

BUSINESS PROPERTY LEASE

APPROVED BY BUILDING OWNERS & MANAGERS ASSOCIATION

This Lease,

Made and executed in duplicate by and between

The LESSORS JOHN NOVAK and MARY NOVAK, Husband and Wife,

and the LESSEE MICHAEL WHEELER doing business as WHEELER'S AUTO PARTS

Witnesseth: That the Lessor does hereby demise and lease unto the Lessee, the following described property, situated in Omaha, Douglas County, Nebraska, to-wit:

DESCRIPTION OF PROPERTY

(Survey hereto attached)

TERM AND PURPOSE

1. The Lessee agrees to use and occupy the premises for used cars and parts

and no other purpose, for the term of Five (5) years, said lease term beginning on February 16, 1965, and ending on February 16, 1970, unless sooner terminated as hereinafter provided.

RENTAL

2. In consideration of the foregoing demise, the Lessee does hereby accept the said lease and hereby covenants to perform the agreements hereby imposed, and to pay the Lessor as rental for said premises the sum of

Nine Thousand Dollars- - - - - - (\$9,000.00), payable as follows:

For the period from February 16, 1965 to March 16, 1965, \$150.00 per month.

For the period from _____ to _____, 19____, \$_____ per month.

For the period from _____ to _____, 19____, \$_____ per month.

said rental to be payable monthly in advance, on the 16th day of each successive month, at the office of John Novak, 3816 M Street, Omaha, Nebraska, Omaha, Nebraska, or at such other place as the Lessor shall direct.

SERVICE

3. It is understood that for the rent mentioned, the Lessor shall furnish service as follows: None

in the manner customary in the building. It is hereby agreed that the Lessor shall have the right to discontinue any service above mentioned or any part thereof whenever and during any period for which bills for rent, or other service are not promptly paid by the Lessee. It is also agreed that the Lessor shall not be liable for damages nor shall the rental hereinbefore stipulated, be abated, for failure to furnish, or delay in furnishing, any service above mentioned, or any part thereof as aforesaid, when such failure to furnish, or delay in furnishing, is occasioned by needful repairs, renewals or improvements, or in whole or in part by any strike or labor controversy, or by any accident or casualty whatsoever, or by the act or default of the Lessee or other parties, or by any unauthorized act or default of any employee of the Lessor, nor for any other cause or causes beyond the reasonable control of the Lessor.

WATER, GAS, ELECTRIC, SEWER USE FEES, ETC., CHARGES

4. The Lessee further agrees to pay from time to time as same may become due, all water, gas, electric light, power or other charges, levied or assessed against, incurred at or chargeable to or in connection with the leased premises during the term of this lease, and to save the premises and Lessor harmless therefrom.

Lessee further agrees to pay any and all sewer use fees which may be assessed against the demised premises whether based on a minimum fee, a percentage charge, or whatever basis said fee shall be levied. In addition to the usual monthly charge for water, the Lessee further agrees to pay any and all additional charges which the Metropolitan Utilities District may make against the demised premises for the use by the Lessee of water for air conditioning purposes.

CONDITION OF PREMISES

5. Lessee has examined said premises prior to his acceptance and the execution hereof, and is satisfied with the physical condition thereof, including all equipment and appurtenances, and his taking possession thereof shall be conclusive evidence of his receipt thereof in good and satisfactory order and repair, except as otherwise specified hereon, and Lessee agrees and admits that no representation as to the condition or repair thereof has been made by the Lessor or his agent, which is not herein expressed or indorsed hereon; and likewise agrees and admits that no agreement or promise to decorate, alter, repair, or improve said premises including all equipment and appurtenances, either before or after the execution hereof, not contained herein, has been made by Lessor or his agent.

REPAIRS

6. In consideration of the foregoing demise and the rate of rental herein stipulated, the Lessee agrees during the term of this lease, at his own expense to keep in good and substantial order and repair, and to make all necessary repairs, renewals, replacements and decorations upon or in connection with, said premises, including all windows and doors and glass, wherever located, and all plumbing, furnace grates, heating equipment, boilers, elevators, pipes, wiring, and gas, steam and electrical fixtures, connections and fittings and all other equipment, fixtures and appurtenances, and excepting only the exterior of said premises (exterior of the premises shall not include windows, doors or any glass). However, it is not the intention of the parties hereto that the foregoing repairs, renewals, replacements, and/or decorations shall be made by the Lessee when such repairs, renewals, replacements and/or decorations are occasioned by fire, windstorm or other unavoidable casualty, except that the Lessee shall make all glass replacements made necessary from any cause other than fire.

