

445

UNOFFICIAL COPY

87007213
87007213

1987 JAN - 6 PM 2: 21
SUBORDINATION, NON-DISTURBANCE

AND ATTORNMENT AGREEMENT

2500

THIS AGREEMENT, made and entered into as of this 31st day of December, 1986, by and among LINPRO CHICAGO LAND LIMITED PARTNERSHIP, an Illinois limited partnership, having an office c/o The Linpro Company, 200 Berwyn Park, Berwyn, Pennsylvania 19312, ("Landlord"), GREYHOUND LINES, INC., a California corporation, having an office at 1602 Greyhound Tower, Phoenix, Arizona 85077 ("Tenant"), and THE BANK OF NEW YORK, a New York banking corporation having an office at 48 Wall Street, New York, New York 10015 ("Lender").

WITNESSETH:

WHEREAS, Lender has made a loan to Landlord in the amount of \$53,000,000 (the "Loan") on or about the date hereof relating to Landlord's acquisition of a certain parcel of land located in Chicago, Illinois, which parcel is more particularly described in Exhibit "A" attached hereto (the "Land"), and the improvements thereon consisting of a five-story building having approximately 352,276 square feet and all other amenities and improvements on the Land (the "Improvements"); and

WHEREAS, the Loan is evidenced by that certain promissory note in the principal amount of \$53,000,000, dated on or about the date hereof, made by Landlord to Lender and secured by, among other things, a Mortgage, Security Agreement and Assignment of Leases and Rents, dated on or about the date hereof (the "Mortgage"), on the Land, the Improvements and other property described in the Mortgage (hereinafter collectively referred to as the "Mortgaged Property"); and

87007213

THIS INSTRUMENT PREPARED IN THE STATE OF NEW YORK.

Box 15

S. THOMAS

UNOFFICIAL COPY

8 7 0 0 7 2 1 3

WHEREAS, Landlord and Tenant have entered into that certain lease agreement, dated December 31, 1986 (the "Lease"), with respect to certain premises (the "Premises") which are part of the Mortgaged Property, all as more particularly set forth in said Lease, a memorandum of said Lease is attached hereto as Exhibit A; and

WHEREAS, Landlord has assigned, pursuant to and under the terms set forth in the Mortgage, all of its right, title and interest in the Lease and the rents payable thereunder to Lender as security for the performance of its obligations made in connection with the Loan; and

WHEREAS, the Mortgage is to be prior in lien to the estate created by the Lease and prior to all right, title and interests of Tenant thereto and thereunder, except as may be otherwise specifically set forth herein; and

WHEREAS, Tenant has requested that Lender give certain assurances that Tenant's possession of the Premises will not, subject to the terms and conditions of this Agreement, be disturbed by reason of foreclosure of the lien of the Mortgage on the Mortgaged Property; and

WHEREAS, Lender is willing to provide such assurances to Tenant upon and subject to the terms and conditions of this Agreement; and

WHEREAS, in order to induce Lender to make the Loan, Landlord and Tenant have agreed to execute and deliver this Agreement to Lender.

NOW, THEREOFRE, in consideration of the premises, the mutual covenants of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do mutually covenant and agree as follows:

87007213

UNOFFICIAL COPY

3 7 0 0 7 2 1 3

1. The Lease is and shall at all times hereafter be subject and subordinate in all respects to the Mortgage and to all increases, amendments, renewals, modifications, substitutions, consolidations, and extensions thereof, and to all other future mortgages held by Lender.

2. Tenant will not terminate the Lease or reduce the rent payable under the Lease, or take any credit or off-set against future rents, notwithstanding any provision in the Lease to the contrary, unless and until Tenant has given Lender notice and Lender shall have failed to cure or remedy such default within thirty (30) days following Lender's receipt of notice from Tenant of such default, provided ^{that} if such default is not capable of being cured by Lender within such thirty (30) day period, Lender shall have a reasonable period of time after the expiration of the cure period to cure such default provided that on or before the expiration of said 30 day period, Lender undertakes to cure such default and Lender diligently proceeds with its efforts to cure. Lender shall have the right, but not the obligation, to remedy or cure any such default.

