hereunder is still in full force and effect. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Agreement. Not less frequently than every five (5) years, Hearst and the District shall cooperate in determining an appropriate increase, to adjust for inflation, in the limit of the insurance coverage maintained by the District under this Agreement. Thereafter, the District shall obtain and maintain in effect such increased coverage until the next such adjustment.

5. **Default by District; Hearst Remedies and Right to Terminate.**

(a) In the event District fails to perform any of its obligations as required under this Agreement, or breaches any covenant, condition or term of this Agreement (including, without limitation Section 1(a) above), Hearst shall, in addition to any other remedies available at law or in equity, have the right to immediately terminate the Easement and this Agreement.

(b) If District fails to make any payment to Hearst when due as provided in under this Agreement, then:

(i) the outstanding amount shall bear interest at the maximum rate allowed by law until paid in full ("**Default Interest**"); and

(ii) a late charge by way of damages shall be immediately due and payable to Hearst. District recognizes that any default by District in paying such amounts when due will result in Hearst incurring additional expenses and in Hearst's loss of the use of the money due. District agrees that, if for any reason District fails to pay any amount owed under this Agreement when due, Hearst shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. District therefore agrees that an amount equal to Five Cents (\$0.05) for each dollar the District fails to pay when due (the "**Late Charge**") is a reasonable estimate of said damages to Hearst, which sum District agrees to pay on demand.

Hearst's right to payment of such Default Interest and Late Charge as provided in this Section 5(b) shall be in addition to, and not in substitution for, any other remedies available to Hearst by reason of any default, including, without limitation, Hearst's right set forth in this Agreement to be paid its costs and expenses as provided in Section 18 below.

(c) District shall not be in default of any of its obligations under this Agreement unless Hearst first provides to District written notice of default and District thereafter fails within five (5) days after receipt of such notice of default to either cure such default or diligently commence such actions reasonably necessary to cure such default within such five (5) day period, and thereafter cures such default not later than thirty (30) days after receipt of such notice of default.

6. **District Obligations Upon Termination.**

(a) **Removal and Reclamation.**

(i) Within twelve (12) months (the "**Removal Period**") after any termination of the Easement and this Agreement as provided in this Agreement (the "**Termination**"), District shall, at its sole cost and expense, remove all improvements and facilities from the Encroachment Area (the "**Removal**"). The Removal shall include, without limitation, removal of all above-ground structures and the upper portion of foundations, and removal of all below-ground structures to a depth of thirty-six (36) inches below grade or greater if Hearst has a valid reason that would require removal of structures greater than 36 inches; provided that any of the foregoing that contain any materials then known to be harmful to the environment or health shall be completely removed, regardless of the depth. Foundations shall be ground to thirty-six (36) inches below grade, unless Hearst has a valid reason that would require removal greater than 36 inches, and the foundation sites re-graded, as applicable. Cables and conduits more than thirty-six (36) inches below grade may be abandoned in place provided they do not contain any materials then known to be harmful to the environment or health, unless Hearst has a valid reason that would require removal greater than 36 inches. All unsalvageable materials shall be disposed of by District at authorized sites in accordance with all applicable present or future federal, state or local laws, statutes, codes, ordinances, rules regulations, decrees, orders and other such requirements. Site reclamation shall be based on site-specific requirements and techniques commonly employed at the time the area shall be reclaimed, including grading and removal of gravel. The failure of District to remove, raze or demolish any improvement within the Removal Period as provided herein shall be deemed an abandonment of the improvements to Hearst, and Hearst shall have the right to keep such improvements and to charge District, and District agrees to reimburse Hearst, for all costs and expenses incurred by Hearst to remove, raze or demolish the improvements or any part thereof to the standard set forth above. In such event, Hearst shall be entitled to the entire salvage value of the improvements, without accounting to District for such value. All Removal and reclamation shall be conducted and completed in compliance with all applicable present or future federal, state or local laws, statutes, codes, ordinances, rules regulations, decrees, orders and other such requirements and all applicable provisions of agreements of record as of the Effective Date, including, without limitation, the Conservation Easement.

(ii) In the event of the Termination as provided above, then notwithstanding any other term or provision of this Agreement, and notwithstanding such

Termination of this Agreement, until District's completion of the Removal as provided in the preceding subsection 6(a)(i) then: (A) District shall remain bound by and obligated under the terms, covenants and provisions of this Agreement, and (B) District's rights under this Agreement shall extinguish, except that District shall have the continued license and right to access the Encroachment Area solely for the purpose of completing the Removal.

