

FILED in PERSON County, NC  
on May 24 2002 at 11:41:38 AM  
by: AMANDA W. GARRETT  
REGISTER OF DEEDS  
BOOK 377 PAGE 379

Prepared by and return to: James W. Tolin, Jr.  
112 South Main Street  
Roxboro, North Carolina 27573

**NORTH CAROLINA**

**PERSON COUNTY**

**DECLARATION OF PROTECTIVE COVENANTS  
AND CREATION OF  
HOMEOWNERS ASSOCIATION FOR CROSS CREEK SUBDIVISION**

**PROPERTY OF K & L PROPERTIES**

**PERSON COUNTY, NORTH CAROLINA**

This Declaration, agreement and covenant, made and entered into this 23rd day of May, 2002, by and between K & L Properties, a North Carolina General Partnership doing business in Person County, North Carolina (the "Declarant"), and their successors in title to any portion of the lands hereinafter described, parties of the second part;

**WITNESSETH:**

**THAT WHEREAS**, Declarant is seized of fee simple absolute in and to real property located in Flat River Township, Person County, North Carolina, and being more particularly described as follows:

Lying and being in Flat River Township, Person County, North Carolina, and being all of what is described by plat of survey entitled plat of survey "CROSS CREEK", prepared by John J. Jennings, RLS, dated January, 2002, and recorded in Plat Cabinet 12, Hanger 810, Person County Registry, which plat of survey is incorporated herein by reference as part of this description.

The described property shall hereinafter be referred to as "the Property".

**AND WHEREAS**, Declarant desires to restrict the use of the aforescribed property for the benefit of itself and for the benefit of its successors in title, and further desires to provide for maintenance of landscape easements and land use buffers and further desires to create a homeowners association concerning said property;

**NOW THEREFORE**, in consideration of the premises, Declarant hereby covenants and agrees with purchasers of the various lots of the property described and referred to aforesaid, and with each of them, that the property described and referred to above is and shall be held and shall be conveyed subject to the restrictions, reservations, covenants, conditions, servitudes, easements, agreements, liens and charges set forth hereinafter, which is hereby covenanted and agreed shall inure to the benefit of and be binding upon the Declarant, its successors and assigns, and the several purchasers, their heirs, successors and assigns, and shall be binding upon all of the aforescribed real property.

**I.**

**CREATION OF CROSS CREEK HOMEOWNERS ASSOCIATION**

Section 1. There is hereby created Cross Creek Homeowners Association, a non-profit association doing business in the State of North Carolina, (the "Homeowners Association").

Section 2. Until one hundred percent of the lots in the subdivision are sold by the Declarant, or its successors in title, the sole member of the Homeowners Association shall be K & L Properties. Thereafter, members of the Homeowners Association shall be the owners of all lots of the property with each lot being entitled to one voting membership.

Section 3. The purpose of the Homeowners Association shall be to provide for maintenance and upkeep of common areas, land use buffers and landscape easements, collection of charges upon various lots in the subdivision as set out hereinafter, and other powers as needed to maintain said subdivision.

Section 4. Meeting of Members. There shall be an annual meeting of the members of the Homeowners Association between January 1 and June 1 of each year beginning January 2003, at which time officers shall be elected to conduct the affairs of the Homeowners Association. In addition to the annual meeting of members, there may be special meetings of members called by the President or Secretary of the Homeowners Association or by at least three members of the Homeowners Association. Notice of all meetings shall be mailed by the Secretary by first class mail to the last known address of each member of the Homeowners Association at least fifteen days prior to the meeting. It shall be the duty of each member of the Homeowners Association to keep the Secretary advised as to his or her mailing address.

Section 5. Quorum. Twenty percent (20%) of the members shall constitute a quorum for all meetings of members.

Section 6. The Cross Creek Architectural Review Committee. There shall be a Cross Creek Architectural Review Committee of one or more persons to be appointed by the Declarant. After all lots in the subdivision are sold, the Architectural Review Committee may be changed by action of the Homeowners Association as to number of members and who the members are.