3. So long as Tenant is not in default in the payment of rent, additional rent or other charges, or in the performance of any of the terms, covenants or conditions of the Lease, Tenant shall not be disturbed by Lender in Tenant's occupancy of the Premises during the original or any renewal term of the Lease or any extension thereof, by reason of foreclosure of the Mortgage, acceptance of a deed in lieu of foreclosure, or exercise of any remedy provided in the Mortgage.

4. No person or entity who exercises a right, arising under the Mortgage or any assignment of the Lease, to receive the rent payable by Tenant under the Lease shall thereby become obligated to Tenant for the performance of any of the terms, covenants, conditions and agreements of Landlord under the Lease. Such receipt of rent by any other party shall not relieve Landlord of its obligations under the Lease, and Tenant shall continue to look to

87007213

Landlord only for performance thereof. Landlord and Tenant agree, and Landlord hereby irrevocably directs Tenant, that Tenant shall make all payments to be made by Tenant under the Lease to such person or entity upon receipt of written notice of the exercise of any such right, and, except for the first month's rent, Tenant agrees not to prepay any sums payable by Tenant under the Lease.

5. If Lender or any successor in interest to Lender shall succeed to the rights of Landlord under the Lease, whether through possession, surrender, assignment, judicial action, subletting, foreclosure action or delivery of a deed in lieu of ~~foreclosure~~ ^{foreclosure} or otherwise, Tenant will attorn to and recognize such successor as Tenant's landlord, and the successor landlord will, provided Tenant is not in default in the payment of rent, percentage rent, additional rent or other charges or in the performance of any of the terms, covenants or conditions of the Lease, and provided there shall be no default, after the expiration of any notice or cure period provided in the Lease, by Tenant under and as defined in the Lease, accept such attornment and recognize Tenant's rights of possession and use of the Premises in accordance with the provisions of the Lease, and such attornment shall be self-operative without further evidence of such attornment and acceptance, and Tenant shall be bound by and shall comply with all the terms, provisions, covenants and obligations contained in the Lease on its part to be performed; provided, however, that nothing contained in this Agreement or any other instrument, including, but not limited to, the Lease, shall impose upon Lender or any successor in interest to Lender an obligation to complete the Improvements or the Premises or any part thereof for the benefit of Tenant.



6. In addition to and not in lieu of the provisions of this Agreement, Lender shall not in any way or to any extent be:

- (a) ~~liable~~ ^{liable} for any act or omission of any landlord (including Landlord) in contravention of any provision of the Lease;
- or



UNOFFICIAL COPY

[Faint, illegible text from a document, possibly a list or table, is visible in the background.]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 7 0 0 7 2 1 3

(b) subject to any offsets, claims or defenses which Tenant might have against any prior landlord (including Landlord); or

(c) bound by any rent or additional rent which Tenant might have paid for more than thirty (30) days in advance to any prior landlord (including Landlord); or

(d) bound by any agreement or modification of the Lease made without Lender's written consent; or

(e) in any way responsible for any deposit or security which was delivered to Landlord but which was not subsequently delivered to Lender.

7. Tenant agrees that if Lender acquires title to the Mortgaged Property as a result of foreclosure of the Mortgage, the acceptance of a deed in lieu of such foreclosure, or obtaining control of the Premises pursuant to the remedies contained in the Mortgage, the laws of the State of Illinois, or ^{otherwise,} ~~otherwise,~~ Lender shall have no personal liability to Tenant; it being agreed by Tenant that Tenant's sole recourse against Lender for any act or omission in contravention of any provision of the Lease shall be to the extent of Lender's interest in the Mortgaged Property, provided that such equity interest is calculated as if the Loan is outstanding. Lender's acquisition of title to or control of the Premises in the manner aforesaid or the performing of any of the obligations of Landlord pursuant to the Lease shall not be construed as an assumption of the Lease by Lender. Upon such acquisition the Lease shall be modified to include the provisions contained herein notwithstanding any other provisions of the Lease.



