

ORDINANCE NO. F-0426

AN ORDINANCE OF THE CITY OF WHEATON, DUPAGE COUNTY, ILLINOIS,
AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A
CERTAIN LEASE REGARDING PROPERTY LOCATED IN THE CITY OF
WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA

WHEREAS, the Mayor and City Council of the City of Wheaton, DuPage County, Illinois (the "City"), have heretofore determined that it is necessary and advisable for the public health, safety, welfare and convenience of residents of the City that the City undertake a redevelopment project and have heretofore approved a redevelopment plan and designated a redevelopment project area (the "Area") for that portion of the City known as the City of Wheaton Main Street Redevelopment Project Area, all as authorized by the Tax Increment Allocation Redevelopment Act, as amended; and

WHEREAS, the City has acquired certain property within the Area for redevelopment purposes, such property being legally described in Exhibit "A" attached hereto and made a part hereof (the "Subject Realty"); and

WHEREAS, the Subject Realty is currently occupied by Herbert V. Ennsmann (the "Tenant") who desires to continue to occupy the Subject Realty for a certain period of time; and

WHEREAS, the City desires that the Subject Realty continue to be occupied until such time as the redevelopment plans for the Subject Realty are finalized; and

WHEREAS, the City and the Tenant have agreed upon the terms of a lease (the "Lease") regarding the Subject Realty; and

WHEREAS, said Lease is on file with the City Clerk of the City and available for public inspection.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, a home rule municipality in the exercise of its home rule powers, as follows:

Section 1. That the Mayor and City Clerk be and the same are hereby authorized to execute the Lease, in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein.

Section 2. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 3. That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

PASSED and APPROVED by the Mayor and City Council of the City of Wheaton,
DuPage County, Illinois, this 3rd day of January, 2000.

ATTEST:

Emily M. Consalvo
City Clerk

Mayor

James Carr

Ayes:

Roll Call Vote:

Councilwoman Davenport
Councilman Eckhoff
Councilman Gresk
Mayor Carr
Councilman Johnson
Councilwoman Johnson
Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: January 3, 2000

Published: January 4, 2000

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LEASE

DATE OF LEASE	TERM OF LEASE		MONTHLY RENT
	BEGINNING	ENDING	
January 1, 2000	Jan. 1, 2000	Dec. 31, 2000	\$ 4,200
Location of Premises:			
311-315 S. Main Street, Wheaton, Illinois			
Purpose:			
d/b/a Aamco Transmission Service & Repair Facility			

LESSEE

Herbert V. Ennsmann
28W550 Washington Avenue
Winfield, IL 60190

LESSOR

City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187

In consideration of the mutual covenants and agreements herein stated, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor solely for the above purpose the premises located at 315 S. Main Street, and the southern portion of the building located at 311 S. Main Street that is currently occupied by the Lessee (collectively, the "Premises"), together with the appurtenances thereto, for the above Term.

- 1. RENT:** Lessee shall pay Lessor as rent for the Premises the sum stated above, monthly in advance, until termination of this lease, at Lessor's address stated above or such other address as Lessor may designate in writing.
- 2. CONDITION AND UPKEEP OF PREMISES:** Lessee has examined and knows the condition of the Premises and has received the same in good order and repair, and acknowledges that no representations as to the condition and repair thereof have been made by Lessor, or its agent, prior to all the execution of this lease that are not herein expressed; Lessee will keep the Premises, including all appurtenances, in good repair, replacing all broken glass with glass of the same size and quality as that broken, and will replace all damaged plumbing fixtures with others of equal quality, and will keep the Premises, including adjoining alleys, in a clean and healthful condition according to the applicable municipal ordinances and the direction of the proper public officers during the term of this lease at Lessee's expense, and will without injury to the roof, remove all snow and ice from the same when necessary, and will remove the snow and ice from the sidewalk abutting the Premises; and upon the termination of this lease, in any way, will yield up the Premises to Lessor, in good condition and repair, loss by fire and ordinary wear excepted, and will deliver the keys therefor at the place of payment of said rent.

