

CAUSE NO. _____

THEATER SQUARE, L.P.,

Plaintiff,

v.

BLOCK 58 INVESTORS, LLC, and
HEARST NEWSPAPERS, LLC,

Defendants.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR TEMPORARY
RESTRAINING ORDER, TEMPORARY INJUNCTION,
AND PERMANENT INJUNCTION**

**I.
INTRODUCTION**

Plaintiff Theater Square, L.P. (“TSLP”) owns Block 43 in Downtown Houston. TSLP owns easements through the basement of the adjacent Houston Chronicle Building for purposes of constructing a tunnel connecting Block 43 to the Downtown Houston Tunnel System. Those easements are recorded and run with the land. TSLP has a tunnel agreement setting forth its easements and its rights to construct the tunnel. That agreement is recorded and provides that its covenants run with the land. The former owner of the Chronicle Building approved TSLP’s plans and specifications for construction of the tunnel. Under the tunnel agreement, that approval binds subsequent owners.

Defendant Block 58 Investors, LLC (“Hines”) recently purchased the Houston Chronicle Building. In spite of TSLP’s easement rights, contract rights, and approved plans and specifications, Hines intends to demolish the Chronicle Building, including the basement structures of that building through which TSLP’s easements run, and on which TSLP’s approved construction plans are based. TSLP has attempted to resolve this dispute without judicial

intervention, but Hines insists on its demolition plans. A construction barrier has been erected. Hines says its demolition activities are “forthcoming.” TSLP seeks relief from this Court to protect and defend its valuable property rights.

II.
DISCOVERY

This action should be conducted pursuant to a Level 3 discovery plan.

III.
PARTIES

Theater Square, L.P. is a Texas limited partnership, with its principal place of business in Houston, Texas.

Hearst Newspapers, LLC is a Delaware limited liability company, with its principal place of business in Houston, Texas. It may be served through its registered agent for service of process, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

Block 58 Investors, LLC is a Delaware limited liability company, with its principal place of business in Houston, Texas. It may be served through its registered agent for service of process, Jeanine E. Hutchens, 2800 Post Oak Blvd., Suite 4800, Houston, Texas 77056.

IV.
JURISDICTION

This Court has jurisdiction of this action because it seeks injunctive relief, which is vested in the district courts, and because it involves claims for damages in excess of the jurisdictional minimums of this Court.

V.
VENUE

Venue is mandatory in Harris County, Texas, because the action seeks a determination of rights with respect to real property located in Harris County, Texas, and because it seeks injunctive relief with respect to an entity located in Harris County, Texas. Alternatively, venue is proper in Harris County, Texas because all or a substantial portion of the events giving rise to the action occurred in Harris County, Texas.

VI.
FACTUAL BACKGROUND

The Downtown Houston Tunnel System is more than six miles long and connects ninety-five city blocks. It is a primary means for daily pedestrian traffic for 150,000 workers and visitors. Connection to the tunnel system is a valuable asset for any downtown commercial development. In fact, Houston downtown office buildings typically cannot be considered “Class A” unless they are connected to the tunnel system.

Block 58, the former home of the Houston Chronicle, sits at the northern end of the North Travis Tunnel section of the Downtown Tunnel System. The North Travis Tunnel connects Block 58 to 717 Texas (formerly Calpine Center) to the west under Milam Street, and it connects Block 58 to Chase Tower (and thereby to the rest of the tunnel system) to the south under Texas Avenue. Until recently, Block 58 was owned by the Houston Chronicle Publishing Company, a division of Hearst Newspapers, LLC (“Hearst”).

TSLP owns Block 43, immediately to the north of Block 58, separated by Prairie Street. TSLP is in the permitting stages of the commercial development of Block 43. The initial phase of development for Block 43 will include a retail and parking structure to be built on the

southern half of the block. The foundation permit for the retail and parking structure has been approved by the City of Houston.