87007213

8. Tenant hereby certifies to Lender that:

(a) Exhibit "^A~~B~~" is a full, true and complete copy of the Memorandum of Lease;



UNOFFICIAL COPY

8 7 0 0 7 2 1 3

(b) The Lease is in full force and effect and has not been modified, amended or supplemented;

(c) There are no defaults on the part of Landlord or Tenant under the Lease and there exists no event which with the giving of notice or passage of time or both ^{which} would constitute a default thereunder;

(d) Tenant has no present right of offset or defense against any rent due or to become due under the Lease;

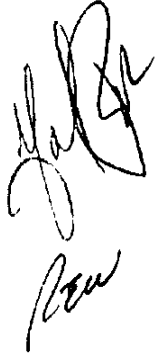
(e) The Lease was duly authorized and entered into and constitutes the valid and binding obligation of Tenant enforceable in accordance with its provisions; and

(f) Tenant has not prepaid any sums payable by Tenant under the Lease; and

(g) The term of the lease commenced on December 31, 1986; Tenant has entered into and accepted possession of the Premises; such Premises are in compliance with the Lease; and Landlord has satisfied or Tenant has waived all conditions of the Lease which were a prerequisite to Tenant's entering into occupancy of the Premises and the effectiveness of the Lease.

9. Tenant agrees to execute such other documents as Lender may reasonably deem necessary to further document or evidence the full subordination of the Lease to the lien of the Mortgage.

10. All notices, demands or requests, and responses thereto, required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by certified or registered mail, postage prepaid, return receipt requested, or nationwide commercial courier service, and addressed to the party as provided below or at such other place as such party may from time to time designate in a



87007213

UNOFFICIAL COPY

8 7 0 0 7 2 1 3

notice to the other parties. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall constitute receipt of the notice, demand or request sent. Any such notice if given to Landlord shall be addressed as follows:

Linpro Chicago Land Limited Partnership
c/o The Linpro Company
200 Berwyn Park
Berwyn, Pennsylvania 19312
Attention: Mr. Eric Eichler

if given to Lender shall be addressed as follows:

The Bank of New York
48 Wall Street, 15th Floor
New York, New York 10005
Attention: Mr. Robert E. Walsh
Vice - President

with a copy to:

Emmett, Marvin & Martin
48 Wall Street
New York, New York 10005
Attention: Mr. Leonard C. Pojednic, Esquire

if given to Tenant shall be addressed as follows:

Greyhound Lines, Inc.
1602 Greyhound Tower
Phoenix, Arizona 85077
Attention: Donise G. Edwards, Esquire

UNOFFICIAL COPY

8 7 0 0 7 2 1 3

11. This Agreement shall be binding upon and inure to the parties, their respective heirs, legal representatives, successors and assigns.

12. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois.

13. This Agreement may not be changed, amended or modified in any manner other than by an agreement in writing specifically referring to this Agreement and executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE BANK OF NEW YORK

BY: 

Robert F. Walsh
Vice President

GREYHOUND LINES, INC.,
A California Corporation

BY: 

Title: Vice President

LINPRO CHICAGO LAND LIMITED PARTNERSHIP
an Illinois limited partnership

By: Linpro Chicago Property I
Limited Partnership
General Partner

BY: 

a general partner

UNOFFICIAL COPY

3 7 0 0 7 2 1 3

STATE OF ARIZONA)

) SS,:

COUNTY OF MARICOPA)

On the 31st day of December, 1986, before me personally came Van Brown, to me known, who being by me duly sworn, did depose and say that he is the Vice President of GREYHOUND LINES, INC., the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.