ASSIGNING, SUBLETTING, INSURANCE ALTERATIONS, AIR CONDITIONING, COOLING

7. It is provided that the Lessee shall not assign this lease nor let or sublet said premises or any part thereof nor use the same nor permit the same to be used for any purpose other than as above described, nor keep or store in or about the premises anything which will increase the rate of insurance on the building, nor permit any change in occupancy or transfer of this lease by operation of law, or otherwise, nor make any alterations or additions or improvements, including air conditioning and cooling systems in said premises, nor place, affix or display in any manner in, upon or in connection with said premises, any "for rent," display or advertising sign or device without the written consent of the Lessor first obtained, and Lessee will not invalidate any policies of insurance now or hereafter made on said building, and Lessee will pay all extra insur-

ance premium on said building, if any, required on account of extra risk caused by the Lessee's use of the demised premises, and it is further provided that all additions, fixtures or improvements which may be made by the Lessee to said premises, except movable office furniture and trade fixtures, shall be made only after the Lessor has given written consent and shall be the property of the Lessor, and shall remain and be surrendered in good condition with the premises as a part thereof at the termination of this lease, by lapse of time or otherwise. Lessee agrees, upon the termination hereof, to remove all Lessee's property except such as according to the conditions of this lease is to remain as part of the premises.

COMPLIANCE WITH LAWS—KEEP PREMISES SAFE AND CLEAN

8. The Lessee shall keep said premises and operate his business therein in a manner which shall be in compliance with all laws, rules and regulations, orders and ordinances of the city, county, state and federal government and any department of either, and will not suffer or permit the premises to be used for any unlawful purpose, and he will protect the Lessor and save him and the said premises harmless from any and all fines and penalties that may result from or be due to any infractions of or non-compliance with, the said laws, rules, regulations, orders and ordinances. Lessee agrees to keep the said premises and all sidewalks and approaches thereto in a safe condition and free and clear of ice and snow and all other matters which may be dangerous to the public and free of all obstructions.

DAMAGE BY FIRE OR OTHER CASUALTY TERMINATION PRIVILEGES

9. It is provided that in case the said premises, or any part thereof, shall at any time be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be unfit for occupation or use, then the rent hereby reserved, or a fair and just proportion thereof, according to the nature and extent of the damage sustained in loss of occupation of the premises, shall be suspended, cease to be payable and so continue until said premises shall be rebuilt or made fit for occupation and use, or if such damage to the said demised premises or to the building in which the demised premises are situated, is to the extent of 50% or more, then this lease may be terminated at the election of the Lessor, notice of which election, if exercised, shall be given in writing within 25 days from date of casualty, provided also that in case the building containing said premises is totally destroyed or work to put the premises in tenantable condition is not commenced within one month from the time of said damage and continued thereafter, with reasonable diligence, then this lease may be terminated at the election of the Lessee, notice of which election, if exercised, must be given in writing within 35 days from date of casualty.

PERSONAL PROPERTY AT RISK OF LESSEE

10. All personal property in the leased premises shall be at the risk of the Lessee only and the Lessor shall not be or become liable for any damage to said personal property, to said premises or to said Lessee or to any other persons or property caused by water leakage, steam, sewerage, gas or odors or for any damage whatsoever done or occasioned by or from any boiler, plumbing, gas, water, steam or other pipes or any fixtures, equipment or appurtenances whatsoever, or for any damage occasioned by water, snow or ice, being upon or coming through the roof, sky-light, trap door, or otherwise, or for any damage arising from any act or neglect of other tenants, occupants or employees of the building in which the leased premises are situated or arising by reason of the use of, or any defect in, the said building or any of the fixtures, equipment or appurtenances therein, or by the act or neglect of any other person or caused in any other manner whatsoever.

RIGHT OF LESSOR TO ENTER FOR REPAIRS, ALTERATIONS, ETC.