Access to the Downtown Tunnel System has always been an essential component of TSLP's development plans for Block 43. On November 15, 2007, TSLP and Hearst entered into the Prairie Tunnel Pedestrian Tunnel Maintenance and Easement Agreement ("Prairie Tunnel Agreement"). See Exhibit A, Attachment 1. One of the primary purposes of the Prairie Tunnel Agreement is to provide for the construction, renovation, use, maintenance, repair, and enjoyment of a subsurface pedestrian passageway connecting Block 43 to Block 58 and thereby to the rest of the Downtown Tunnel System.

As part of the Prairie Tunnel Agreement, Hearst granted TSLP perpetual easements for the purpose of access and passage through the existing passageway connecting Block 58 with the Chase Tower under Texas Avenue ("Chase Tunnel") and the existing passageway connecting Block 58 with 717 Texas under Milam Street ("Milam Tunnel").

As a further part of the Prairie Tunnel Agreement, Hearst granted TSLP a perpetual easement for the purpose of access and passage through the existing passageway in the basement of the Chronicle Building connecting the Chase Tunnel on one end and the Milam Tunnel on the other end. In the Prairie Tunnel Agreement, this easement area is called the "Chronicle Connector."

As a further part of the Prairie Tunnel Agreement, Hearst granted TSLP perpetual easements for the purposes of accessing and constructing, renovating, maintaining, operating, and/or repairing the Prairie Tunnel, to be built in the basement of the Chronicle Building connecting the Chronicle Connector on one end and Block 43 on the other end. In the Prairie Tunnel Agreement, this easement area is called the "Chronicle Portion of the Prairie Tunnel."

These easements are perpetual. They run with the land. As stated in the Prairie Tunnel Agreement, Hearst's grants of these easements are binding upon the successors and assigns of Hearst's interests in Block 58. A memorandum describing these easements was filed and recorded in the real property records of Harris County, Texas.

Exhibit G to the Prairie Tunnel Agreement is the conceptual plan for the Prairie Tunnel, prepared by Walter P. Moore and Associates, depicting the route and dimensions of the Prairie Tunnel and certain floor and ramp details as well. As stated in the Prairie Tunnel Agreement, by entering into the Prairie Tunnel Agreement, Hearst specifically agreed to the general concepts set forth in the conceptual plan, and waived the right to object to those general concepts, for itself and its successors.

The Prairie Tunnel Agreement includes procedures for submission and approval of plans and specifications for the construction of the Prairie Tunnel. TSLP met with Hearst to discuss its work on those plans and specifications in December 2012. The initial tunnel design was presented to Hearst in January 2014. TSLP formally submitted its proposed plans and specifications to Hearst on March 10, 2014. Hearst responded with minor objections on June 25, 2014. Over the next six months, TSLP and Hearst worked through the objections. TSLP submitted revised plans and specifications to Hearst on December 9, 2014. Hearst approved those revised plans and specifications on February 5, 2015.

As stated in the Prairie Tunnel Agreement, by approving TSLP's plans and specifications for the construction of the Prairie Tunnel, Hearst specifically agreed to the general concepts set forth in those plans and specifications, and waived the right to object to those general concepts, for itself and its successors. Hearst's approval of these plans and specifications authorized TSLP to undertake construction of the Prairie Tunnel on a date of TSLP's choosing.

Following Hearst's approval of the plans and specifications, TSLP began work on applications for construction permits and vault rights from the City of Houston. As a further part of the Prairie Tunnel Agreement, TSLP is required to obtain the necessary permits and vault rights for construction of the Prairie Tunnel and to pay for those permits and vault rights. Hearst is required to assist TSLP in obtaining and maintaining those permits and vault rights, and must execute the City of Houston's standard applications and instruments for those permits and vault rights.

Long before Hearst's approval of TSLP's plans and specifications, Hearst had been soliciting and considering offers to purchase Block 58. In July 2014, the Houston Chronicle announced plans to relocate its newspaper operations to a facility on the Southwest Freeway, stating that Hearst would be "exploring alternatives" for the newspaper's downtown property. Hearst interviewed real estate brokers for a potential sale of Block 58 in October 2014. Hearst selected Holliday, Fenoglio Fowler, L.P. to market the property in November 2014.

