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BK1759 P3364  
PRESENTED FOR  
REGISTRATION  
AND RECORDED

This Instrument Prepared By,  
and After Recordation Return To:

Howard L. Borum, Esq.  
Carruthers & Roth, P.A.  
Post Office Box 540  
Greensboro, North Carolina 27402

'92 OCT 15 P1:18

L.E. SPEAS  
REGISTER OF DEEDS  
FORSYTH CO. N.C.  
SUBORDINATION AND  
INTERCREDITOR AGREEMENT

\$30.00  
Karen Pierce

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT ("Agreement"), made and entered into this 9th day of October, 1992, by and among JOSEPH C. HEDGPETH, II, acting as Trustee as hereinafter stated, of Forsyth County, North Carolina, hereinafter called the "Trustee"; BANK ONE, MILWAUKEE, NA, a national banking association, as agent, hereinafter called the "Agent"; GRAVELY INTERNATIONAL, INC. (f/k/a G. Acquisition Company Inc.), a North Carolina corporation, hereinafter called "Gravely"; HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation, hereinafter called "Harris Trust"; and FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association, hereinafter called "First Union";

WITNESSETH:

THAT, WHEREAS, Gravely heretofore executed and delivered to Kenneth M. Greene, as Trustee for the benefit of Agent, as agent for (i) the "Banks" which are parties to that certain Revolving Credit Agreement ("Credit Agreement") dated July 19, 1991, as amended, entered into by and among Ariens Company ("Ariens"), Agent and the Banks, and (ii) Aid Association for Lutherans ("AAL") under that certain General Pledge and Security Agreement dated March 28, 1991, as amended, among Gravely, Agent and the other parties thereto for the benefit of Banks and AAL, as beneficiary, a Deed of Trust dated July 19, 1991, and recorded in Book 1720, Page 2148, Forsyth County Registry, to secure the "obligations" (as such term is defined in the Deed of Trust) of Gravely to Agent, Banks and AAL; and

WHEREAS, pursuant to a certain Substitution of Trustee Indenture dated January 6, 1992, and recorded in Book 1739, Page 117, Forsyth County Registry, Agent substituted the Trustee as the Trustee in the said Deed of Trust in the place and stead of the said Kenneth M. Greene, Trustee; and

WHEREAS, the said Deed of Trust was amended by a certain First Amendment to Deed of Trust dated January 6, 1992, entered into by and among Gravely, Trustee, and Agent, and recorded in Book 1739, Page 119, Forsyth County Registry (the said Deed of Trust as so modified by the First Amendment thereto is hereinafter called the "Bank One Deed of Trust"); and

WHEREAS, the Bank One Deed of Trust encumbers certain real property located in Forsyth County, North Carolina, described therein and in Exhibit A which is attached hereto and incorporated herein by reference thereto (the "Property"); and

WHEREAS, as further security for the obligations, Gravely has granted to Agent a security interest in fixtures now or hereafter attached to the Property (the "Fixtures") described in those certain UCC Fixture Filing Financing Statements, filed as filing no. 195404 and recorded in Book 1720, Page 2923, Forsyth County Registry, and filed as filing no. 0804680 in the office of the Secretary of State of North Carolina (collectively, the "Bank One Financing Statements"); and

WHEREAS, First Union and Harris Trust are two of the Banks under the Credit Agreement, and Ariens and Gravely have requested that First Union and Harris Trust renew and restructure the outstanding revolving loans (the "Original Revolving Loans") owed by Ariens to First Union and Harris Trust under the Credit Agreement and guaranteed by Gravely; and