(b) Recordation of Quitclaim. Upon the Termination as provided above, District shall execute, acknowledge and deliver to Hearst, within ten (10) business days after written demand from Hearst to District, any quitclaim deed, termination agreement, cancellation and surrender agreement, affidavit, petition, or other document required by any reputable title company selected by Hearst, licensed to operate in California, to remove any cloud or encumbrance on the Conservation Property created by this Agreement. District irrevocably appoints Hearst as attorney-in-fact of District, with full powers, at District's cost and expense, to perform the obligations of District under this paragraph upon the expiration of the ten (10) business day period described in this paragraph. District's obligations under this paragraph shall survive the Termination.

7. District's Use and Liability; Release of Hearst. District hereby releases Hearst from any liability arising from the District exercising its rights under this Agreement and the District's undertaking of the Project. Furthermore, District agrees to assume responsibility for any damages to the Encroachment Area caused by reason of the District's use of the Easement and Encroachment Area under this Agreement. With respect to the release provided in this Section by the District, the District acknowledges that it has been advised by legal counsel and that the District waives the provisions of California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

District, on behalf of itself and for its successors and permitted assigns, expressly, knowingly, and voluntarily waives and relinquishes all rights and benefits afforded by California Civil Code Section 1542 and any analogous state or federal law or regulation, and in so doing, understands and acknowledges the significance and consequence of such specific waiver.

8. Notices. Any notice, demand, approval, consent, or other communication required or desired to be given under this Agreement in writing shall be given in the manner set forth below, addressed to the party to be served at the addresses set forth below or at such other address for which that party may have given notice under the provisions of this Section, with a courtesy copy of same to be delivered to Rangeland Trust. Any notice, demand, approval, consent, or other communication given by: (a) mail shall be deemed to have been given on the second (2nd) business day immediately following the date it was deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) electronic transmission shall be deemed to have

been given on the date of transmission of the entire communication, provided that (i) such transmission occurs during 8:00 a.m. and 5:00 p.m., Pacific Time, on normal business days, and (ii) the receiving party receives delivery of a hard copy of the original transmitted document(s) not later than the first (1st) business day following such transmission.

To Hearst:

Hearst Holdings, Inc.  
5 Third Street, Suite 200  
San Francisco, CA 94103-3202  
Attn: Controller  
Email: [klotoole@hearst.com](mailto:klotoole@hearst.com)

To District:

San Simeon Community Services District  
111 Pico Avenue  
San Simeon, CA 93452  
Attn: Chairperson  
Email: [admin@sansimeoncsd.org](mailto:admin@sansimeoncsd.org)

To Rangeland Trust:

California Rangeland Trust  
1225 H Street  
Sacramento, CA 95814  
Attn: Stewardship Director  
Email: [jflatt@rangelandtrust.org](mailto:jflatt@rangelandtrust.org)

9. **Time of the Essence; Dates.** Time is of the essence in the performance of each of the parties' respective obligations contained in this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or other day on which public agencies and major banks in San Luis Obispo County, California, are not open for business (each a "**Non-Business Day**"), such date shall be deemed to be the succeeding business day. For purposes of this Agreement, a "business day" shall mean a day other than a Non-Business Day.

10. **Further Assurances.** Each of the parties agrees to perform any and all further acts and to execute and deliver any documents that may reasonably be necessary to carry out the provisions of this Agreement.

11. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

12. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Hearst and the District pertaining to the subject matter contained in it and, subject to Section 1(f) above, supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement may be amended, modified or supplemented only by written agreement of Hearst and the District and prior written consent of Rangeland Trust. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent



or of partnership or of joint venture or of any association between Hearst and the District, and no provision contained in this Agreement nor any acts of the parties shall be deemed to create any relationship between Hearst and the District.

14. **No Assignment.** District's rights and obligations under this Agreement are personal to District, and District shall not assign this Agreement without the express written consent of Hearst, which consent may be withheld for any reason or for no reason.

15. **Binding on Successors.** This Agreement shall be binding upon the parties, permitted assigns and other successors in interest.

