

101
CONSTRUCTION LOAN
DEED OF TRUST

THIS INSTRUMENT DRAFTED BY:

20 M. Van Causson *Bel*
(SIGNATURE OF DRAFTSMAN)

STATE OF NORTH CAROLINA :

COUNTY OF Forsyth :

THIS DEED OF TRUST, made and entered into this 27th day of October, 19 78, by and between H & C Construction Company, Inc. of Forsyth County, State of North Carolina, hereinafter referred to as "Borrower"; Harley P. Graves of Forsyth County, North Carolina, hereinafter referred to as "Trustee"; and BANK OF NORTH CAROLINA, N. A., organized and existing under the laws of the United States, hereinafter referred to as "Lender";

WITNESSETH, THAT WHEREAS, the Lender has agreed to lend to the Borrower and has reserved for the benefit of the Borrower the sum of Eighty Thousand and no/100 (\$ 80,000.00) DOLLARS, to be disbursed from time to time, in accordance with the terms of a Construction Loan Agreement of even date herewith, and the Borrower has agreed to accept any and all such installments advanced by Lender up to the full amount stated above;

WHEREAS, the Borrower is thereby indebted to the Lender as evidenced by a Note of even date herewith, in the principal sum of Eighty Thousand and no/100 (\$ 80,000.00) DOLLARS, with interest as therein specified, payable as set out in said Note.

WHEREAS, the Note secured by this Deed of Trust is for the present and future obligations of the makers of said Note to the Lender, and this Deed of Trust is executed to secure all such obligations.

The total amount of present obligations secured hereby is	\$ <u>0</u>
The total amount of future obligations secured is	\$ <u>80,000.00</u>
Total	\$ <u>80,000.00</u>

WHEREAS, the period within which such future obligations may be incurred is the period between the date of the Note and its due date; provided however, that such period may be extended by the holder of the Note up to, but not more than, ten years from the date of the Note.

WHEREAS, Borrower desires to secure to the Lender (or its successor noteholder) secured hereby, the full and punctual payment of said debt and interest thereon as well as the performance of the covenants herein contained, as well as any and all renewals and extensions of said Note, or any part thereof, with interest thereon; and also to secure the reimbursement to the Lender or to the Trustee, and to any purchasers or grantee under any sale under the provisions of this Trust, all money which may be advanced or become due as herein provided for, and for any and all costs and expenses (including reasonable attorney's fees) incurred or paid on account of any litigation at law or in equity which may arise in respect to this Trust, or to any indebtedness secured hereby, or to the property herein described, or in obtaining possession of the premises after any sale which may be made as hereinafter provided for;

NOW, THEREFORE, in consideration of the premises and of ONE (\$1.00) DOLLAR paid to Borrower by Trustee, the Borrower has given, granted, bargained, sold and conveyed, and by these presents does hereby give, grant, bargain, sell and convey unto the Trustee, his heirs, successors and assigns, in fee simple, all of that certain lot or parcel of land situated in Forsyth County, State of North Carolina, and more particularly described as follows:

BEING known and designated as Lot 9 as shown on the map of Country West, which is recorded in Plat Book 26, at page 56, in the office of the Register of Deeds of Forsyth County, North Carolina to which map further reference is hereby made for a more particular description.

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TO HAVE AND TO HOLD the said land and premises, together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all materials intended for construction, alterations and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the said premises, and all easements, rents, mineral rights and profits, water, water rights, and also to the extent of the interest therein of the Grantor, all fixtures and articles of personal property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the above-described premises and any and all buildings thereon or to be erected thereon, including, but without being limited to, those for the purposes of supplying or distributing heating, cooling, electricity, natural gas, water, air and light; and including, but not limited to, all plumbing, bathtubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, washers, awning screens, blinds, shades, storm windows, storm doors, antennas, attached floor coverings, trees and plants; and all equipment and other personally used in the operation of the property; all of which including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust (hereinafter referred to collectively as "Property"); unto the Trustee, his heirs, successors and assigns, in fee simple forever, upon the Trust and for the uses and purposes hereinafter set forth.