The Chronicle Building property formally hit the market on April 6, 2015. Media reports quoted Hearst representatives as stating the Chronicle Building would likely be torn down and replaced with a modern skyscraper. On May 29, 2015, in response to those and similar reports, TSLP wrote Hearst seeking assurances that any purchaser of Block 58 would be notified of TSLP's tunnel rights and the status of TSLP's permitting and construction efforts.

On June 23, 2015, Hearst responded that feedback from potential purchasers made it apparent that the existing structures on the Block 58 would be demolished, and that those "changes in facts and circumstances" would require modifications to TSLP's plans. On July 10, 2015, TSLP replied that its rights to proceed with construction were not subject to further

approvals by Hearst or any prospective buyer, and that TSLP intended to proceed with permitting and construction without delay.

TSLP diligently pursued permitting for construction of the Prairie Tunnel. In connection with those efforts, TSLP repeatedly requested that Hearst grant TSLP access to its easement through the Chronicle Portion of the Prairie Tunnel for purposes of compiling information for its permit submissions. Hearst repeatedly either denied or delayed TSLP's access to its easement, in an effort to frustrate TSLP's progress on the Prairie Tunnel project.

At the same time, TSLP repeatedly requested that Hearst assist TSLP in obtaining necessary permits and vault rights for construction of the Prairie Tunnel, as specifically required by the Prairie Tunnel Agreement. Hearst either denied these requests or failed to respond altogether, in an effort to frustrate TSLP's progress on the Prairie Tunnel project.

In August 2015, Hearst announced that Block 58 was under contract to Hines. (Hines Holdings, Inc. is the ultimate general partner of a series of limited liability companies and limited partnerships that manage the affairs of the purchasing entity.¹) That sale closed on October 23, 2015. Hines was well aware of the Prairie Tunnel Agreement and TSLP's easements through the basement of the Chronicle Building during the time that it was negotiating with Hearst for the purchase of Block 58.

Hines has consistently disregarded TSLP's easement rights. Prior to closing, on information and belief, Hines induced Hearst to breach its obligations to TSLP under the Prairie Tunnel Agreement, including but not limited to denying TSLP access to its easement rights, and failing to assist TSLP in obtaining necessary permits and vault rights. As the successor in

¹ *Hines Holdings, Inc.* is the general partner of *Hines Interests Limited Partnership*, which is the sole member of *Hines Block 58/42 GP LLC*, which is the general partner of *Hines Block 58/42 Associates Limited Partnership*, which is the managing member of *Block 58 HH Partners LLC*, which is the managing member of *Block 58 Investors LLC*.

interest to Hearst's ownership of Block 58, Hines is now contractually obligated to TSLP under the Prairie Tunnel Agreement. Following closing, Hines has breached those obligations, by denying TSLP access to its easement rights, and by failing to assist TSLP in obtaining necessary permits and vault rights.

Despite consistent efforts by Hearst and Hines to frustrate TSLP's progress on the Prairie Tunnel project, TSLP was eventually able to compile and submit permit applications for the construction of the Chronicle Portion of the Prairie Tunnel. The construction permit for the portion of the Prairie Tunnel that runs through the basement of the Chronicle Building has been issued by the City of Houston.

The construction permit for the portion of the Prairie Tunnel under Prairie Street has not been issued. Hines first attempted to block issuance of that permit by objecting to the City of Houston about issuing the City's standard encroachment agreement for vault rights for that portion of the tunnel. When that failed, and the City issued the draft agreement for execution, Hines refused to sign it, despite a specific requirement to the contrary in the Prairie Tunnel Agreement.

Hines now intends to demolish the existing structures on Block 58, including the basement through which the Chronicle Portion of the Prairie Tunnel is to be built. Such demolition work is imminent. The Chronicle Building is currently surrounded with barricades and construction fences. Hines has stated that its demolition work on Block 58 is "forthcoming."

As a further part of the Prairie Tunnel Agreement, Hearst contractually acknowledged the unique and special nature of the interests it had granted to TSLP. In fact, Hearst agreed and stipulated that damages would be an inadequate remedy for TSLP in the event that the contractual obligations owed to TSLP were breached. That agreement is binding upon Hines.