16. **Drafting.** The parties to this Agreement agree that this Agreement is the product of joint authorship and negotiation and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each such party to this Agreement waives the effect of such statute.

17. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in Superior Court in San Luis Obispo County, California, and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding. Each party irrevocably and unconditionally waives any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

18. **Legal Costs.** If any party to this Agreement shall take any action to enforce this Agreement or bring any action or commence any proceeding for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' and experts' fees and costs incurred in taking such action, bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' and experts' fees and costs due hereunder, and such provision shall be determined by a court of competent jurisdiction and not by a jury. For the purposes of this Section, attorneys' and experts' fees and costs shall include, without limitation, fees incurred in the following: (a) postjudgment motions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals.

19. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties authorize each other to detach and combine, or cause to be detached and combined, original signature pages and consolidate them into a single identical original for recordation of this Agreement in the Official Records of San Luis Obispo County, California.

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

**HEARST:**

HEARST HOLDINGS, INC., a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

**DISTRICT:**

SAN SIMEON COMMUNITY SERVICES DISTRICT, a California special district

By: \_\_\_\_\_  
Name:  
Title:

**CONSENT OF CONSERVATION EASEMENT HOLDER**

Rangeland Trust, as holder of the Conservation Easement under the Conservation Easement Agreement, hereby consents to and approves of the grant of the Easement as set forth in the foregoing Agreement, in accordance with the Conservation Easement Agreement. Capitalized terms used in this Consent shall have the meanings ascribed to them in the foregoing Agreement.

**RANGELAND TRUST:**

CALIFORNIA RANGELAND TRUST, a  
California nonprofit public benefit  
corporation

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Name:  
Title:

\*\*\*\*\*

**CERTIFICATE OF ACCEPTANCE**

STATE OF CALIFORNIA                    )  
COUNTY OF SAN LUIS OBISPO    )SS.

Certificate of Acceptance

This is to certify that the SAN SIMEON COMMUNITY SERVICES DISTRICT, a California special district, hereby accepts the interest in real property conveyed by the foregoing Grant of Limited Term Encroachment Easement and Agreement and consents to the recordation thereof.

Dated: \_\_\_\_\_

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

\*\*\*\*\*

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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_

(Seal)

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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, 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.

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 )  
County of \_\_\_\_\_ )

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WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**DESCRIPTION OF ENCROACHMENT AREA**

The real property referred to in this Agreement as the “Encroachment Area,” is located in San Luis Obispo County, California, and more particularly described as follows:

(See attached)



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**EXHIBIT A**  
**Legal Description**

A portion of Lot "A" of the Subdivisions of the Rancho San Simeon, as surveyed by V.H. Woods and delineated on the "Plat Showing Partition of that part of San Simeon Ro. owned by Ira Van Gorden S'r." filed in the office of the Recorder of San Luis Obispo County, California, on July 17<sup>th</sup>, 1899 in Book B at page 108 of Maps, also being portions of land owned by Hearst Holdings, Inc. as described in Certificates of Compliance recorded as Document Numbers 2002-028663 and Document No. 2002-055088 in the office of the County Recorder of San Luis Obispo County, California described as follows;

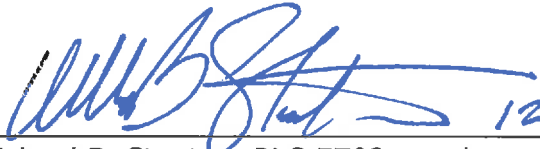
Beginning at the most northerly corner of the Arbuckle Tract as shown on the map filed May 22, 1952 in Book 6 of Records of Surveys at page 49 in said County Recorder's office, said point also being a 1" iron pipe with tag "RCE 6923" as shown on said map; thence