Mary Ann Duckett
Notary Public

My Commission Expires:

My Commission Expires May 31, 1990

Property of Cook County Clerk's Office

87007213

UNOFFICIAL COPY

3 7 0 0 7 2 1 3

STATE OF NEW YORK)

) SS,:

COUNTY OF New York

On the 2nd day of December, 1986, before me personally came Peter DiLullo, to me known, who, being by me duly sworn, did depose and say that he resides at No. 645 Thornwold Dr. Wheeling, Ill.; that he is the general partner of Linpro Chicago Property I Limited Partnership, the limited partnership described in and which executed the foregoing instrument; which limited partnership is the General Partner of Linpro Chicago Land Limited Partnership the Illinois limited partnership which executed the foregoing instrument; and that he signed his name thereto by like order.

Martha A. Spitzer
Notary Public

My Commission Expires:

Notary Public
Cook County
Commission Expires May 19, 1988

87007213

UNOFFICIAL COPY

8 7 0 0 7 2 1 3

STATE OF NEW YORK)

) SS.:

COUNTY OF NEW YORK)

On the ~~30th~~ ¹⁹⁸⁶ day of December, ~~1985~~, before me personally came Robert E. Walsh, to me known, who, being by me duly sworn, did depose and say that he resides at 277 Alport Circle, Riverdale, N.Y., that he is a Vice President of THE BANK OF NEW YORK, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Martine J. Spuler
Notary Public

My Commission Expires:

MARTINE J. SPULER
Notary Public
County of Cook
Commission Expires May 19, 1988

87007213

UNOFFICIAL COPY

8 7 0 0 7 2 1 3

EXHIBIT A

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

MEMORANDUM OF LEASE

This Memorandum Witnesseth, that by that certain Lease dated 31st day of December, 1986, Linpro Chicago Land Limited Partnership, an Illinois Limited Partnership (Lessor), has leased and demised unto Greyhound Lines, Inc. (Lessee), a California corporation, for a period of six (6) years commencing December 31, 1986, expiring December 30, 1992, the parcel of land, and the building located thereon (as described in Exhibit "A" annexed hereto) situate in the County of Cook and State of Illinois ("Premises").

Lessor shall have the right, at any time or times during the Term of the Lease, to mortgage Lessor's interest in the Premises for any purposes, and Lessee will, if requested by the lender, subordinate its interest in the Premises to the lien of the lender's mortgage or trust deed, provided the lender agrees in writing, in recordable form, not to disturb Lessee's possession of the Premises under the Lease, so long as Lessee is not in default of any of the terms, conditions, and covenants of the Lease, and to accept the performance by Lessee of its covenants and obligations thereunder if such mortgage shall be foreclosed.

This Memorandum of said Lease is made solely for recording purposes and does not in any manner enlarge or reduce the respective rights, privileges, liabilities, or obligations of the parties hereto under the Lease.

In Witness Whereof the parties hereto have executed or caused this Memorandum of Lease to be executed this 31st day of December, 1986.

LESSEE: Greyhound Lines, Inc.

LESSOR: Linpro Chicago Land
Limited Partnership

By [Signature]
Title: Vice President

By Linpro Chicago Property I
Limited Partnership
General Partner

Attest: [Signature]
Assistant Secretary

By [Signature]
General Partner

87007213

UNOFFICIAL COPY

8 7 0 0 7 2 1 3

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

Before me, a Notary Public in and for said County and State, personally appeared
Van Brown and S. A. Windham
and --, respectively, of Greyhound Lines, Inc., a
California Corporation organized and existing under the laws of the State of California,
and who, having been duly sworn, acknowledged the execution of the foregoing
Memorandum of Lease for and on behalf of said corporation.

Witness my hand and Notarial Seal this 31st day of December,
1986.