All payments of whatever nature shall be paid in lawful money of the United States at the principal office of Lender, or at such other places as the holder of the Note may from time to time designate.

FURTHER, THIS CONVEYANCE IS MADE UPON THE SPECIAL TRUST, that if the Borrower shall pay the Note secured hereby in accordance with its terms, and any renewals or extensions thereof in whole or in part, and all other sums secured hereby, and shall comply with all the covenants, obligations, and conditions of this Deed of Trust and the Construction Loan Agreement referred to herein, then this conveyance shall be null and void and may be marked satisfied and returned to the Borrower to be cancelled of record by and at the cost of the Borrower. If, however, there shall be any default in any of the terms, conditions, covenants, or obligations, of the Note secured hereby, this Deed of Trust, the Construction Loan Agreement referred to herein, or in the event of actual or threatened demolition, or injury or waste to the Property which may impair its value, or if a receiver shall be appointed for, or in arrangement or a petition in bankruptcy filed by or against Borrower, or if an assignment for the benefit of Borrower's creditors is made, or if the Property herein conveyed, or any part thereof or interest therein, is sold or transferred without Lender's prior written consent, then and in any of such events, Lender (or its successor noteholder) may declare the entire indebtedness secured hereby immediately due and payable, regardless of the maturity date thereof, and on the application of the Lender, it shall be lawful for and the duty of the Trustee, and he is hereby authorized and empowered to expose to sale and sell the Property in one or more parcels in such order as Trustee may determine, at public auction for cash in compliance with the requirements of the General Statutes of North Carolina, in effect at the time as such sale takes place. The Trustee, after having retained five (5%) percent of the gross proceeds of such sale as compensation for his services, with a minimum compensation of four hundred fifty dollars for such services and, after retaining also all advertising and other expenses incurred by him including a reasonable attorney's fee for legal services actually performed, shall apply the residue first to the payment of any taxes or assessments which may be a lien against the land unless the Trustee advertised and sold same subject to such taxes or assessments, second to the payment of the note secured hereby with all accrued interest and any sums advanced by the Lender as herein provided, and any balance to the Grantors or other party entitled thereto. An incomplete foreclosure is one terminated upon payment of the note or reinstatement of installments by the Lender after the Trustee is called upon by the Lender to commence foreclosure proceedings and before his deed is delivered, in which case the Trustee shall be paid by the Grantors or their successors in title all expenses incurred by him and compensation for his services based upon the five percent commission computed on the full indebtedness then owing or the aforesaid minimum commission, whichever is greater, in accordance with the following schedule, to wit: one fourth thereof before the Trustee issues a notice of hearing on the right to foreclose; one half thereof after issuance of said notice; three fourths thereof after such hearing; and the greater of the full commission or minimum after the initial sale. The Borrower agrees that in the event of a sale hereunder the Lender shall have the right to bid thereat. The Trustee may require the successful bidder in any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed 25% of his bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made, and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a re-sale is had; otherwise, it shall be applied to the purchase price. If personal property is sold hereunder, it need not be at place of sale; but the published notice shall state the time and place where such Property may be inspected prior to sale. The Lender may resort for the payment of the indebtedness secured hereby to its several securities therefor in such order and manner as it may deem fit.

Borrower covenants that Borrower is seized of said land and premises in fee and has the right to convey the same in fee simple; that the same are free and clear of all encumbrances, and that Borrower will warrant and defend the title to the same against the lawful claims of all persons whomsoever, subject to the easements and restrictions of record, and will, upon request of Lender, execute and deliver such further instruments or assurances as may be necessary or proper to carry out the true intent and purpose of this Deed of Trust.

Borrower further covenants and agrees as follows:

1. CONSTRUCTION LOAN AGREEMENT. Borrower will perform the conditions, covenants and requirements as set forth in the Construction Loan Agreement of even date herewith, which Agreement is incorporated herein by reference as fully as if set out herein.