VII.
BREACH OF CONTRACT - HEARST AND HINES

TSLP and Hearst entered into a valid and binding contract in the form of the Prairie Tunnel Agreement on November 15, 2007. Hearst granted perpetual easements to TSLP upon, over, and through the Chronicle Portion of the Prairie Tunnel for the purpose, among others, of constructing the Prairie Tunnel. Hearst covenanted to assist TSLP in obtaining and maintaining all necessary permits and vault rights for the construction of the Prairie Tunnel, and Hearst agreed to execute all standard City of Houston applications and instruments for those permits and vault rights.

Hearst covenanted that any monitoring, inspection, or coordination of TSLP's construction and maintenance activities would not materially and unreasonably interfere with TSLP's construction of the Prairie Tunnel. Hearst covenanted to cooperate with TSLP by providing all documents and records reasonably requested by TSLP to assist in determining compliance with the agreement.

As provided in the Prairie Tunnel Agreement, the covenants, terms, and conditions set forth in the agreement are binding upon TSLP and Hearst and their respective heirs, legal representatives, successors, and assigns. Hearst's covenants, terms, and conditions in the agreement constitute covenants running with Block 58 for the benefit of TSLP.

A memorandum describing the Prairie Tunnel Agreement was recorded and filed in the real property records of Harris County, Texas. Hines was on actual notice of the agreement and the covenants and easements contained therein from the time that it began due diligence on the prospective purchase of Block 58 from Hearst. As the new owner of Block 58, Hines is contractually bound by the covenants made by Hearst in the Prairie Tunnel Agreement.

Prior to closing, Hearst did breach material covenants in the Prairie Tunnel Agreement, by denying and obstructing TSLP's access to its easements, by denying or unreasonably delaying responses to TSLP's requests for assistance in obtaining necessary permits and vault rights for the construction of the Prairie Tunnel, by materially and unreasonably interfering with TSLP's efforts to commence construction of the Prairie Tunnel, and by failing to cooperate with TSLP by providing documents and records reasonably requested by TSLP for the purpose of pursuing such permits and vault rights and commencing such construction.

Following the closing, Hines did breach, and continues to breach, material covenants in the Prairie Tunnel Agreement, by denying and obstructing TSLP's access to its easements, by denying or unreasonably delaying responses to TSLP's requests for assistance in obtaining necessary permits and vault rights for the construction of the Prairie Tunnel, by materially and unreasonably interfering with TSLP's efforts to commence construction of the Prairie Tunnel, and by failing to cooperate with TSLP by providing documents and records reasonably requested by TSLP for the purpose of pursuing such permits and vault rights and commencing such construction.

These breaches did cause and continue to cause TSLP to incur and suffer actual damages, in excess of the jurisdictional minimums of this Court, including but not limited to increased design, architectural, engineering, consultant, construction, and legal fees and expenses in connection with delays to TSLP's efforts to commence and pursue construction of the Prairie Tunnel. Such breaches may also cause additional damages and delays to TSLP with regard to the marketing and development of Block 43.

Pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code, TSLP is entitled to recover its reasonable attorneys' fees in connection with these breach of contract claims, in addition to its actual damages.

VIII.
TRESPASS - HEARST AND HINES

In the Prairie Tunnel Agreement, Hearst did grant to TSLP a perpetual easement upon, over, and through the Chronicle Portion of the Prairie Tunnel for the purpose, among others, of constructing the Prairie Tunnel. That easement runs with the land and binds any subsequent owner of Block 58. Hearst approved the plans and specifications submitted by TSLP for construction of the Prairie Tunnel, authorizing TSLP to proceed with construction in accordance with those plans and specifications.

Prior to the closing of the sale of Block 58, TSLP repeatedly requested that Hearst provide TSLP with access to its easement upon, over, and through the Chronicle Portion of the Prairie Tunnel for the purpose of gathering information necessary to obtain the permits and vault rights necessary to commence construction of the Prairie Tunnel, all in accordance with the plans and specifications approved by Hearst. Hearst repeatedly and intentionally interfered with TSLP's easement rights, by unreasonably denying, delaying, and conditioning TSLP's access to its easement area.