3. **LESSEE NOT TO MISUSE; SUBLET; ASSIGNMENT:** Lessee will not allow the Premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that hereinbefore specified, and will not load floors with machinery or goods beyond the floor load rating prescribed by applicable municipal ordinances, and will not allow the Premises to be occupied in whole, or in part, by any other person, and will not sublet the same or any part thereof, nor assign this lease without in each case the written consent of the Lessor first had, and Lessee will not permit any transfer by operation of law of the interest in the Premises acquired through this lease, and will not permit the Premises to be used for any unlawful purpose, or for any purpose that will injure the reputation of the building or increase the fire hazard of the building, or disturb the tenants or the neighborhood, and will not permit the same to remain vacant or unoccupied for more than ten consecutive days; and will not allow any signs, cards or placards to be posted, or placed thereon, nor permit any alteration of or addition to any part of the Premises, except by written consent of the Lessor; all alterations and additions to the Premises shall remain for the benefit of Lessor unless otherwise provided in the consent aforesaid.
4. **MECHANICS LIEN:** Lessee will not permit any mechanic's lien or liens to be placed upon the Premises or any building or improvement thereon during the term hereof, and in case of the filing of such lien Lessee will promptly pay the same. If default in payment thereof shall continue for thirty (30) days after written notice thereof from Lessor to the Lessee, the Lessor shall have the right and privilege at Lessor's option of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much additional indebtedness hereunder due from Lessee to Lessor and shall be repaid to Lessor immediately on rendition of bill therefor.
5. **INDEMNITY FOR ACCIDENTS:** Lessee covenants and agrees that he will protect and save and keep the Lessor forever harmless and indemnified against and from any penalty or damages or charges imposed for any violation of any laws or ordinances, whether occasioned by the neglect of Lessee or those holding under Lessee, and that Lessee will at all times protect, indemnify and save and keep harmless the Lessor against and from any and all loss, cost, damage or expense, arising out of or from any accident or other occurrence on or about the Premises, causing injury to any person or property whomsoever or whatsoever and will protect, indemnify and save and keep harmless the Lessor against and from any and all claims and against and from any and all loss, cost, damage or expense arising out of any failure of Lessee in any respect to comply with and perform all the requirements and provisions thereof.
6. **NON-LIABILITY OF LESSOR:** Except as provided by Illinois statute, Lessor shall not be liable for any damage occasioned by failure to keep the Premises in repair, nor for any damage done or occasioned by or from plumbing, gas, water, sprinkler, steam or other pipes or sewerage or the bursting, leaking or running of any pipes, tank or plumbing fixtures, in, above, upon or about Premises or any building or improvement

thereon nor for any damage occasioned by water, snow or ice being upon or coming through the roof, skylights, trap door or otherwise, nor for any damages arising from acts or neglect of any owners or occupants of adjacent or contiguous property.

7. **WATER, GAS AND ELECTRIC CHARGES:** Lessee will pay, in addition to the rent above specified, all water rents, gas and electric light and power bills taxed, levied or charged on the Premises, for and during the time for which this lease is granted, and in case said water rents and bills for gas, electric light and power shall not be paid when due, Lessor shall have the right to pay the same, which amounts so paid, together with any sums paid by Lessor to keep the Premises in a clean and healthy condition, as above specified, are declared to be so much additional rent and payable with the installment of rent next due thereafter.
8. **KEEP PREMISES IN REPAIR:** Lessor shall not be obliged to incur any expense for repairing any improvements upon said demised premises or connected therewith, and the Lessee at his own expense will keep all improvements in good repair (injury by fire, or other causes beyond Lessee's control excepted) as well as in a good tenantable and wholesome condition, and will comply with all local or general regulations, laws and ordinances applicable thereto, as well as lawful requirements of all competent authorities in that behalf. Lessee will, as far as possible, keep said improvements from deterioration due to ordinary wear and from falling temporarily out of repair. If Lessee does not make repairs as required hereunder promptly and adequately, Lessor may, but need not, make such repairs and pay the costs thereof, and such costs shall be so much additional rent immediately due from and payable by Lessee to Lessor.
9. **ACCESS TO PREMISES:** Lessee will allow Lessor free access to the Premises for the purpose of examining or exhibiting the same, or to make any needful repairs, or alterations thereof which Lessor may see fit to make and will allow to have placed upon the Premises at all times notice of "For Sale" and "To Rent", and will not interfere with the same.
10. **ABANDONMENT AND RELETTING:** If Lessee shall abandon or vacate the Premises, or if Lessee's right to occupy the Premises be terminated by Lessor by reason of Lessee's breach of any of the covenants herein, the same may be re-let by Lessor for such rent and upon such terms as Lessor may deem fit, subject to Illinois statute; and if a sufficient sum shall not thus be realized monthly, after paying the expenses of such re-letting and collecting to satisfy the rent hereby reserved, Lessee agrees to satisfy and pay all deficiency monthly during the remaining period of this lease.
11. **HOLDING OVER:** Lessee will, at the termination of this lease by lapse of time or otherwise, yield up immediate possession to Lessor, and failing so to do, will pay as liquidated damages for the whole time such possession is withheld, the sum of Three Hundred Dollars (\$300.00) per day; but the provisions of this clause shall not be held

as a waiver by Lessor of any right of re-entry as hereinafter set forth; nor shall the receipt of said rent or any part thereof, or any other act in apparent affirmation of tenancy, operate as a waiver of the right to forfeit this lease and the term hereby granted for the period still unexpired, for a breach of any of the covenants herein.