**Section 7. Officers.****BOOK 377 PAGE 381**

(A). The Officers of the Homeowners Association shall consist of a President and Secretary-Treasurer who shall be elected at the annual meeting of members and each officer shall hold office until his death, resignation, retirement, removal, disqualification or his successors shall have been elected and qualified.

(B). President. The President shall be the principal executive officer of the Homeowners Association and subject to the control of the members, shall in general supervise and control all of the business and affairs of the Homeowners Association. He shall, when present, preside over all meetings of the members. He shall sign, with the Secretary, any deeds, mortgages, bonds, contract, or other instruments which the members have authorized to be executed.

(C). Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of the meeting of the members, see that all notices are duly given in accordance with the provisions of this document; keep a register of the Post Office address of each member, sign with the President any deeds, mortgages, bonds, contract, or other instruments which the members have authorized to be executed; have charge and custody of and responsible for all funds and securities of the Association, receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such depositories as shall be selected by the Secretary-Treasurer.

**II.****ANNUAL ASSESSMENTS  
CREATION OF CHARGE UPON THE PROPERTY**

Section 1. Declarant, for each parcel of property subject hereto owned by it, hereby covenants, and each purchaser of any parcel of the property, whether purchased from Declarant or another, by the acceptance of a deed therefore, shall, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Homeowners Association an annual assessment or charge to be fixed, established and collected from time to time as hereinafter provided. Each installment of the annual assessment or charge when due shall become a lien upon the parcel of the property against or on account of the ownership of which such assessment or charge is made. Each parcel of subject property, except as hereafter mentioned, unless owned by Declarant, is hereby made subject to a continuing lien to secure the payment of each installment of such assessment or charge when due.

Such charge shall be in an amount to be fixed from year to year by the Homeowners Association. The annual assessment shall be \$150.00 per year during 2002 and 2003 and shall be no more than \$250.00 per year until such time as control of the Homeowners Association is

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given to the owners of the various lots in the subdivision by the Declarant.

Section 2. The annual assessment charge for any year shall become due and payable on the first day of January of each year and shall be payable to the Secretary-Treasurer of the Homeowners Association. The purchaser of each lot shall at the time of purchase of his lot pay to the Declarant, as reimbursement as described above, a prorated portion of the annual assessment calculated by multiplying the annual assessment for the year of the purchase by the number of days remaining after the purchase date and then dividing this amount by the number of days in the calendar year. If any assessment is not paid by the 15th day of January of the year in which it is due, there shall be added to the assessment a late charge of \$50.00 per month for each month, or fraction of month, the assessment is not paid.

Section 3. Upon the failure of the owner of any parcel of the property to pay any such charge or installment thereof when due, the Homeowners Association shall have the right to collect the amount thereof, plus reasonable attorney's fees and court cost, by an action at law against the owner as for a debt, and may bring suit for the foreclosure of the lien thereof upon said parcel of the property, and bring and maintain such other suits and proceedings at law or in equity as may be available (and such remedies shall be cumulative and not exclusive). Such rights and powers shall continue in the Homeowners Association, and the lien of such charge shall be deemed to run with the land and the successive owners of each parcel of the property, by the acceptance of deeds therefor shall be deemed personally to assume and agree to pay all such charges as shall become a lien thereon during their ownership thereof

Section 4. The charges created by this Article and the lien thereof shall be subordinate to the lien of any mortgage or deed of trust now or hereafter placed upon the property or any parcel thereof, provided, however, that such subordination shall apply only to the charges which shall have become payable prior to the sale of such parcel pursuant to a foreclosure of such instrument. Such sale shall not relieve such parcel from liability for charges thereafter becoming due hereunder nor from the lien of any charge or installment thereof thereafter becoming due, and the purchaser at such sale by the acceptance of the deed shall be deemed personally to assume and agree to pay all such charges or installments thereof thereafter becoming due.