My commission expires

My Commission Expires May 31, 1990

Mary Ann Duckett
Notary Public
Mary Ann Duckett

Property of Cook County Clerk's Office

87007213

UNOFFICIAL COPY

8 7 0 0 7 2 1 3

EXHIBIT "A"
LEGAL DESCRIPTION
NORTHEAST CORNER CLARK AND RANDOLPH STREETS
CHICAGO, COOK COUNTY, ILLINOIS

PARCEL ONE

The West half of Lot 2, and that part of the West half of the East half of Lot 2 lying West of the West 18 feet of the East 19 feet of said West half of the East Half of Lot 2; and all of Lots 3, 4 and 6, in Block 35 in the Original Town of Chicago, in the Southeast quarter of Section 9, Township 39 North, Range 14 East of the 3rd Principal Meridian, in Cook County, Illinois.

Also Lots 1 to 8, inclusive, in George Smith's Subdivision of Lot 6 in said Block 35.

Also that part of vacated Couch Place which lies north of said Lots 5 and 6 and south of said Lot 3 and said Lot 8, in said Block 35.

PARCEL TWO

The East 1 foot of the West half of the East half of Lot 2 in said Block 35.

PARCEL THREE

The east half of Lot 7, together with that part of the original 18 foot alley north of and adjoining same which lies south of the south line of alley as narrowed by Ordinance of City of Chicago, in Block 17 in the said Original Town of Chicago.

Subject to grant of easement to the City of Chicago for a permanent perpetual and exclusive right easement and right of way for the construction, maintenance and operation of subways and tunnels in, through and under that part of premises in question as set out in the following documents:

Rights of the public and the City of Chicago for a perpetual and exclusive right, easement and right of way in, through and under that part of the West half of the East half of Lot 2 in block 35 in the Original Town of Chicago described as follows:

Beginning at a point on the East line of said West Half of the East half of said lot, 43.0 feet South of the North line of said lot; thence North Westerly along a straight line to a point on the North and South center line of said lot said point being 30.0 feet South of the North line of said lot; thence North along the North and South center line of said lot to the North line of said lot; thence East along the North line of said lot to the North East corner of the West half of the East Half of the said lot; thence South to the place of beginning and below a horizontal plane whose elevation is 9.75 feet below Chicago City Datum (-9.75 Chicago City Datum) and lying between the lines of the afore - described property projected vertically downward to the center of the earth as condemned for subway purposes on petition filed May 3, 1939 in Case 30 C 5191 Circuit Court of Cook County, Illinois.

Excepting from Parcel Three the following air rights in the process of being acquired by the City of Chicago through exercise of the power of eminent domain, and any compensation or awards authorized for their acquisition.

The North 111.00 feet of the east 1/2 of Lot 7 lying above a horizontal plane having an elevation of +22.00 feet above Chicago City Datum, all in Block 17 in the original town of Chicago, in the southeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian in Cook County, Illinois

and

The south 16.00 feet of the north 127.00 feet of the east 1/2 of Lot 7 lying above a horizontal plane having an elevation of +14.66 feet above Chicago City Datum, all in Block 17 in the original town of Chicago, in the Southeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian in Cook County, Illinois

UNOFFICIAL COPY 87007213

and

That part of the east 1/2 of Lot 7, except the north 127.00 feet thereof, lying above a horizontal plane having an elevation of +12.66 feet above Chicago City Datum, all in Block 17 in the original town of Chicago, in the southeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian in Cook County, Illinois.