12. EXTRA FIRE HAZARD: There shall not be allowed, kept, or used on the Premises any inflammable or explosive liquids or materials save such as may be necessary for use in the business of the Lessee, and in such case, any such substances shall be delivered and stored in amount, and used, in accordance with the rules of the applicable Board of Underwriters and statutes and ordinances now or hereafter in force.

13. DEFAULT BY LESSEE: If default be made in the payment of the above rent, or any part thereof, or in any of the covenants herein contained to be kept by the Lessee, Lessor may at any time thereafter at his election declare said term ended and reenter the Premises or any part thereof, with or (to extent permitted by law) without notice or process of law, and remove Lessee or any persons occupying the same, without prejudice to any remedies which might otherwise be used for arrears of rent, and Lessor shall have at all times the right to distrain for rent due, and shall have a valid and first lien upon all personal property which Lessee now owns, or may hereafter acquire or have an interest in, which is by law subject to such restraint, as security for payment of the rent herein reserved.

14. NO RENT DEDUCTION OR SET OFF: Lessee's covenant to pay rent is and shall be independent of each and every other covenant of this lease. Lessee agrees that any claim by Lessee against Lessor shall not be deducted from rent nor set off against any claim for rent in any action.

15. RENT AFTER NOTICE OR SUIT: It is further agreed, by the parties hereto, that after the service of notice, or the commencement of a suit or after final judgment for possession of the Premises, Lessor may receive and collect any rent due, and the payment of said rent shall not waive or affect said notice, said suit or said judgment.

16. PAYMENT OF COSTS: Lessee will pay and discharge all reasonable costs, attorney's fees and expenses that shall be made and incurred by Lessor in enforcing the covenants and agreements of this lease.

17. RIGHTS CUMULATIVE: The rights and remedies of Lessor under this lease are cumulative. The exercise or use of any one or more thereof shall not bar Lessor from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise nor use of any right or remedy by Lessor waive any other right or remedy.

18. FIRE AND CASUALTY: In case the Premises shall be rendered untenantable during the term of this lease by fire or other casualty, Lessor at its option may

terminate the lease or repair the Premises within 60 days thereafter. If Lessor elects to repair, this lease shall remain in effect provided such repairs are completed within said time. If Lessor shall not have repaired the Premises within said time, then at the end of such time the term hereby created shall terminate. If this lease is terminated by reason of fire or casualty as herein specified, rent shall be apportioned and paid to the day of such fire or other casualty.

19. SUBORDINATION: This lease is subordinate to all mortgages which may now or hereafter affect the Premises.

20. PLURALS; SUCCESSORS: The words "Lessor" and "Lessee" wherever herein occurring and used shall be construed to mean "Lessors" and "Lessees" in case more than one person constitutes either party to this lease; and all the covenants and agreements contained shall be binding upon, and inure to, their respective successors, heirs, executors, administrators and assigns and may be exercised by his or their attorney or agent.

21. SEVERABILITY: Wherever possible each provision of this lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this lease shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this lease.

22. SECURITY DEPOSIT: Lessee shall deposit simultaneously with the execution hereof with Lessor the sum of \$4,200 to be retained by Lessor as a security deposit for the performance of Lessee's obligations hereunder. Lessee hereby covenants and agrees that in the event Lessor shall suffer or incur any damages, costs and expenses (including attorneys' fees) on account of which Lessor would be entitled to indemnification from Lessee pursuant to this lease, Lessor may and is hereby expressly authorized and empowered to apply any and all security deposits against and in payment of such damages, costs and expenses (including attorneys' fees) suffered or incurred by Lessor.

Should the entire security deposit, or any portion thereof, be appropriated and applied by Lessor for the payment of overdue rent or other sums due and payable to Lessor by Lessee hereunder or to compensate Lessor for loss or damage sustained by Lessor due to Lessee's breach hereunder, then Lessee shall, upon the Lessor's demand forthwith remit to Lessor a sufficient amount in cash to restore the security deposit immediately. Failure of Lessee to restore said security deposit upon demand shall constitute a default of this lease.