Section 5. The following property subject to this Declaration shall be exempted from the charge created by this Article: (a) all streets whether dedicated to any municipal authority, owned by the Homeowners Association, or created by easement; (b) open space while devoted to common use, however owned; (c) all property owned or leased by the Homeowners Association; (d) all land taken by or sold or granted any public authority for public improvements or uses; (e) all property owned by or leased to a public utility operating under a certificate of convenience and necessity issued by an appropriate State or Federal agency; (f) all other property exempted from taxation by the laws of the State of North Carolina, upon the terms and the extent of such legal exemption; (g) all property owned by the Declarant. In addition, any lot(s) on which is being constructed, or has been constructed, a speculation house, which is owned by a licensed general contractor, shall not be required to pay the charge created by the Article for a period of

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one year after lot purchase.

Section 6. The monies collected by virtue of the charges or assessments or the lien created by this Article shall be paid to the Homeowners Association to be used for land use buffers and landscape easements.

Section 7. The Homeowners Association shall not be obligated to spend in any one calendar year all of the sums collected during such year by way of charges, and may carry forward to surplus any balances remaining; nor shall the Association be obliged to apply any such surpluses to the reduction of charges in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in their absolute discretion may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

Section 8. If at any time the monies collected by virtue of the charges or assessments or the lien created by this Article shall not be sufficient to meet expenditures which the Homeowners Association shall deem necessary in the furtherance of the purposes of the Association, the Homeowners Association shall have authority in its absolute discretion to borrow money in anticipation of revenue upon such terms and security and for such periods not exceeding one year as it may determine, and in fixing the charge for succeeding year the Homeowners Association shall have the power to include such sums as may be necessary to provide for the repayment of such advance with interest.

Section 9. The provisions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Homeowners Association or the owner of any land included in the property, their respective legal representative, heirs, successors, and assigns, and failure by the Homeowners Association or any owners to enforce any restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter to the same breach or as to one occurring prior or subsequent thereto.

Section 10. Neither the Homeowners Association nor Declarant shall be liable in any way for failure or omission to take action of any kind for the enforcement of any restriction or violation thereof.

### III.

#### TERM AND AMENDMENTS

Section 1. Term. All of the restrictions set forth or provided for in this Declaration (or any supplementary Declaration) shall be deemed covenants running with the land, and any and every conveyance of any part of the property shall be absolutely subject to the said restrictions whether or not it shall be so expressed in the deed or other conveyance thereof. The said restrictions shall continue with full force and effect against both the property and the owner thereof, and all persons claiming under them, unless amended as hereinafter provided, until

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January 2, 2030, after which time said restrictions shall be automatically extended for successive periods of ten (10) years unless not less than two (2) months prior to January 1, 2030, or not less than two (2) months prior to the expiration of any successive ten (10) year period thereafter, a written agreement shall be recorded in the Office of the Register of Deeds of Person County, by the terms of which any of said restrictions may be changed, modified, or extinguished in whole or in part as to all of the property or such part thereon as may be described in the said agreement, in the manner and to the extent set forth in said agreement, which shall be duly executed and acknowledged by the Homeowners Association, and by the then owners of record or more than one-half in area of the premises therein described which are then subject to this Declaration and subject to the payment of the charges created by Article II hereof. In the event that any such written agreement of change or modification be duly executed and recorded, the original restrictions as therein modified shall continue in force for successive period of ten (10) years each unless and until further changed, modified, or extinguished in the manner herein provided. Such agreement when recorded shall be effective as of January 1, 2030, or as of the end of the succeeding ten (10) year period during which said agreement shall be recorded.

Section 2. Amendment by Declarant. The Declarant reserves the right to amend these restrictive covenants at any time in its sole discretion until all of the property area subject to these restrictions is sold by Declarant.