2. INDEBTEDNESS, TAXES, ASSESSMENTS, GOVERNMENT, CHARGES AND INSURANCE. Borrower shall pay the indebtedness secured hereby and shall pay when due all taxes, assessments, levies and other charges of every character upon or against the property, including without limitation all taxes assessed against the Trustee or Lender on this instrument or the sum secured hereby or evidenced by the aforesaid Note, and Borrower will immediately upon request by Lender deliver to it originals of official receipts for all payments of such taxes, assessments, levies and other charges, and will keep the buildings and other improvements now or hereafter on the property insured against loss and damage by fire, tornado and windstorm, with extended coverage, and against such other hazard as Lender may require, including malicious mischief and rent coverage, in amounts satisfactory to Lender, but not less than amounts sufficient to prevent any co-insurance liability of the owner of the Property or Lender, for the benefit of Lender, with loss, if any, to be made payable in the policy or policies of insurance to the Lender as its interests may appear, the loss payable clause to be in such form as the Lender may require. All insurance shall be in com-

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panies approved by Lender, shall contain standard waiver of subrogation endorsements, and originals of the policies and renewals thereof shall, when issued, be immediately delivered to the Lender, and further said policy or policies shall contain New York standard mortgagee clauses. Borrower will give immediate notice of loss by mail to Lender, who may make proof of loss if not made promptly by Borrower, and each insurance company concerned is hereby authorized and directed to make payment for such loss direct to Lender instead of to Borrower and Lender jointly. Lender is authorized and empowered to adjust and compromise any loss under insurance policies, to collect and receive insurance proceeds, and to apply the insurance proceeds or any part thereof at its option to the restoration or repair of the Property damaged or to the reduction of the sums secured by this Deed of Trust in the order of application hereinbefore set forth. If the Property is sold under foreclosure or the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to purchaser or Lender, as the case may be.

Borrower shall, at the request of the Lender, pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth (1/12) of the next due ad valorem taxes, annual hazard insurance premium, annual mortgage insurance premium, and assessments, if any, all as estimated initially and from time to time by Lender, to be applied by Lender to pay said taxes, insurance premium and assessments. Lender shall have the right to hold the Funds without interest in any manner it selects and may commingle the Funds with other monies held by it.

If the amount of Funds held by Lender shall not be sufficient to pay taxes, insurance premium, and assessments as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty (30) days after notification by Lender of the existence thereof. If the property is sold under a foreclosure as herein provided or the Property is otherwise acquired by Lender, it shall apply any Funds held by it at the time of application as a credit against the sums secured by this Deed of Trust. Nothing contained herein shall be construed to create an obligation of Lender to pay ad valorem taxes at any time prior to date of delinquency thereof. Lender shall not be liable to Borrower if it fails to pay ad valorem taxes, hazard insurance premiums, or assessments unless: (1) Borrower has paid Lender sufficient funds, in addition to Borrower's required principal and interest installments, to pay said taxes, hazard insurance premiums, and assessments, and (2) Lender received written notice of non-payment from Borrower or from the firm, agency, person or corporation to whom such items shall be payable.

3. **PRESERVATION AND MAINTENANCE.** Borrower shall (i) not permit or suffer waste, impairment, or deterioration of the Property, (ii) not remove, demolish or alter any improvements now existing or hereafter erected upon the Property unless Lender shall consent thereto in writing, (iii) keep the Property in good repair, and (iv) comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property. The Lender shall have the right to inspect the Property at all reasonable times and access thereto shall be permitted for that purpose by it or its authorized representatives.

4. **PROTECTION OF SECURITY.** If Borrower fails to perform the covenants and agreements contained herein, or if any action or proceeding is commenced which affects the Property or title thereto, or in the interest of Lender therein, including but not limited to, eminent domain, insolvency, code enforcement, arrangements, reorganization, and a bankruptcy generally, then Lender at its option may make such appearances, disburse such sums and take such actions as Lender deems necessary to protect its interest, including but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Any amount disbursed by Lender pursuant to this Paragraph 4 shall become additional indebtednesses of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable within thirty (30) days of demand and shall bear interest from the date of disbursement at the highest lawful rate, but not in excess of 3% of the rate provided in the Note; provided that Borrower shall have the right to repay such amounts together with accrued interest in whole or in part at any time. Nothing contained in this Paragraph 4 shall require Lender to incur any expenses or do any act hereunder.