In no event will the security deposit be deemed to constitute, nor used by the Lessee to pay, the first or final month's rent.

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If Lessee shall faithfully perform all of the conditions and agreements in this Lease to be performed by Lessee, the security deposit shall be returned to Lessee within sixty (60) days after termination of this lease.

23. **DRIVEWAY USE:** Lessee shall be entitled to utilize the driveway located to the North of the subject premises for purposes of parking and vehicle storage provided Lessee allows reasonable access along the northerly 10 feet of the driveway for access to the 311 S. Main Street building. Lessor shall govern and control the use of said driveway in its sole discretion.
24. **DRIVEWAY USE:** Lessee covenants and warrants to allow the other tenant of the 311 S. Main Street building the reasonable use of its washroom and toilet during normal business hours.
25. **INSURANCE:** Lessee covenants and agrees with Lessor that during the entire term of this lease the Lessee will indemnify and save harmless the Lessor against any and all claims, debts, demands or obligations which may be made against the Lessor or against the Lessor's title in the premises arising by reason of any negligent acts or omissions of the Lessee, his agents or employees in occupying the premises. If it becomes necessary for the Lessor to defend any action seeking to impose any such liability, the Lessee will pay the Lessor all costs of court and reasonable attorneys' fees incurred by Lessor in such defense, in addition to any other sums which said Lessor may be called upon to pay by reason of the entry of a judgment or decree against the Lessor in the litigation in which such claim is asserted. And to this end, Lessee further contracts and agrees to procure and carry at his own expense insurance against all such liability in a sum no less than \$500,000 for injury to one person or one accident; \$1,000,000 for injury to two or more persons; and \$500,000 property damage. Lessee shall cause said insurance policy of policies to specifically name Lessor as an insured and furnish Lessor with a certificate of said policy or policies. The Lessee shall not do or permit any act or thing that shall render such policy invalid or which shall affect the validity thereof. If Lessee fails or neglects to carry such insurance as herein provided and to pay all insurance premiums therefore or if said policy of insurance shall be canceled for any cause whatsoever and Lessee does not promptly obtain other insurance prior to or simultaneously with such cancellation, the Lessor may effect such insurance in its own name to the extent herein provided and pay the premium therefore, and any sums paid by Lessor for said premiums shall be deemed additional rent hereby reserved and shall be payable by Lessee on demand of Lessor, together with interest at the rate of twenty percent (20%) per annum, until paid by the Lessee.
26. **RENTAL PAYMENTS:** All rental payments and notices shall be made payable to and sent to: City of Wheaton, 303 W. Wesley, Wheaton, IL 60187, Attention: City Manager.

27. ENVIRONMENTAL:

(a) Lessee represents and warrants that he shall handle all waste, waste oil, fluids, grease, solvent, liquids, chemicals or any substance in or about the Premises, all in conformity and compliance with any and all local, county, state, federal, Illinois Environmental Protection Agency, Environmental Protection Agency, or any other such governmental agency charged with the regulation and control of such waste or materials, laws, ordinances and regulations. Lessee agrees to return the Premises clean and free of all such materials and shall indemnify Lessor against any and all claims resulting from Lessee's use of such materials on or about the Premises.

(b) Additionally, but not in lieu of Lessee's affirmative undertakings set forth in this lease, Lessee agrees to indemnify, defend and hold harmless Lessor, its officers, agents and employees, and its grantees, from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by Lessor, its officers, agents or employees, and its grantees, as a result of any matter, condition or state of fact involving Environmental Laws or Hazardous Substances which, in the course of Lessee's occupancy of the Premises, failed to comply with: (i) the Environmental Laws or (ii) any existing common law theory based on nuisance or strict liability.

For purposes of this lease, the term "Hazardous Substance" shall mean at any time, any substance, waste, pollutant, contaminant or material, in solid, liquid or gaseous form, which:

- (i) Is a substance regulated or defined or designated as hazardous, extremely or imminently hazardous, dangerous or toxic pursuant to any law, by any local, state, territorial or federal governmental authority; or
- (ii) Is a substance with respect to which such a governmental authority otherwise requires environmental investigation, monitoring, reporting, or remediation, including but not limited to:
 - (A) All substances, wastes, pollutants, contaminants and materials regulated, or defined or designated as hazardous, extremely or imminently hazardous, dangerous or toxic, under the following federal statutes and their state counterpart, as well as theses statutes' implementing regulations: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq. the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11011 et seq., the Safe

Drinking Water Act, 33 U.S.C. §300f et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq., the Atomic Energy Act, 42 U.S.C. §2011 et seq., and the Hazardous Materials Transportation Act, 42 U.S.C. §1801 et seq.;

- (B) Petroleum and petroleum products including crude oil and any fractions thereof;
- (C) Natural gas, synthetic gas, and any mixtures thereof;
- (D) Radon;
- (E) Radioactive substances;
- (F) Asbestos;
- (G) Urea formaldehyde;
- (H) Polychlorinated biphenyl; and
- (I) Electromagnetic field radiation.