Following the closing of the sale of Block 58, TSLP has requested that Hines provide TSLP with access to its easement upon, over, and through the Chronicle Portion of the Prairie Tunnel for the purpose of gathering information necessary to obtain the permits and vault rights necessary to commence construction of the Prairie Tunnel, all in accordance with the plans and specifications approved by Hearst. Hines has intentionally interfered, and continues to

intentionally interfere, with TSLP's easement rights, by unreasonably denying, delaying, and conditioning TSLP's access to its easement area.

Such interference constitutes the tort of trespass. Such trespass has caused and continues to cause TSLP to incur and suffer actual damages, in excess of the jurisdictional minimums of this Court, including but not limited to increased design, architectural, engineering, consultant, construction, and legal fees and expenses in connection with the delays to TSLP's efforts to commence and pursue construction of the Prairie Tunnel. Such trespass may also cause additional damages and delays to TSLP with regard to the marketing and development of Block 43.

IX.
TORTIOUS INTERFERENCE WITH CONTRACT - HINES

Hearst announced in August 2015 that Block 58 was under contract to Hines. Hearst and Hines had been engaged in discussions and negotiations concerning the sale for months in advance of that announcement. The sale closed on October 23, 2015. During all such times, the Prairie Tunnel Agreement was a valid and binding contract between TSLP and Hearst, and Hines was fully aware of the existence of the agreement and the easements and covenants contained therein.

Prior to the closing, Hines did willfully and intentionally interfere with Hearst's obligations and TSLP's rights under the Prairie Tunnel Agreement, by encouraging and inducing Hearst to breach its obligations to TSLP under the Prairie Tunnel Agreement in the following ways: by denying and obstructing TSLP's access to its easements, by denying or unreasonably delaying responses to TSLP's requests for assistance in obtaining necessary permits and vault rights for the construction of the Prairie Tunnel, by materially and unreasonably interfering with TSLP's efforts to commence construction of the Prairie Tunnel, and by failing to cooperate with

TSLP by providing documents and records reasonably requested by TSLP for the purpose of pursuing such permits and vault rights and commencing such construction.

Such acts of interference by Hines have caused and continue to cause TSLP injury and actual damages and loss, in excess of the jurisdictional minimums of this Court, including but not limited to increased design, architectural, engineering, consultant, construction, and legal fees and expenses in connection with the delays to TSLP's efforts to commence and pursue construction of the Prairie Tunnel. Such interference may also cause additional damages and delays to TSLP with regard to the marketing and development at Block 43.

Such acts of interference by Hines were committed with malice, because they were committed with specific intent to cause substantial injury or harm to TSLP. As a result, TSLP is entitled to recover exemplary damages from Hines, in addition to actual damages.

DECLARATORY JUDGMENT - HINES

There exists an actual dispute and justiciable controversy between TSLP and Hines regarding terms and conditions in the Prairie Tunnel Agreement and the property interests granted in the Prairie Tunnel Agreement. Declaratory relief is necessary to declare the rights, status, and other legal relations of the parties under the Prairie Tunnel Agreement, in order to settle and afford relief to TSLP from uncertainty and insecurity.

Pursuant to the Prairie Tunnel Agreement, TSLP requests a declaratory judgment that:

- The Prairie Tunnel is the subsurface pedestrian passageway that will connect to the Chronicle Connector on one end, run through the existing basement area of the Chronicle Building parallel and adjacent to Travis Street, and run across and under Prairie Street near the intersection of Travis Street and Prairie Street, connecting to Block 43 on the other end.