5. **ASSIGNMENT OF LEASES, RENTS AND PROFITS.** As further security hereunder, Borrower hereby assigns and sets over to Lender all leases of premises located on the Property, now made or hereafter made; authorizes and empowers Lender to collect the rents, issues, profits, rights, revenues, and benefits from the property, as they shall become due; and directs the tenants of the aforesaid premises to pay such rents, as they are now due or hereafter become due to Lender, upon demand for payment thereof by Lender; it being understood and agreed, however, that no demand shall be made unless and until there has been a default which would permit foreclosure hereof; and until such demand is made, Borrower is authorized to collect said rents, issues, profits, rights and benefits; but that such privilege to collect, as aforesaid, by the Borrower shall not operate to permit the collection of any rents in advance of the date same are due under the terms and provisions of said lease or leases.

Borrower agrees promptly and fully to comply with all the terms, covenants, conditions and agreements imposed upon and assumed by him as Lessor under any lease of all or part of the Property defined either in effect as of the date hereof or hereafter entered into prior to the cancellation of this Deed of Trust, and to not do, permit anything to be done, or omit and refrain from doing anything, the doing or omission of which will give Lessee the right to terminate, without Lender's written consent.

In the event Borrower fails to comply as aforesaid, Lender, at its option, may take any action Lender deems necessary or desirable to prevent or cure any default by Borrower under any of said leases. Lender shall have the right to enter upon the Property to such extent and as often as Lender, in its sole discretion, deems necessary to prevent or cure any such default by Borrower. Borrower will give Lender immediate notice by certified mail of any notice of default or notice of cancellation received from any tenant. Any default in any of the terms, conditions, covenants or agreements contained in any separate assignment of Lessor's interest in leases given as additional security for this loan shall constitute an event of default under this Deed of Trust.

Upon the occurrence of any event which would permit foreclosure hereof, regardless of whether Lender elects to foreclose and regardless of the insolvency of Borrower or the value of the Property, Lender or its agent shall (a) be entitled to have a receiver appointed to enter upon, take possession of, manage and preserve the Property, and to collect the rents, issues and profits thereof, including those past due as well as those accruing thereafter, and apply the same as the court may direct; or (b) be entitled at any time, without notice, to enter upon and take possession of the Property, to perform any acts Lender deems necessary or proper to preserve the Property and to collect and receive all rents, issues and profits thereof, including those past due as well as those accruing thereafter, and to apply the same in any lawful manner, including the payment of reasonable management fees.

Lender or the receiver may also take possession of, and for rental purposes, use any personal property used by Borrower in the rental or leasing of the Property. The costs and expenses, including but not limited to, receiver fees and premiums on receivers bonds, attorney's fees, and agent compensation, incurred pursuant to the powers herein contained shall constitute additional indebtedness at the highest lawful rate, but not in excess of 3% of the rate

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provided in the Note. Lender shall apply such rents, issues and profits received by it to the sums secured by this Deed of Trust in such order as it determines. Lender shall be liable to account only for those rents, issues and profits actually received.

6. CONDEMNATION. Any awards, proceeds, or damages for the taking of, or damages to, all or any part of the Property or any interest therein upon the lawful exercise of the power of eminent domain, or for conveyances in lieu of such taking, are hereby assigned and shall be paid to Lender to the extent of the sum secured by this Deed of Trust. Lender, at its option, shall apply such awards, proceeds or damages, to restoration of the Property or to payment of the sum secured by this Deed of Trust. Lender is hereby authorized in the name of Borrower to execute and deliver valid acquittances thereof and to appeal from any such award. If Lender incurs counsel fees or expenses in protecting its interest in condemnation or other proceeding affecting the lien of this Deed of Trust, Borrower agrees to repay Lender any such amounts so paid by Lender for such counsel fees and expenses, with the interest thereon, and the same shall be a lien on said premises, and be secured by these presents.