11. The Lessor, his agents or representatives, shall have the right to enter said premises at all reasonable times, to examine or exhibit the same, or to make such repairs, additions or alterations as Lessor may see fit to make for the safety, improvement or preservation thereof, or of the building of which the leased premises are a part or for any other reasonable purpose. The Lessor may display "for rent" signs on or about the said premises and in the windows thereof for sixty days prior to the termination of this lease.

DEFAULT, BANKRUPTCY, ETC.

12. Should default be made by the Lessee in the payment of the rental herein reserved, or any part thereof, when and as herein provided, or should Lessee make default in the performing, fulfilling, keeping or observing of any of the Lessee's other covenants, conditions, provisions or agreements herein contained, or should a petition in bankruptcy be filed by the Lessee or should the Lessee be adjudged bankrupt or insolvent by any court or should a trustee or receiver in bankruptcy or a receiver of any property of the Lessee be appointed in any suit or proceeding by or against the Lessee or should the demised premises become vacant or abandoned or should this lease by operation of law pass to any person other than the Lessee, or should the leasehold interest be levied on under execution, then and in any of such events the Lessor may, if the Lessor so desires, without demand of any kind or notice to the Lessee, or any other person at once declare this lease terminated, and the Lessor may re-enter said premises without any formal notice or demand and hold and enjoy the same thenceforth as if these presents had not been made, without prejudice, however, to any right of action or remedy of the Lessor in respect to any breach by the Lessee of any of the covenants herein contained. In case Lessor does not elect to take advantage of the right to terminate this lease conferred by the foregoing provision of this paragraph, the Lessor shall nevertheless have and Lessor is hereby expressly given the right to re-enter the said premises, with or without legal process, should any of the events hereinbefore specified take place or occur, and to remove the Lessee's signs, and all property and effects of the Lessee or other occupants of said premises, and if the Lessor so desires, to relet the said premises or any part thereof upon such terms, and to such person or persons and for such period or periods as may seem fit to the Lessor, and in case of such reletting, the Lessee shall be liable to the Lessor for the difference between the rents and payments herein reserved and agreed upon for the residue of the entire stipulated term of this lease and the net rent for such residue of the term realized by the Lessor by such reletting, such net rent to be determined by deducting from the entire rent received by Lessor from such reletting the expenses of recovering possession, reletting, altering and repairing said premises and collecting rent therefrom; and the Lessee hereby agrees to pay such deficiency each month as the same may accrue, the Lessee to pay to the Lessor within five (5) days after the expiration of each month during such residue of the term, the difference between the rent and payments for said month as fixed by this lease and the net amount realized by the Lessor from the premises during said month.

VACATION OF PREMISES BY LESSEE LIEN ON PERSONAL PROPERTY

13. If the Lessee shall not promptly remove all his property from said premises whenever the Lessor shall become entitled to the possession of said premises as herein agreed, the Lessor, may, without notice, remove the same, or any of the same, in any manner that the Lessor may choose, and the Lessee will pay the Lessor, on demand, any and all expenses incurred in such removal, and also storage on said effects for any length of time during which the same shall be in the Lessor's possession or control, or if the Lessee shall at any time vacate or abandon said premises, and leave any goods or chattels in, upon or about the premises, for a period of ten days after such vacation or abandonment, or after the termination of this lease in any manner whatsoever, then the Lessor shall have the right to sell all or any part of said goods and chattels, at public or private sale, without giving any notice to the Lessee, or any notice of sale, all notices required by statute or otherwise being hereby expressly waived, and to apply the proceeds of such sale, first to the payment of all costs and expenses of conducting the sale or caring for or storing the goods and chattels; and, second, to apply the balance, if any, to any indebtedness due from the Lessee to the Lessor; and third, to deliver any additional surplus, on demand in writing, to the Lessee. It is further agreed that all the goods, chattels, fixtures and other personal property belonging to said Lessee, which are, or may be put into the said leased premises during said term, whether exempt or not from sale under execution and attachment under the laws of the State of Nebraska, shall at all times be bound with a first lien in favor of said Lessor, and shall be chargeable for all rent hereunder and the fulfillment of the other covenants and agreements herein contained, which said lien may be enforced in like manner as a chattel mortgage, or in any other manner afforded by law.