- 1) South 37° 46' 11" West along the northwest line of said Arbuckle Tract a distance of 26.82 feet to a 5/8" rebar with aluminum cap "LS5702" as shown on map filed in Book 117 of Records of Survey at Page 17; thence
- 2) North 31° 00' 43" West along the northeast line of Pico Ave. as shown on said Arbuckle Tract a distance of 32.25 feet to the east corner of property (Parcel One) granted to Rancho San Simeon Acres Service Corporation recorded on March 4, 1958 in Book 930 of Official Records at page 32 as witnessed by a 1" iron pipe with cap "LS 5702" as shown on map filed in Book 125 of Records of Surveys at page 62-63; thence continuing
- 3) North 31° 00' 43" West along the northeast line of Pico Ave. as shown on map of said Arbuckle Tract a distance of 32.13 feet to the most northerly corner of Pico Avenue as shown on map of said Arbuckle Tract and the most southerly corner of Hearst Holdings Inc. property described in Certificate of Compliance recorded as Document Number No. 2002-055088; thence
- 4) North 38° 17' 12" West along southwest line of said Hearst Holdings property a distance of 39.30 feet (said point lies North 38° 17' 12" West 1.00 feet from a 1" iron pipe with cap "LS 5702" per 125 RS 62-63); thence leaving said southwest line of Hearst Holdings Inc. property
- 5) North 47° 42' 01" East along an existing fence line a distance of 31.45 feet, thence
- 6) South 30° 30' 54" East along an existing fence line a distance of 99.82 feet to the Point of Beginning.

The basis of bearings for this survey was taken from the centerline of Avonne Avenue between found monuments at Pico Ave. and Pen Way as shown on Record of Survey filed in Book 125 at pages 62-63. Measured distances are on state plane grid, Zone 5. To obtain ground distances, multiply distances shown by the inverse of the combined scale factor of 1.00003312. All measured bearings shown are on grid. To obtain geodetic bearings, rotate bearings shown clockwise by 1° 47' 12".

The above-described parcel contains 2693 square feet and is graphically shown on Exhibit B attached hereto and made a part hereof.

\* \* \*

 12-14-2021  
Michael B. Stanton, PLS 5702      date



N:\2021\21-321 111 Pico Ave - San Simeon CSD\Legal Descriptions\Legal Description - Hearst Encroachment Area.doc  
12/14/2021 1:03 PM

# EXHIBIT "B"

POINT OF BEGINNING  
 N38°00'48"E 26.76'R7  
 N37°46'11"E 26.82'M

6 RS 49

S38°00'48"W 1

FND 1" IP  
 "RCE 6923"  
 PER R2 & R7

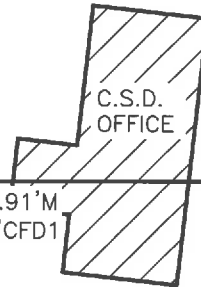
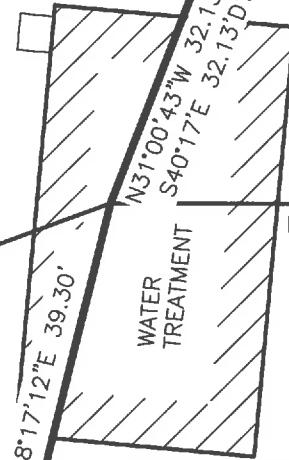
FND 5/8" REB IP  
 ALUM. CAP  
 "LS 5702" PER R7

## PICO AVE.

N38°00'48"E 51.41'M  
 S36°01'W D1 (NO DIST)

S53°59'E 30.00'D1  
 N51°59'12"W 30.00'M

HEARST HOLDINGS.  
 COC DOC NO. 2002-028663



## SAN SIMEON COMMUNITY SERVICES DISTRICT

N47°42'01"E 31.45'

S38°17'12"E 39.30'

BARB WIRE FENCE

BARB WIRE FENCE

TOP OF BANK

## 930 OR 32 PARCEL ONE

SCALE 1"=20'

HEARST HOLDINGS.  
 COC DOC NO. 2002-055088  
 767 OR 490

### REFERENCES

- R2 6 RS 49, McLENNAN, 1952 (THE ARBUCKLE TRACT)
- R7 117 RS 17
- D1 930 OR 32 (CSD PROPERTY)

SEE 125 RS 62-63 FOR BOUNDARY ESTABLISHMENT.

N51°59'12"W 209.38'M  
 N53°59'W 209.38'D1 '09.38'D1

COC DOC NO. 2004-033958  
 JOHN K. RUSSELL TRUST



MICHAEL B. STANTON, PLS 5702  
 3559 SOUTH HIGUERA ST.  
 SAN LUIS OBISPO, CA 93401  
 805-594-1960  
 January 24, 2023 Board Meeting Packet

HEARST EASEMENT AREA  
 IN FAVOR OF SAN SIMEON C.S.D.  
 December 14, 2021