**IV.****RESTRICTIVE COVENANTS**

Section 1. Plan Review. No dwelling, including the garage, whether attached or detached from the main dwelling, outbuilding, fence, or any other structure constructed, situated, or allowed to remain on any lot, unless the plans and specifications (including but not limited to exterior paint and trim colors, roof shingles and color) and location of the same shall have been approved in writing by the Homeowners Association Architectural Review Committee. Prior to the change of paint color or exterior modification of any structure located in the subdivision, the plans and specifications or new color(s) shall be submitted to the Architectural Review Committee for review and the color change or exterior modification shall not be commenced until written approval is obtained from the Architectural Review Committee. The approval or disapproval of specifications, plans, and locations to be made by the Architectural Review Committee shall be reasonable and made in good faith. All parties to these Covenants, whether Declarant, lot owner, or prospective purchaser, acknowledge that such approval shall take into account the nature of the improvements and the harmony of the proposed improvements with the surroundings, other buildings within the subdivision and topography of the lot. It is the intent of this Declaration of Restrictions and Covenants to promote the maximum maintenance of all trees and the natural setting and appearance of the lots.

Each lot owner shall prior to the commencement of construction submit a copy of the proposed plans and specifications, including site plan and landscaping plan, to the Architectural Review Committee. Approval of such plan, specifications, site plan and landscape plan shall be

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evidenced by written endorsement of the Architectural Review Committee on such plans and maps, copies of which shall be delivered to the owner or owners of the lot upon which the prospective structure is contemplated prior to the beginning of construction. No external structural changes or deviation in or from such plans and specifications as approved shall be made without the prior written consent of the Architectural Review Committee.

The Declarant, or the Architectural Review Committee shall be entitled to injunctive relief to stop or require the modifications, relocation, or removal of any construction in violation of these restrictions.

Section 2. Single Family Dwellings. No structure other than one single family dwelling to be used for residential purposes, and accessory non-residential outbuildings not exceeding 225 square feet, a detached two-car garage or in-ground pool will be permitted.

Section 3. Size of Dwellings. No dwelling shall be erected that has a permanently enclosed and heated living area of less than 1400 square feet. Heated living area does not include basement space.

Section 4. Mobile/Manufactured Home. No manufactured/HUD Code home (commonly known as mobile home) or modular home of any type shall be allowed or maintained upon any lot in the subdivision (i.e.: only conventional, "stick built" homes shall be allowed).

Section 5. Exterior Requirements. All homes shall have a brick or stone foundation, brick or stone stoop/steps, and gutters. Roof pitch of any structure built within the subdivision shall be five-twelfths (5/12) or greater.

Section 6. Detached Garages and Outbuildings. No outbuilding of any kind that is larger than 225 square feet will be permitted except for a two-car garage. Any outbuilding or detached garage is to be constructed in architectural conformity with the construction of the residence. No metal outbuilding or metal carport/garage shall be allowed. Any outbuilding must be located to the rear of the main residence.

Section 7. Building Setbacks.

- (a) All structures, excluding well houses not exceeding 3'X 3', must have at least a 50' front setback from the road right-of-way (corner lots are considered to have double frontage regardless of drive access), 20' side and rear setbacks.
- (b) No structures of any type are permitted in the landscape easement unless otherwise approved by the Cross Creek Architectural Review Committee.
- (c) No structures of any type are permitted in drainage easements designated on the recorded plat.

Section 8. Driveways. All driveways are to be gravel or paved with concrete, asphalt, brick, or other such material approved by the developer. Driveway pipe shall be made of concrete and meet the standards of the North Carolina Department of Transportation.

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Section 9. Satellite Receivers and Antennas. No satellite dishes, C.B. antennas or short-wave antennas shall be permitted except satellite dishes that are no more than one-meter (39 inches) in diameter. The Architectural Review Committee shall approve the location of satellite dish. In deciding the location of satellite dish, the Architectural Review Committee shall not unreasonably withhold approval so as to: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality of signal.