CONTINUED OCCUPANCY OF PREMISES

14. Lessee covenants to, and it is of the essence of this lease that the Lessee shall, continuously and uninterruptedly during the term of this lease, occupy and use the premises for the purpose hereinabove specified, except while premises are untenable by reason of fire or other unavoidable casualty, and in this connection it is agreed that in case of breach of this covenant the Lessee shall in addition to the rental hereinabove provided for, pay to the Lessor monthly a sum equal to 25% of the monthly rental stipulated herein, for each and every month during which the premises are not so continuously and uninterruptedly used and occupied, as liquidated damages for the Lessee's breach of covenant, it being recognized by the parties that the exact amount of damages to the Lessor on account of such breach cannot be accurately ascertained. This provision shall, however, in no wise abridge or affect any other right or remedy which the Lessor may have on account of or in connection with the Lessee's breach of this covenant.

Provided also, and this lease is upon these express conditions, that the Lessor and the Lessor's successors or assigns shall have the right to terminate this lease absolutely at the end of any calendar month by first giving to the Lessee, or the Lessee's assigns, or by leaving at said demised premises, addressed to the Lessee, at least six months before the date of such termination, a written notice of the Lessor's intention to remodel, remove or demolish the said building, or to sell, or make a ground lease of the land thereunder, the rate of rent herein stipulated being the consideration for this agreement.

15. The Lessee agrees at the termination of this lease, by lapse of time or otherwise, to forthwith leave, surrender and yield up the demised premises in good and substantial order and repair. It is understood and agreed that this lease shall not extend beyond the term herein granted, and a holding over or continuance in the occupancy of the demised premises shall not work an extension of the said lease, but in any and all such cases, the Lessee shall be a trespasser or a tenant at will at the option of the Lessor, subject to removal by the said Lessor by summary process and proceedings, it being provided further that an acceptance of rent by the Lessor during such holding over period, shall operate to create a tenancy from month to month only, terminable upon thirty days' notice, and in such case all provisions of this lease not inconsistent with a tenancy from month to month shall remain in force.

ACCEPTANCE OF RENT AFTER PROCEEDINGS

16. It is agreed that after the service of notice or the commencement of suit, or after final judgment for possession of the premises, the Lessor may receive and collect any rent due without prejudice to, nor waiver of or effect upon the said notice, suit or judgment.

CHARGES ADDED TO RENT

17. In the event of the failure of the Lessee to perform any of the covenants, agreements or conditions herein contained, the Lessor shall have the right but shall not be obligated to pay any sum of money or incur any expense which should have been paid or incurred by the Lessee in the performance of any such covenant, agreement or condition. The Lessee covenants that in case the Lessor, by reason of the failure of the Lessee to perform any of the covenants, agreements, or conditions herein contained, shall be compelled to pay or shall pay any sum of money, or shall be compelled to do or shall do any act which requires the payment of money, then the sum or sums so paid or required to be paid, together with interest, costs and damages, shall be added to the installment of rent, next becoming due and shall be collectible as additional rent in the same manner and with the same remedies as if it had been originally reserved, any sum so paid by Lessor to bear interest at the rate of 6% per annum from date of payment by Lessor to date of repayment by Lessee.

WAIVER—NONE

18. The failure of the Lessor to insist upon a strict performance of any of the covenants or conditions of this lease or to exercise any right or option herein conferred in any one or more instances, shall not be construed as a waiver or a relinquishment for the future of any such covenants, conditions, rights or options, but the same shall remain in full force and effect; and the doing by the Lessor of any act or thing which Lessor is not obligated to do hereunder shall not be deemed to impose any obligation upon the Lessor to do any such act or thing in the future or in any way change or alter any of the provisions of this lease.

SURRENDER INVALID UNLESS WRITTEN

19. No surrender of the premises or of the remainder of the term herein shall be binding upon the Lessor unless accepted by the Lessor in writing. Without limiting the scope or effect of the last preceding sentence, it is agreed that the receipt or acceptance of the keys to the premises by the Lessor shall not constitute an acceptance of a surrender of said premises.

LESSOR'S RIGHTS CUMULATIVE—NO CHANGE HEREOF EXCEPT IN WRITING

20. All rights and remedies of the Lessor under or in connection with this lease shall be cumulative and none shall be exclusive of any other rights or remedies allowed by law. No agreements shall be held as changing or in any manner modifying, adding to or detracting from any of the terms or conditions of this lease, unless such agreement shall be in writing, executed by both parties hereto.