- The Chronicle Portion of the Prairie Tunnel is that portion of the Prairie Tunnel that will connect to the Chronicle Connector on one end, and run through the existing basement area of the Chronicle Building parallel and adjacent to Travis Street, extending to the halfway point across and under Prairie Street near the intersection of Travis Street and Prairie Street on the other end.
- The Chronicle Connector is the subsurface pedestrian passageway that connects to the Chase Tunnel and Prairie Tunnel on one end, runs through the existing basement area of the Chronicle Building parallel and adjacent to Texas Avenue, and then parallel and adjacent to Milam Street, connecting to the Milam Tunnel on the other end.
- The Chase Tunnel is the subsurface pedestrian passageway connecting Block 58 to the Chase Tower across and under Texas Avenue.
- The Milam Tunnel is the subsurface pedestrian passageway connecting Block 58 to 717 Texas across and under Milam Street.
- TSLP has perpetual easements upon, over, and through the Chronicle Portion of the Prairie Tunnel, the Chronicle Connector, the Chase Tunnel, and the Milam Tunnel. Hines may not take any action to demolish or damage these passageways or the basement areas of the Chronicle Building through which they run.
- TSDP is authorized to commence and proceed with construction of the Prairie Tunnel in accordance with the plans and specifications submitted by TSLP and approved by Hearst. Those plans and specifications call for the construction of the Prairie Tunnel through the existing basement of the Chronicle Building.

- Hines must assist TSLP in obtaining and maintaining the necessary permits and vault rights for the construction of the Prairie Tunnel, and Hines must execute the City of Houston's standard applications and instruments for such permits and vault rights, without regard to whether TSLP has commenced construction of its planned development on Block 43.
- TSLP is permitted to enter upon any such portion of Block 58 as is necessary to access the Chronicle Portion of the Prairie Tunnel for the purpose of obtaining the necessary permits and vault rights for the construction of the Prairie Tunnel and for the purpose of constructing the Prairie Tunnel.
- Hines may not block or unreasonably interfere with TSLP's access to the Chronicle Portion of the Prairie Tunnel for the purpose of obtaining the necessary permits and vault rights for the construction of the Prairie Tunnel and for the purpose of constructing the Prairie Tunnel.
- Hines may not take any action that materially and unreasonably interferes with TSLP's construction of the Prairie Tunnel in accordance with the plans and specifications previously submitted by TSLP and approved by Hearst. Hines may not take any action to demolish or damage the basement areas of the Chronicle Building through which the Prairie Tunnel is to be constructed.
- By executing the Prairie Tunnel Agreement, Hearst waived the right to object, for itself and any successor owner of Block 58, to the general concepts depicted in the conceptual plan, which is Exhibit G to the Prairie Tunnel Agreement, and which depicts a subsurface pedestrian passageway to be constructed in the basement of the Chronicle Building.

- By approving TSLP's plans and specifications for construction of the Prairie Tunnel, Hearst waived the right to object, for itself and any successor owner of Block 58, to the general concepts depicted in the plans and specifications, which depict a subsurface pedestrian passageway to be constructed in the basement of the Chronicle Building.
- Hines must cooperate with TSLP by providing all documents and records reasonably requested by TSLP for the purpose of obtaining and maintaining the necessary permits and vault rights for the construction of the Prairie Tunnel.

Pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, TSLP requests an award of costs and reasonable and necessary attorneys' fees in connection with these requests for declaratory relief.

XI
APPLICATION FOR TEMPORARY RESTRAINING ORDER - HINES

Hearst and Hines have improperly interfered with TSLP's property rights in the easements granted by the terms of the Prairie Tunnel Agreement. They have done so by improperly blocking, delaying, and conditioning access to those easements, and particularly to the easement upon, over, and through the Chronicle Portion of the Prairie Tunnel. Hines now threatens to severely impair TSLP's property rights in those easements by demolition of the basement areas of the Chronicle Building through which the easements run.

TSLP, by attached affidavit evidence, has demonstrated a probable right to success on the merits, because Hines has no legal right to interfere with TSLP's access to its easements and no legal right to impair those easements by demolition of the basement areas of the Chronicle Building through which the easements run.

In the absence of a temporary restraining order, TSLP will suffer immediate and irreparable harm. Interference with the exercise of a property right causes irreparable harm as a matter of law. In the Prairie Tunnel Agreement, Hearst agreed and stipulated, for itself and its successors, that money damages would be an inadequate remedy should the covenants made to TSLP be breached. Hines' demolition plans are imminent.