PARCEL FOUR

All Grantor's right, title and interest in the permanent easement for tunnel under Lake Street between Parcel One and Parcel Three, which easement description is shown on Exhibit "A-1" annexed hereto and described, as follows:

THAT PART OF W. LAKE STREET LYING BETWEEN AND ADJOINING BLOCKS 17 AND 35 IN THE ORIGINAL TOWN OF CHICAGO IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF SAID W. LAKE STREET AT THE INTERSECTION OF SAID LINE WITH THE EAST LINE OF N. GARVEY COURT, SAID EAST LINE OF N. GARVEY COURT BEING ALSO THE WEST LINE OF EAST HALF OF LOT 7 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO, AFORESAID, AND RUNNING

THENCE EAST ALONG SAID NORTH LINE OF W. LAKE STREET, SAID NORTH LINE BEING ALSO THE SOUTH LINE OF AFORESAID BLOCK 17, A DISTANCE OF 31.35 FEET;

THENCE SOUTHWESTWARDLY ALONG AN ARC OF A CIRCLE CONVEX TO THE SOUTHEAST AND HAVING A RADIUS OF 175.35 FEET, A DISTANCE OF 83.35 FEET TO A POINT WHICH IS 8.66 FEET WEST OF THE EAST LINE OF SAID N. GARVEY COURT, EXTENDED SOUTH, AND 72.86 FEET SOUTH OF SAID NORTH LINE OF W. LAKE STREET;

THENCE CONTINUING SOUTHWESTWARDLY ALONG AN ARC OF A CIRCLE CONVEX TO THE NORTHWEST, TANGENT TO LAST DESCRIBED ARC OF A CIRCLE AND HAVING A RADIUS OF 33.25 FEET, A DISTANCE OF 8.26 FEET, TO AN INTERSECTION WITH THE SOUTH LINE OF SAID W. LAKE STREET, AT A POINT 13.45 FEET WEST OF THE EAST LINE OF N. GARVEY COURT, EXTENDED SOUTH;

THENCE WEST ALONG SAID SOUTH LINE OF W. LAKE STREET, BEING ALSO THE NORTH LINE OF BLOCK 35 AFORESAID, A DISTANCE OF 68.63 FEET;

THENCE NORTHEASTWARDLY ALONG A STRAIGHT LINE, A DISTANCE OF 29.63 FEET, TO A POINT WHICH IS 56.39 FEET WEST OF SAID EAST LINE OF N. GARVEY COURT, EXTENDED SOUTH, AND 64.57 FEET SOUTH OF THE NORTH LINE OF SAID N. LAKE STREET;

THENCE NORTHEASTWARDLY ALONG AN ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, TANGENT TO LAST DESCRIBED STRAIGHT LINE AND HAVING A RADIUS OF 88.15 FEET, A DISTANCE OF 32.55 FEET TO A POINT WHICH IS 31.77 FEET WEST OF SAID EAST LINE OF N. GARVEY COURT, EXTENDED SOUTH, AND 43.14 FEET SOUTH OF THE NORTH LINE OF N. LAKE STREET;

THENCE CONTINUING NORTHEASTWARDLY ALONG AN ARC OF A CIRCLE CONVEX TO THE SOUTHEAST, TANGENT TO LAST DESCRIBED ARC OF A CIRCLE AND HAVING A RADIUS OF 167.50 FEET, A DISTANCE OF 71.05 FEET, TO AN INTERSECTION WITH THE AFORESAID EAST LINE OF N. GARVEY COURT, AT A POINT 20.34 FEET NORTH OF THE NORTH LINE OF SAID W. LAKE STREET, AND

THENCE SOUTH ALONG SAID EAST LINE OF N. GARVEY COURT, SAID DISTANCE OF 20.34 FEET, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

CONTAINING 3,814 SQUARE FEET OF LAND, MORE OR LESS.