The term "Environmental Laws" shall mean all statutes specifically described in the foregoing sentence and all federal, state and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Substances.

This indemnification will survive the termination of this lease and will be a continuing commitment and obligation of the Lessee, subject to any applicable statute of limitations.

27. ORIGINAL INDUSTRIAL BUILDING LEASE DATED 8/1/89: It is hereby acknowledged by the parties hereto that the Original Industrial Building Lease dated 8/1/89, as amended by that certain First Amendment, dated June 2, 1994 and that certain Second Amendment dated July 8, 1999, between Herbert V. Ennsmann and Evelyn M. Ennsmann, as Lessees and Gary-Wheaton Bank Trust # 6001, as Lessor, has been terminated, and is of no further force or effect.

28. LEASE CANCELLATION: Lessor and Lessee shall each have the right to terminate this Lease Agreement at any time with a 180 day prior written notice.

29. LEGAL DESCRIPTION: See Exhibit "A" attached hereto and made part of this Lease Agreement.

This lease consists of 10 pages numbered 1 to 9, plus Exhibit "A".

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IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the Date of Lease stated above.

LESSEE:

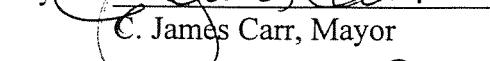
HERBERT V. ENNSMANN



LESSOR:

CITY OF WHEATON

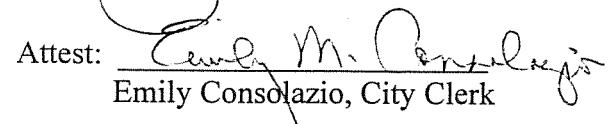
By:



C. James Carr

C. James Carr, Mayor

Attest:



Emily M. Consolazio

Emily Consolazio, City Clerk

ASSIGNMENT BY LESSOR

On this _____, for value received, Lessor hereby transfers assigns and sets over to _____ all right, title and interest in and to the above Lease and the rent thereby reserved, except rent due and payable prior to _____.

GUARANTEE

On this _____, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Guarantor hereby guarantees the payment of rent and performance by Lessee, Lessee's heirs, executors, administrators, successors or assigns of all covenants and agreements of the above Lease.

EXHIBIT "A"

LOT 1 (EXCEPT THAT PART THEREOF LYING NORTH AND EAST OF A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID LOT, 27.4 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT, SAID POINT BEING THE POINT OF INTERSECTION OF SAID WEST LOT LINE WITH A LINE WHICH IS THE EXTERIOR OF THE NORTH WALL OF THE BUILDING NOW SITUATED ON SAID LOT, EXTENDED WEST TO SAID WEST LOT LINE; THENCE EAST ALONG SAID EXTERIOR BUILDING WALL LINE EXTENDED AND ALONG SAID EXTERIOR BUILDING WALL LINE 97.725 FEET, MORE OR LESS, TO THE MID POINT, MEASURED FROM EAST TO WEST OF AN EXISTING NORTH AND SOUTH BUILDING WALL; THENCE SOUTH ALONG THE MIDDLE LINE OF SAID NORTH AND SOUTH BUILDING WALL AND ALONG SAID LINE EXTENDED SOUTH TO THE POINT OF INTERSECTION OF SAID LINE WITH THE SOUTH LINE OF THE NORTHEAST PORTION OF SAID LOT 1, EXTENDED WEST) OF REYNOLDS PLAT OF SURVEY OF PARTS OF LOTS 4, 5, 6 AND 7, TOGETHER WITH A PORTION OF VACATED ALLEY, ALL IN BLOCK 5 OF WARREN L. WHEATON'S ADDITION TO THE TOWN OF WHEATON, IN THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO SAID REYNOLDS PLAT OF SURVEY FILED FOR RECORD ON DECEMBER 10, 1948 AS DOCUMENT 559801, IN DUPAGE COUNTY, ILLINOIS.