Accordingly, TSLP requests that the Court issue a temporary restraining order, to preserve the status quo pending a hearing on TSLP's request for temporary injunction, as follows:

- Restraining Hines from interfering with the following easements granted to TSLP in Paragraph 1(a)-(d) on page 4 of the Prairie Tunnel Agreement:
 - a perpetual and non-exclusive easement upon, over and through the Chronicle Portion of Prairie Tunnel solely for the purpose of constructing, renovating, maintaining, operating and/or repairing the Prairie Tunnel in accordance with the terms of the Prairie Tunnel Agreement;
 - a perpetual and non-exclusive easement solely for the purpose of access and passage through the Chronicle Portion of the Prairie Tunnel for the purpose of pedestrian traffic;
 - a perpetual and non-exclusive easement solely for the purpose of access and passage through the Chronicle Connector for the purpose of pedestrian traffic; and
 - a perpetual and non-exclusive easement solely for the purpose of access and passage through the Chase Tunnel and the Milam Tunnel for the purpose of pedestrian traffic.
- Restraining Hines from interfering with TSLP's efforts to obtain the necessary permits and vault rights for construction of the Prairie Tunnel.
- Restraining Hines from pursuing, directing, authorizing, or approving any demolition activities on Block 58 that would in any way demolish or damage the basement areas of the Chronicle Building through which TSLP's easements run.

TSLP has given notice of this proceeding to Hines. TSLP is willing to post a bond to provide security for the harm to Hines, if any, in the unlikely event the temporary restraining order is dissolved.

XII.
REQUEST FOR TEMPORARY INJUNCTION - HINES

Hearst and Hines have improperly interfered with TSLP's property rights in the easements granted pursuant to the terms of the Prairie Tunnel Agreement. They have done so by improperly blocking, delaying, and conditioning access to those easements, and particularly to TSLP's easement upon, over, and through the Chronicle Portion of the Prairie Tunnel. Hines now threatens to severely impair TSLP's property rights in those easements by demolition of the basement areas of the Chronicle Building through which the easements run.

TSLP will, by evidence at the temporary injunction hearing, show a probable right to success on the merits, because Hines has no legal right to interfere with TSLP's access to its easements and no legal right to impair those easements by demolition of the basement areas of the Chronicle Building through which the easements run.

In the absence of a temporary injunction, TSLP will suffer immediate and irreparable harm. Interference with the exercise of a property right causes irreparable harm as a matter of law. In the Prairie Tunnel Agreement, Hearst agreed and stipulated, for itself and its successors, that money damages would be an inadequate remedy should the covenants made to TSLP be breached. Hines' demolition plans are imminent.

Accordingly, TSLP requests that the Court set an evidentiary hearing, and after the hearing, issue a temporary injunction to preserve the status quo pending trial on the merits, as follows:

- Enjoining Hines from interfering with the following easements granted to TSLP in Paragraph 1(a)-(d) on page 4 of the Prairie Tunnel Agreement:
 - a perpetual and non-exclusive easement upon, over and through the Chronicle Portion of Prairie Tunnel solely for the purpose of constructing, renovating, maintaining, operating and/or repairing the Prairie Tunnel in accordance with the terms of the Prairie Tunnel Agreement;
 - a perpetual and non-exclusive easement solely for the purpose of access and passage through the Chronicle Portion of the Prairie Tunnel for the purpose of pedestrian traffic;
 - a perpetual and non-exclusive easement solely for the purpose of access and passage through the Chronicle Connector for the purpose of pedestrian traffic; and
 - a perpetual and non-exclusive easement solely for the purpose of access and passage through the Chase Tunnel and the Milam Tunnel for the purpose of pedestrian traffic.
- Enjoining Hines from interfering with TSLP's efforts to obtain the necessary permits and vault rights for construction of the Prairie Tunnel.
- Enjoining Hines from pursuing, directing, authorizing, or approving any demolition activities on Block 58 that would in any way demolish or damage the basement areas of the Chronicle Building through which TSLP's easements run.
- Enjoining Hines from interfering with TSLP's efforts to construct the Prairie Tunnel in accordance with the plans and specifications for construction of the Prairie Tunnel approved by Hearst.