7. BORROWER NOT RELEASED. No sale or transfer of the Property, no delay or forbearance by the Lender in exercising any or all of its rights hereunder or rights otherwise afforded by law, and no extension of time for payment, modification of amortization of such secured hereby, release from liability on the obligation secured hereby, or release of a portion of the Property granted by Lender to any successor in interest to Borrower, shall operate to release, waive, change or affect, in any manner, the liability of the original Borrower or the Borrower's successors in interest. The parties hereto intend that North Carolina General Statutes, Chapter 45, Section 45.1 be inoperative with respect to this Deed of Trust and the Note secured hereby. As used in this paragraph the term "Borrower" includes endorser, sureties, and guarantors of the Note secured hereby.

8. RELEASE. Lender may release for such consideration, or none, as it may require, any portion of the above-described Property without, as to the remainder of the security, in anywise impairing or affecting the liens and priorities herein provided for the Lender or improving the position of any subordinate lienholder.

9. TRUSTEE. The word "Trustee" whenever used herein shall mean any one or all of the Trustees above named; provided however, that each of said Trustees is hereby invested with full power and authority to fully exercise in his own name alone, and without joinder of the other Trustees, all or any of the powers, authorities and duties herein and by law vested in and imposed upon the Trustee; and the acts and deeds of any one Trustee hereunder shall be as fully binding and effective as if all Trustees had joined therein; and provided further that no Trustee shall be liable for any of the acts or omissions of the other Trustees. Lender shall at any time and from time to time have the irrevocable right to remove a Trustee without notice or cause, and to appoint his successor by an instrument in writing, duly acknowledged in recordable form; and in the event of the death or resignation of a Trustee, Lender shall have the right to appoint his successor by such written instrument; and any Trustee so appointed shall be vested with the title to the Property and shall possess all of the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though he were named as a Trustee.

10. DISBURSEMENT OF LOAN PROCEEDS. Borrower, by execution of this Deed of Trust, does hereby authorize and empower Lender to disburse the proceeds of this loan, or any part thereof, to any other person, or firm or corporation executing this Deed of Trust, and the receipt of the Borrower so collecting and receiving the same shall be a full and complete receipt and acquittance in the hands of Lender.

11. HEIRS AND ASSIGNS BOUND; NUMBER; GENDER; JOINT AND SEVERAL LIABILITY; CAPTIONS; NOTICE. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, executors, administrators, successors and assigns of Lender and Borrower. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. All covenants and agreements of Borrower shall be joint and several. The captions and heading of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof. Any notice which either Borrower or Lender may give under this Deed of Trust shall be mailed to Lender at its main offices, and mailed to Borrower at the property address, or at such other place as either Borrower or Lender may designate to the other in writing.

12. PREPAYMENT. A prepayment fee, if any is provided in the Note secured hereby, may be charged if said loan is repaid in full prior to maturity.

IN WITNESS WHEREOF, Borrower has caused these presents to be signed in its name by its President, and its corporate seal to be hereto affixed and attested by its secretary the day and year first above written, all in pursuance of authority duly given by resolution of the Board of Directors of Borrower.

ATTEST:

Secretary
STATE OF NORTH CAROLINA,
COUNTY OF _____

H & C Construction Company, Inc. (SEAL)

By: Claude P. Harris (SEAL)
President (SEAL)

I, _____, a Notary Public of _____ County, N. C.

do hereby certify that
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 19 _____.

My commission expires _____, 19 _____.

Notary Public

STATE OF NORTH CAROLINA, COUNTY OF Forsyth

I, Alice M. Evans, Notary Public, certify that Helen L. Harris

personally came before me this day and acknowledged that she is _____ Secretary of H & C Construction Company, Inc.

Notary Public, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ Secretary.

Witness my hand and notarial seal, this 27 day of October, 19 48

Alice M. Evans
My commission expires Nov. 22, 1981

STATE OF NORTH CAROLINA FORSYTH COUNTY.

The foregoing certificate(s) of Alice M. Evans N.P. Forsyth Co., NC.

is (are) certified to be correct. This instrument was _____

County, N.C.

Register of Deeds

Recorded and verified

Probate Fee \$1.00 paid 27 day of _____ at _____ M.

Register of Deeds

Recorded and verified

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