WHEREAS, Ariens proposes to execute and deliver to each of First Union and Harris Trust a Promissory Note in the amount of \$1,187,973.00 and \$793,082.44, respectively (the "Notes"), which will renew and restructure the Original Revolving Loans owing to First Union and Harris Trust under the Credit Agreement, and Gravely proposes to execute a Guaranty Agreement in favor of each of First Union and Harris Trust (the "Guaranties") confirming its continuing guaranty of the Original Revolving Loans which are being renewed and restructured by First Union and Harris Trust in accordance with the provisions of the Notes, all of which obligations are to be secured by a first lien Deed of Trust (the "First Union/Harris Deed of Trust") encumbering the Property recorded concurrently with this Agreement in the Forsyth County Registry, and granting a first lien security interest in the Fixtures to be perfected by the filing of UCC Fixture Filing Financing Statements in the Forsyth County Registry and in the office of the Secretary of State of North Carolina (the "First Union/Harris Financing Statements"); and

WHEREAS, First Union and Harris Trust will restructure the Original Revolving Loans owing to them only if (a) Agent and the Trustee will subordinate the lien of the Bank One Deed of Trust to the lien of the First Union/Harris Deed of Trust and (b) Agent will subordinate its security interest in the Fixtures to the security interest in the Fixtures to be granted to First Union and Harris Trust under the First Union/Harris Deed of Trust; and

WHEREAS, Agent has agreed to subordinate its security interest in the Fixtures to the security interest in the Fixtures to be granted to First Union and Harris Trust and has agreed to subordinate the lien of the Bank One Deed of Trust to the lien of the First Union/Harris Deed of Trust and has requested the Trustee to join in said subordination;

NOW, THEREFORE, in consideration of the premises, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the parties hereto do hereby agree as follows:

1. Subordination. Agent and the Trustee do hereby contract and agree with Gravely that Gravely may execute and deliver to Joseph C. Hedgpeth, II, Trustee, for First Union and Harris Trust, as beneficiaries, the First Union/Harris Deed of Trust encumbering the Property to secure the Guaranties and all other indebtedness, obligations and liabilities of Gravely and/or Ariens secured thereby, and that the lien of the First Union/Harris Deed of Trust and the First Union/Harris Financing Statements shall be a lien and security interest upon the Property and the Fixtures superior to the lien and security interest of the Bank One Deed of Trust and the Bank One Financing Statements now held by Agent and/or Trustee to the same extent as though the First Union/Harris Deed of Trust and the First Union/Harris Financing Statements were recorded prior in point of time to the Bank One Deed of Trust and the Bank One Financing Statements; and to carry out said purpose, the Trustee and Agent do hereby release, remise and forever quitclaim unto Gravely their title to and lien and security interest upon the Property and the Fixtures to the extent only that the lien and security interest of the Bank One Deed of Trust and the Bank One Financing Statements shall be subordinate to the lien and security interest of the First Union/Harris Deed of Trust and the First Union/Harris Financing Statements. It is understood and agreed that except for such subordination, the Bank One Deed of Trust and the Bank One Financing Statements, and all and singular the terms and conditions thereof, shall be and remain in full force and effect.

2. Release of Subordinate Property and Fixtures. Agent agrees, whether or not a default has occurred in payment of the obligations secured by the Bank One Deed of Trust and the Bank One Financing Statements, to release or otherwise terminate the lien and security interest under the Bank One Deed of Trust and the Bank One Financing Statements in all or any portion of the Property or the Fixtures upon written request of First Union and Harris Trust to the extent necessary to permit all or such portion of the Property or Fixtures to be sold or otherwise disposed of by any one or more of First Union, Harris Trust, their agents, or Gravely (with the consent of First Union and Harris Trust), whether or not in the ordinary course of Gravely's business; provided, however, that substantially contemporaneously with such release, the proceeds from such sale or disposition (net of customary closing costs and prorations and payments which the buyer requires to be paid as a condition of the sale and which First Union and Harris Trust permit to be paid) are applied as a permanent reduction of the Obligations owing to First Union and Harris Trust secured by the First Union/Harris Deed of Trust and the First Union/Harris Financing Statements and such net proceeds shall be sufficient to satisfy in full all of the Obligations owing to First Union and Harris, and any surplus proceeds remaining after payment in full of such Obligations are applied to the obligations secured by the Bank One Deed of Trust after giving effect to this Agreement.