17-09-424-001

17-09-436-007

-013

-014

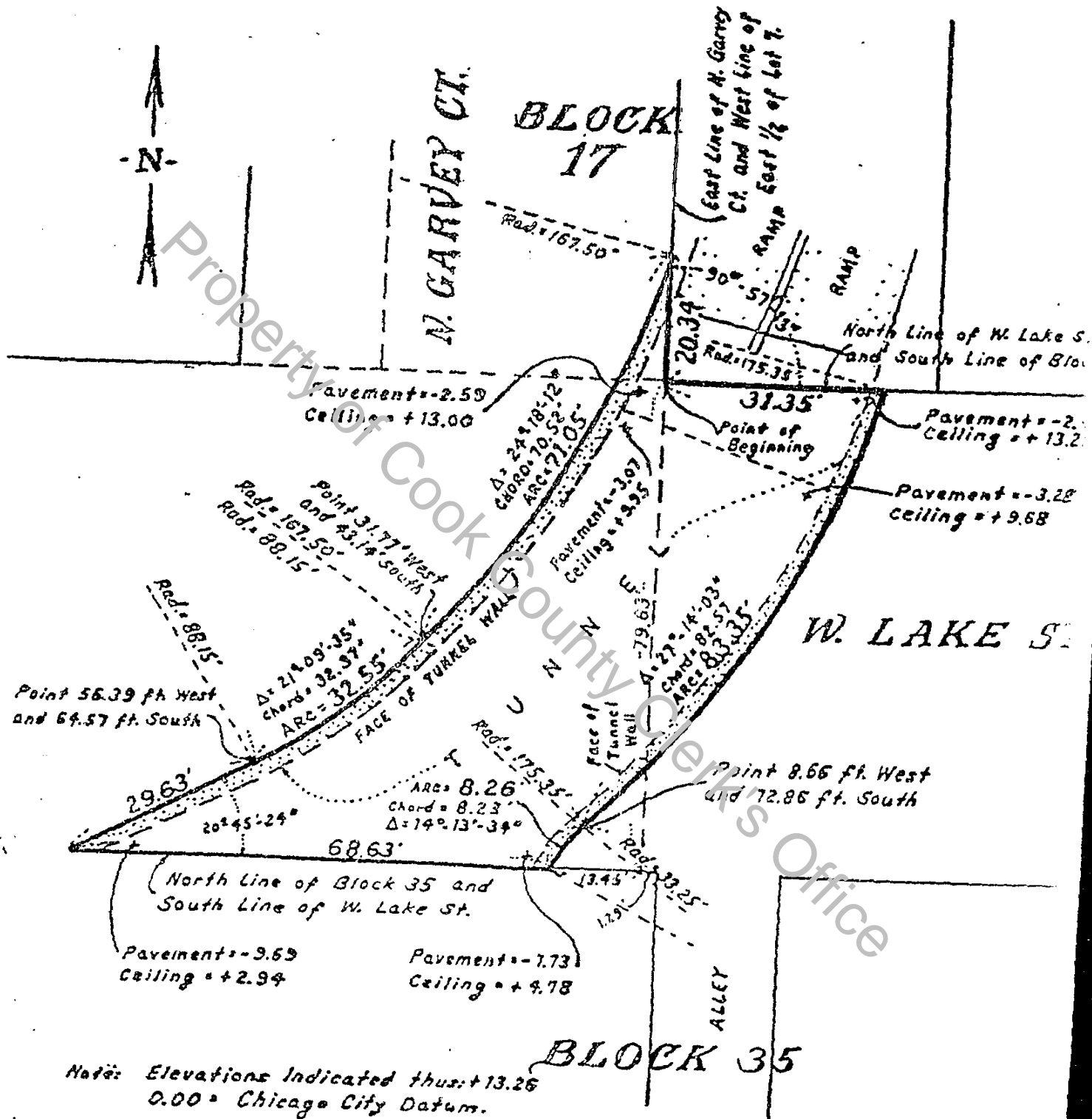
74 W. Randolph

CHICAGO, ILL.

UNOFFICIAL COPY

8 7 0 0 7 2 1 3

EXHIBIT "A-1"



Notes: Elevations Indicated thus: +13.26
0.00 = Chicago City Datum.

CHICAGO GUARANTEE SURVEY COMPANY 105 W. Madison St., Chicago, Illinois 60602 (312) 726-6880
ORDER NO. 8605010-C

87007213