AIR CONDITIONING AND WATER SUPPLY

21. In event Lessee wishes to install any air conditioning or cooling system in the leased premises during the term of this lease, Lessee will first submit to Lessor for approval all plans and specifications therefor, and no work shall be started until Lessor shall give written consent therefor.

Lessee will, at his own expense, make all necessary changes in water supply, discharge and waste lines, together with all changes in electrical wiring resulting from installation of such equipment.

Lessee agrees that any air conditioning or cooling system shall receive its cold water supply from the main supply of the building and shall be measured through a special meter to be installed and maintained by Lessor at the expense of Lessee. All water used by Lessee for air conditioning whether presently installed or added subsequently by Lessee, shall be paid for by Lessee each month in addition to the agreed rent and other charges, including regular or other special use water charges. Lessor shall have the right of access to such meter when it is read and to inspect and keep it in repair. Lessee shall not connect with or in any manner interfere with any other part of the water system of the building.

EXPLANATORY PROVISION

22. The words "Lessor" and "Lessee" shall be taken to include and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and shall be taken in the plural sense, wherever the context requires, and all pronouns used herein and referring to said parties shall be construed accordingly, regardless either of the number or gender thereof.

Headings of the various paragraphs herein are inserted merely as a matter of convenience and for reference and shall not be considered as in any manner defining, limiting or describing the scope or intent of the particular paragraphs to which they refer or as affecting the meaning or construction of the language in the body of such paragraphs.

Option is granted to the Lessee to purchase said real estate for a period of Five (5) years from this date for the total sum of Twelve Thousand Dollars (\$12,000.00) cash, said option to be exercised prior to the termination of this lease or upon the termination thereof.

All rentals are terminated upon the purchase of said premises or upon the exercise of the option.

Seller agrees to furnish good and marketable title and convey by Warranty Deed, free and clear of any encumbrances whatsoever. Abstract to be furnished by the Seller and marketable title to be determined by buyer's attorney.

This lease shall be binding upon all the heirs of John and Mary Novak, their executors, administrators or assignees.

Lessee agrees to pay any increase in taxes due after this date.

Since it is understood that Lessor does not now have possession of the premises, it is hereby covenanted and agreed that if the demised premises above described shall not be available for occupancy at the date named in said lease as the time when the lease term is to commence, then said lease shall commence on the date when said premises shall be available for occupancy, and a pro rata abatement of the rental herein provided shall be made until said premises are available for occupancy but the expiration of the said lease shall remain the same; and, the Lessor shall not be liable for any loss or damage of any kind whatsoever that the Lessee may sustain or claim to have sustained by reason of such delay.

Until this lease is executed on behalf of all parties hereto, it shall be construed as an offer of proposed Lessee to proposed Lessor. Time being of the essence, this lease must be completed on behalf of all parties on or before _____

February 16, 1965. to be effective.

IN WITNESS WHEREOF, the parties hereto have executed this lease this 16th day of February 1965.

WITNESS:

<u>Henry R. Messner</u>	<u>John Novak</u>	Lessor
<u>Henry R. Messner</u>	<u>Mary Novak</u>	Lessor
<u>Henry R. Messner</u>	<u>Whitlock's Auto Parts</u>	Lessee
	<u>Michael R. Whitlock</u>	Lessee