3. Authority. Agent and Trustee severally represent and warrant that this Agreement was duly authorized, executed and delivered by each of them and constitutes the legal, valid and

binding obligation of each of them, enforceable against each of them in accordance with its terms.

4. Subsequent Modifications to First Union/Harris Trust Loan Documents. Subject to the provisions of Section 5 below, Agent and Trustee acknowledge and agree that First Union and Harris Trust may, from time to time, extend, modify, supplement, consolidate or otherwise amend the Notes, the Guaranties, the First Union/Harris Deed of Trust, or the First Union/Harris Financing Statements, and that any such extension, modification, supplementation, consolidation or amendment may be made without in any way impairing or affecting this Agreement, or the prior lien and security interest of the First Union/Harris Deed of Trust or the First Union/Harris Financing Statements in and to the Property and the Fixtures for the full amount of the Obligations evidenced and secured by the First Union/Harris Deed of Trust.

5. Restrictions on Modifications to First Union/Harris Trust Loan Documents. Notwithstanding the provisions of Section 4 above, First Union and Harris Trust agree with the Agent that, without the prior written consent of the Agent, they shall not enter into with Ariens or Gravely any written amendments, modifications or restatements of the Notes, the Guaranties, the First Union/Harris Deed of Trust or the First Union/Harris Financing Statements, if the effect of any such amendment, modification or restatement would: (a) shorten the maturity of either or both of the Notes, increase the principal amount of either or both of the Notes or the interest thereon, or shorten the time of payment of the principal amount of either or both of the Notes or the interest thereon other than as provided in the Notes; (b) increase the amount of any of the Obligations secured by the First Union/Harris Deed of Trust and the First Union/Harris Financing Statements or increase or substitute any collateral for the Obligations; or (c) amend, or increase the number of, any event which constitutes an "Event of Default" under any of such documents; provided, however, that the failure of either First Union or Harris Trust to obtain the prior written consent of the Agent to any of the foregoing shall not affect this Agreement, or the prior lien and security interest of the First Union/Harris Deed of Trust or the First Union/Harris Financing Statements in and to the Property and the Fixtures, or affect the subordination of the lien of the Bank One Deed of Trust and the Bank One Financing Statements to the lien of the First Union/Harris Deed of Trust and the First Union/Harris Financing Statements pursuant to Section 1 hereof.

6. Further Assurances. Agent and Trustee agree to execute any and all instruments or documents, including additional agreements, deemed necessary or appropriate by First Union and Harris Trust in order to effectuate the provisions of this Agreement.

7. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, each of the parties hereto and their respective heirs, successors, and assigns.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

9. Counterparts. The parties hereto may execute this Agreement in multiple counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart.

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

BANK ONE, MILWAUKEE, NA, as Agent

By: *James W. Eads*  
Title: Vice President

ATTEST:

*James H. Smyth*  
Secretary

[CORPORATE SEAL]

HARRIS TRUST AND SAVINGS BANK

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

ATTEST:

\_\_\_\_\_  
Secretary

[CORPORATE SEAL]

FIRST UNION NATIONAL BANK OF NORTH CAROLINA

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

ATTEST:

\_\_\_\_\_  
Secretary

[CORPORATE SEAL]

*Joseph C. Hedgpeth* (SEAL)  
Joseph C. Hedgpeth, II, Trustee

ARIENS.SIA  
7/HLB/10-9-92(FUNB-ARIENS)

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

9. Counterparts. The parties hereto may execute this Agreement in multiple counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart.