Section 10. Swimming Pools. A below ground pool will be permitted provided that it is located to the rear of the main residence. Design and layout must be submitted to the Architectural Review Committee prior to construction. Above ground pools are prohibited.

Section 11. Mailbox Design. In attempt to achieve architectural harmony, the design of the mailboxes and mailbox posts will follow only the design provided by the Declarant. Tubular receptacles for newspapers and advertisements shall be prohibited.

Section 12. Clotheslines. Outside clotheslines shall be prohibited.

Section 13. Fuel Tanks. With the exception of small tanks not constructed for underground installation, all fuel tanks shall be located underground. Small fuel tanks, not constructed for underground installation, shall not be installed without approval as to location and type by the Architectural Review Committee. All above ground fuel tanks shall be properly screened from view.

Section 14. Exterior Lights. Any exterior lights, except street lights installed by the declarant or governmental agency, shall be installed and shielded so as not to disturb abutting or nearby neighbors.

Section 15. Recreational Vehicles, Campers and Boats. Recreational vehicles, campers, boats shall be concealed from public view. On street parking of lot owner's vehicles shall be prohibited.

Section 16. Fruit and/or Vegetable Gardens. Fruit and/or vegetable gardens must be located to the rear of the main residence or at a location approved by the Architectural Review Committee.

Section 17. Incinerators/Open Burning. Trash and garbage incinerators are prohibited. All open burning (i.e. leaves) must be extinguished by 12:00 o'clock midnight.

Section 18. Junk Storage. The exterior storage of junk, including but not limited to appliances, motor vehicle parts, inoperable machinery is prohibited.

Section 19. Telephone/Cable and Utility Connections. All telephone/cable and utility



connections between the main lines and the structures located on the lots shall be concealed and located underground.

**Section 20. Fence Placement.** Fences are prohibited in front of the main residence. Plans to be approved prior to construction by the Architectural Review Committee.

**Section 21. Trash/Garbage Receptacles.** Trash, garbage or other waste shall be kept in sanitary containers which are screened from view and located behind the main residence, except that containers may be placed at the road side up to twenty-four (24) hours prior to scheduled collection.

**Section 22. Signs.** All signs other than "For Sale" or "For Rent" signs not exceeding 2' X 4' in size to be placed within the subdivision must be approved by the Declarant, its successor or assigns. Declarant shall be permitted to maintain signs for promoting sales for lots it owns, even though the signs may exceed 2' X 4'.

**Section 23. Maintenance Responsibility.** Each lot owner shall maintain and preserve his lot in a clean, sanitary, orderly and attractive appearance within the spirit of the development. Lot owners shall be responsible for maintaining that portion of the street right-of-way between their lots and portion of the street right-of-way between their lots and the pavement.

**Section 24. Animals.** No animals or poultry, with the exception of domestic pets shall be kept or maintained on any lot. Domestic pets may be kept on lots only in limited numbers, but only if reasonable regulation of control and sanitation is provided. Domestic pets may not be kept, bred or maintained for any commercial purpose.

**Section 25. Trees/Clearing.** No contiguous area greater than twenty percent (20%) of a lot shall be cleared of trees until approval in writing is given by the Architectural Review Committee. Any owner violating this provision shall be required to restore the damaged area as nearly as possible to its original condition. All debris from clearing shall be removed from lot.

**Section 26. Business Activities.** No business activity, trade, or profession of any kind shall be carried or practiced on any lot except office type activities that do not cause increased vehicular traffic in the subdivision and are not apparent from the exterior of the home.

**Section 27. Covenants and Restrictions Binding.** All covenants and restrictions shall apply to all lots within the Cross Creek Subdivision and any additions thereto, purchased hereafter from the Developer or any other party.