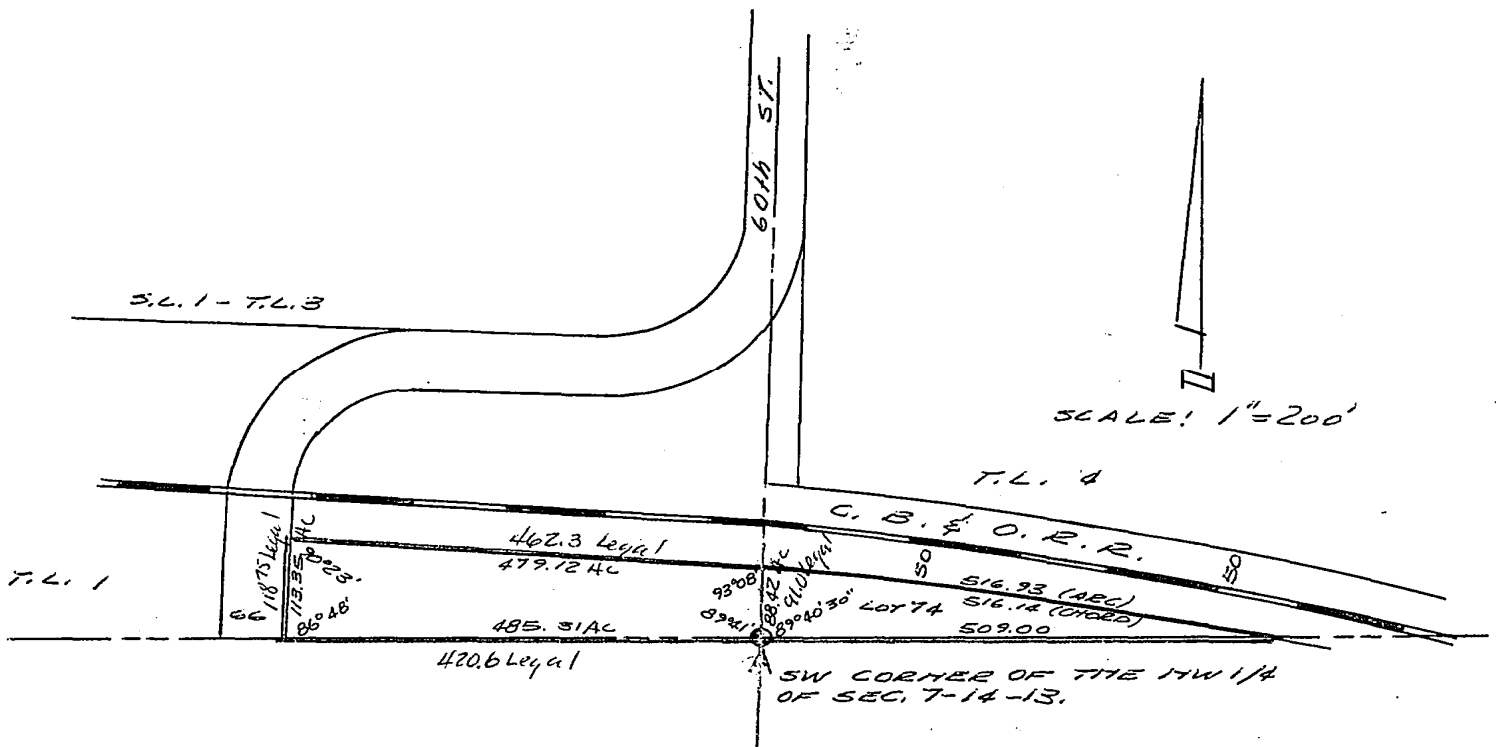
BLDG PERMIT NO. _____

DATE: _____

This is to certify that I, the undersigned Registered Land Surveyor have surveyed the lot or tract of land hereinafter set forth and have placed permanent markers at each corner as required by Sections 81-8108 to 81 8127 of the Statutes of Nebraska and Municipal Code Section 3712.030 Par. 8.

LEGAL DESCRIPTION OF LOT OR TRACT OF LAND: Lot 74, South Side Acres, an Addition in Douglas County, Nebraska, and also a tract of land beginning at the SE corner of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 12, T 14, R 12E of the 6th P. M., running thence West 420.6 feet to a road; thence North 118.75' to the South line of the R.O.W. of B & M Railroad, thence Southerly along said R.O.W., 462.3 feet to the East line of said SE $\frac{1}{4}$ of NE $\frac{1}{4}$, thence South along Section line 91' to the place of beginning.

PLAT TO SCALE, LOT OR TRACT OF LAND INCLUDING STREETS, ALLEYS & ADJACENT LOTS:



OFFICIAL ADDRESS

DATE OF SURVEY OCT 14 1964

William H. Pappas
Reg. Land Surveyor

REGISTRATION NO. 63

DATE RECEIVED: _____

Lamp, Rynearson & Associates, Inc.
420 South 17th Street
Omaha, Nebraska

seal

MC.

B-PI-144

7
18 DAY February 1965 AT 2:57 P.M. THOMAS J. O'CONNOR, REGISTER OF DEEDS