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

BANK ONE, MILWAUKEE, WA, as Agent

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

ATTEST:

\_\_\_\_\_  
Secretary

[CORPORATE SEAL]

HARRIS TRUST AND SAVINGS BANK

By: *[Signature]*  
Title: VP

ATTEST:

*[Signature]*  
ASST. Secretary

[CORPORATE SEAL]

FIRST UNION NATIONAL BANK OF NORTH CAROLINA

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

ATTEST:

\_\_\_\_\_  
Secretary

[CORPORATE SEAL]

\_\_\_\_\_  
Joseph C. Hedgpath, II, Trustee (SEAL)

ARIENS.BIA  
7/MLB/10-9-02(FUMB-ARIENS)

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8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

9. Counterparts. The parties hereto may execute this Agreement in multiple counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart.

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

BANK ONE, MILWAUKEE, NA, as Agent

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

ATTEST:

\_\_\_\_\_  
Secretary  
[CORPORATE SEAL]

HARRIS TRUST AND SAVINGS BANK

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

ATTEST:

\_\_\_\_\_  
Secretary  
[CORPORATE SEAL]

FIRST UNION NATIONAL BANK OF NORTH CAROLINA

By: AC Lloyd  
Title: Vice President

ATTEST:  
Wanda U. Parks  
Assistant Secretary  
[CORPORATE SEAL]

\_\_\_\_\_  
(SEAL)  
Joseph C. Hedgpeth, II, Trustee

ARIENS.BIA  
7/HLB/10-9-92(FUNB-ARIENS)

STATE OF WISCONSIN

COUNTY OF Milwaukee

I, Ola Tahnke, a Notary Public of the said State and County do hereby certify that Frances C. Smyth personally appeared before me this day and acknowledged that she is Secretary of BANK ONE, MILWAUKEE, NA, a national banking association, as Agent, and that by authority duly given and as the act of the association, the foregoing instrument was signed in its name by its Vice President, sealed with its seal and attested by Fran Smyth as its Secretary.

WITNESS my hand and official stamp or seal, this 12th day of October, 1992.

Ola Tahnke  
Notary Public

My commission expires: 3-24-96



## STATE OF ILLINOIS

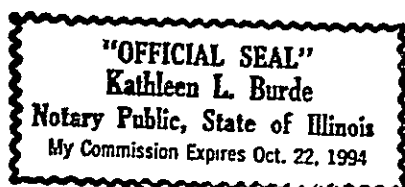
## COUNTY OF COOK

I, Kathleen L. Burde, a Notary Public of the said State and County do hereby certify that LINDA L. Schwaab personally appeared before me this day and acknowledged that she is Assistant Secretary of HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its VICE President, sealed with its corporate seal and attested by LINDA L. Schwaab as its Secretary.

WITNESS my hand and official stamp or seal, this 9th day of October, 1992.

Kathleen L. Burde  
Notary Public

My commission expires: 10/22/94




STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Vinnia E. Nicholson, a Notary Public of the said State and County do hereby certify that Marcia A. Combs personally appeared before me this day and acknowledged that he is Assistant Secretary of FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association, and that by authority duly given and as the act of the association, the foregoing instrument was signed in its name by its Vice President, sealed with its seal and attested by her as its Secretary.

WITNESS my hand and official stamp or seal, this 9th day of October, 1992.

Vinnia E. Nicholson  
Notary Public



My commission expires: 12-8-93

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STATE OF NORTH CAROLINA

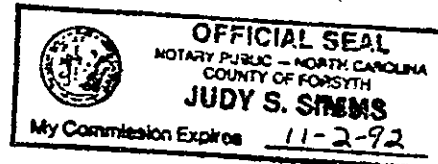
COUNTY OF FORSYTH

I, Judy S. Simms, a Notary Public of said State and County do hereby certify that JOSEPH C. HEDGPETH, II, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 15<sup>th</sup> day of October, 1992.