TSLP is willing to post a bond to provide security for harm to Hines, if any, in the unlikely event the temporary injunction is dissolved.

XIII.
REQUEST FOR PERMANENT INJUNCTION - HINES

Hearst and Hines have improperly interfered with TSLP's property rights in the easements granted pursuant to the terms of the Prairie Tunnel Agreement. They have done so by improperly blocking, delaying, and conditioning access to those easements, and particularly to TSLP's easement upon, over, and through the Chronicle Portion of the Prairie Tunnel. Hines now threatens to severely impair TSLP's property rights in those easements by demolition of the basement areas of the Chronicle Building through which the easements run.

Hines has no legal right to interfere with TSLP's access to its easements and no legal right to impair those easements by demolition of the basement areas of the Chronicle Building through which the easements run.

In the absence of a permanent injunction, TSLP will suffer immediate and irreparable harm. Interference with the exercise of a property right causes irreparable harm as a matter of law. In the Prairie Tunnel Agreement, Hearst agreed and stipulated, for itself and its successors, that money damages would be an inadequate remedy should the covenants made to TSLP be breached. Hines' demolition plans are imminent.

Accordingly, TSLP requests that after trial on the merits, the Court issue a permanent injunction, as follows:

- Enjoining Hines from interfering with the following easements granted to TSLP in Paragraph 1(a)-(d) on page 4 of the Prairie Tunnel Agreement:
 - a perpetual and non-exclusive easement upon, over and through the Chronicle Portion of Prairie Tunnel solely for the purpose of constructing, renovating, maintaining, operating and/or repairing the Prairie Tunnel in accordance with the terms of the Prairie Tunnel Agreement;

- a perpetual and non-exclusive easement solely for the purpose of access and passage through the Chronicle Portion of the Prairie Tunnel for the purpose of pedestrian traffic;
 - a perpetual and non-exclusive easement solely for the purpose of access and passage through the Chronicle Connector for the purpose of pedestrian traffic; and
 - a perpetual and non-exclusive easement solely for the purpose of access and passage through the Chase Tunnel and the Milan Tunnel for the purpose of pedestrian traffic.
- Enjoining Hines from interfering with TSLP's efforts to obtain the necessary permits and vault rights for construction of the Prairie Tunnel.
 - Enjoining Hines from pursuing, directing, authorizing, or approving any demolition activities on Block 58 that would in any way demolish or damage the basement areas of the Chronicle Building through which the easements run.
 - Enjoining Hines from interfering with TSLP's efforts to construct the Prairie Tunnel in accordance with the plans and specifications for construction of the Prairie Tunnel approved by Hearst.

XIV.
CONDITIONS PRECEDENT

All conditions precedent to the institution of this action have occurred or have been waived.

XV.
JURY DEMAND

TSLP demands a trial by jury and is tendering the appropriate fee along with the filing of this petition.

XVI.
PRAYER

Wherefore, premises considered, TSLP prays that upon hearing, the Court award TSLP the following relief:

1. Issuance of a temporary restraining order against Hines in accord with section XI hereof.
2. Issuance of a temporary injunction against Hines in accord with section XII hereof.
3. Issuance of a permanent injunction against Hines in accord with section XIII hereof.
4. Issuance of a declaratory judgment against Hines in accord with section X hereof.
5. An award of actual damages against Hearst and Hines, jointly and severally, for breach of contract and trespass, as claimed in sections VII and VIII hereof.
6. An award of actual damages and exemplary damages against Hines for tortious interference with contract, as claimed in section IX hereof.
7. An award of attorneys' fees and expenses against Hearst and Hines, jointly and severally, for breach of contract, as claimed in section VII hereof.
8. An award of attorneys' fees and expenses against Hines for declaratory relief, as sought section X hereof.
9. An award of prejudgment and postjudgment interest as permitted by law.
10. All other relief to which TSLP may be entitled.

Respectfully submitted,

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