Judy S. Simms  
Notary Public

My commission expires: 11-2-92



STATE OF NORTH CAROLINA-Forsyth County Judy S. Simms N.P. Forsyth Co NC

The foregoing (or annexed) certificate S of Olga Schirke N.P. Milwaukee Co Wisc., Kathleen L.  
(here give name and official title of the officer signing the certificate, passed upon)

Bernd N.P. Cook Co Ill + Winnie E. Nicholson N.P. Mecklenburg Co NC

% (are) certified to be correct. This the 15 day of Oct 1992

L. E. Speas, Register of Deeds

By Jessie Liden Deputy ~~Assistant~~

Probate and Filing Fee \$ \_\_\_\_\_ paid.

EXHIBIT A

That certain piece, parcel or tract of land, lying and being in the County of Forsyth, State of North Carolina, and being more particularly described as follows:

BEGINNING at a new iron pipe located on the eastern margin of the right of way of Middlebrook Drive at a point which is located approximately 1,965 feet in a northerly direction along the eastern margin of the right of way of Middlebrook Drive from the intersection of the eastern margin of the right of way of Middlebrook Drive with the northern margin of the right of way of Idols Road, the beginning point being also at the northwest corner of the property of George Sparks; and thence from the beginning point and along the eastern margin of the right of way of Middlebrook Drive the following courses and distances: North 08 deg. 50 min. 33 sec. East 1,076.71 feet to an existing iron pipe, North 06 deg. 51 min. 26 sec. East 100.03 feet to an existing iron pipe, North 04 deg. 31 min. 31 sec. East 128.98 feet to an existing iron pipe, and North 01 deg. 31 min. 16 sec. East 257.43 feet to an existing iron pipe, corner with Jackie L. Sparks; thence with the line of Sparks, South 87 deg. 59 min. 37 sec. East 251.04 feet to an existing iron pipe, corner with George W. Sparks; thence with the line of George W. Sparks, South 87 deg. 50 min. 53 sec. East 600.26 feet to an existing iron pipe; thence, continuing with the line of George W. Sparks, North 42 deg. 14 min. 49 sec. East 1,288.83 feet to an existing iron pipe; thence North 42 deg. 27 min. 00 sec. East 400.34 feet to an existing iron pipe, corner with Robert E. Brewer; thence with Brewer's line, South 17 deg. 37 min. 27 sec. East 516.12 feet to an existing iron pipe, corner with Opal B. Wilson; thence with Wilson's line, South 17 deg. 40 min. 34 sec. East 408.23 feet to an existing iron pipe, corner with Robert L. Phelps; thence with the line of Phelps, South 31 deg. 18 min. 03 sec. West 599.58 feet to an existing iron pipe; thence, continuing with the line of Phelps and Robert G. Martin, South 31 deg. 18 min. 30 sec. West 533.67 feet to an existing iron pipe; thence, continuing with the line of Robert G. Martin, South 61 deg. 43 min. 39 sec. East 293.28 feet to an existing iron pipe, another corner with Robert L. Phelps; thence South 61 deg. 40 min. 59 sec. East 439.42 feet to a stone, corner with W. R. Beauchamp; thence with the line of Beauchamp, South 58 deg. 30 min. 44 sec. East 690.05 feet to a new iron pipe located on the western margin of the right of way of Hampton Road (also known as State Road 3000); thence along the western margin of the right of way of Hampton Road the following courses and distances: South 10 deg. 58 min. 16 sec. West 81.02 feet to a new iron pipe, South 15 deg. 14 min. 35 sec. West 100.51 feet to a new iron pipe, South 26 deg. 16 min. 14 sec. West 100.09 feet to a new iron pipe and South 33 deg. 50 min. 45 sec. West 173.04 feet to an existing iron pipe, corner with Roberson; thence with Roberson's line, South 57 deg. 39 min. 08 sec. West 38.85 feet to a new iron pipe; thence South 72 deg. 45 min. 57 sec. West 216.32 feet to an existing iron pipe; thence South 23 deg. 30 min. 51 sec. East 212.51 feet to an existing iron pipe on the northern margin of the right of way of Idols Road; thence with the northern margin of the right of way of Idols Road, South 60 deg. 07 min. 53 sec. West 250.13 feet to an existing iron pipe; thence North 10 deg. 50 min. 23 sec. East 132.56 feet to an existing iron pipe; thence North 10 deg. 38 min. 39 sec. East 152.70 feet to an existing iron pipe; thence North 33 deg. 32 min. 44 sec. West 83.95 feet to an existing iron pipe; thence North 34 deg. 01 min. 59 sec. West 125.35 feet to an existing

iron pipe; thence North 33 deg. 54 min. 44 sec. West 150.47 feet to an existing iron pipe; thence North 33 deg. 59 min. 27 sec. West 150.30 feet to an existing iron pipe; thence North 33 deg. 59 min. 09 sec. West 129.92 feet to an existing iron pipe; thence North 33 deg. 58 min. 22 sec. West 115.00 feet to an existing iron pipe; thence North 33 deg. 58 min. 38 sec. West 364.93 feet to an existing iron pipe; thence South 49 deg. 39 min. 10 sec. West 631.09 feet to an existing iron pipe; thence South 49 deg. 43 min. 22 sec. West 355.67 feet to an existing iron pipe; thence North 89 deg. 27 min. 10 sec. West 329.96 feet to a point, corner with Blakely, thence with Blakely's line, North 88 deg. 51 min. 30 sec. West 531.65 feet to an existing iron pipe; thence North 86 deg. 56 min. 06 sec. West 81.99 feet to an existing iron pipe; thence North 86 deg. 59 min. 24 sec. West 285.30 feet to a new iron pipe, the point and place of BEGINNING. Being shown on a recent boundary survey made for Gravely International, Inc. by Kale Engineering dated October 7, 1991, last revised October 31, 1991, designated as Job No. 91003.

SAVE AND EXCEPT from the above-described property, that certain piece, parcel or tract of land designated as Tax Lot 12A, Forsyth County, North Carolina, Block 4209, now owned by the City of Winston-Salem, North Carolina, and being more particularly described as follows:

BEGINNING at a point, said beginning point being located the following three (3) courses and distances from an iron pipe located on the eastern margin of the right-of-way of Middlebrook Drive (S.R. 1103) which is the southwest corner of the property of Jackie L. Sparks (now or formerly) described as Tax Lot 38G, Block 4208 (see Deed Book 866, Page 171), and the northwest corner of the property hereinabove described: (1) along the south line of Jackie L. Sparks South 87 deg. 59 min. 37 sec. East 251.04 feet to an iron pipe, the southeast corner of Jackie L. Sparks and the southwest corner of the property of George W. Sparks (see Deed Book 741, Page 509); (2) along the southern line of the property of George W. Sparks, South 87 deg. 50 min. 53 sec. East 600.26 feet to an iron pipe; and (3) South 18 deg. 50 min. 16 sec. East 82.10 feet to the point of beginning; and running thence from the said point of beginning North 86 deg. 30 min. 10 sec. East 99.66 feet to a point; thence South 01 deg. 54 min. 14 sec. East 99.61 feet to a point; thence South 86 deg. 21 min. 08 sec. West 100.21 feet to a point; thence North 01 deg. 35 min. 42 sec. West 99.89 feet to the point and place of BEGINNING. Being shown on a recent boundary survey made for Gravely International, Inc. by Kale Engineering, dated October 7, 1991, last revised October 31, 1991, designated as Job No. 91003, and being the same property conveyed to the City of Winston-Salem by deed recorded in Book 1176, Page 1661, Forsyth County Registry.

Together with all right, title and interest in and to the right of reverter as set forth in that certain corporation deed dated October 31, 1973, by Clark-Gravely Corporation to Forsyth County, North Carolina, recorded in Book 1117, Page 327, Forsyth County Registry.