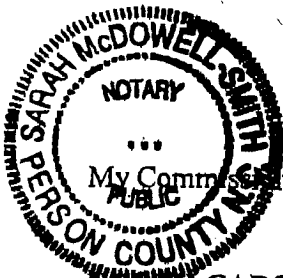
Invalidation of any one or more of these restrictions shall in no way affect any of the other provisions of expressly held to be void, and all other such provisions shall remain in full force and effect.

K & L PROPERTIES

By: Steven Lee Kelly  
Steven Lee Kelly, Managing Partner

NORTH CAROLINA  
PERSON COUNTY

I, SARAH MCDOWELL-SMITH, a Notary Public of the County and State aforesaid, certify that Steven Lee Kelly personally appeared before me this day and acknowledged that he is Managing Partner of K & L Properties, a General Partnership, and further acknowledged the due execution of the foregoing instrument on behalf of the General Partnership. Witness my hand and official stamp or seal, this 23RD day of MAY, 2002.



Sarah McDowell-Smith  
NOTARY PUBLIC

My Commission expires: 3/10/2007

NORTH CAROLINA  
PERSON COUNTY

The foregoing certificate of Sarah McDowell-Smith (Person County, N.C.) a Notary Public of Person County, North Carolina is certified to be correct. This instrument was presented for registration and recorded in this office at Book 377, Page 379.

This the 24 day of May, 2002 at 11:41:38 o'clock A.m.

Arlanda W. Garrett by:  
Bill C. Edwards, Deputy  
Arlanda W. Garrett  
Register of Deeds

FILED in PERSON County, NC  
on May 24 2002 at 11:41:54 AM  
by: AMANDA W. GARRETT  
REGISTER OF DEEDS  
BOOK 377 PAGE 389

Prepared by: James W. Tolin, Jr.  
Attorney At Law  
112 South Main Street  
Roxboro, North Carolina 27573

NORTH CAROLINA  
PERSON COUNTY

### ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT made this the 10th day of December, 2001, by and between K & L Properties, a North Carolina General Partnership, the undersigned party of the first part, and its successors-in-title to any portions of these lands hereinafter described, parties of the second part;

#### WITNESSETH:

THAT WHEREAS, the undersigned is owner of property adjacent and contiguous to that road, as shown on plat of survey entitled "CROSS CREEK", prepared by John J. Jennings, RLS, dated January, 2002, of record in Plat Cabinet 12, Hanger 810, Person County Registry, said road providing access to and from N.C. State Road 1119 and the various lots described by said plat of survey;

AND WHEREAS, the undersigned owner believes it to be in its best interest to declare and enter into a joint road maintenance agreement with reference to the maintenance and upkeep of the said road until such time as maintenance of the road is assumed by the North Carolina Department of Transportation.

NOW, THEREFORE, in consideration of \$10.00 and the mutual promises and covenants herein contained, the undersigned hereby declares and agrees:

1. The expense of maintaining said road as shown on the referenced plat of survey, in a condition reasonably suitable for residential vehicular traffic, shall be equally apportioned among each of the several lot owners along said roadway on a prorata basis, with the owner of each lot served by said roadways paying an equal amount per year for such maintenance. Maintenance shall be determined and provided for by a roadway maintenance committee. Until all of the lots are sold, the undersigned shall be the sole member of the roadway maintenance committee. After all of the lots are sold, the roadway maintenance committee shall be composed of three persons, each elected by majority vote of the various lot owners. This committee shall establish a roadway maintenance fund and make all decisions as to the type and timing of maintenance.

2. All purchasers of the subject lots hereby bind themselves, their heirs, successors, and assigns to this Roadway Maintenance obligation, and the same shall constitute a lawful obligation of each lot owner and shall be enforceable against said lot owners by the maintenance committee pursuant to all legal remedies allowed for the collection of debts.

3. At such time as the North Carolina Department of Transportation accepts responsibility for maintenance of the referenced road, this agreement shall terminate.

IN TESTIMONY WHEREOF, the undersigned has hereunto set its hand and affixed its seal the day and year first above written.

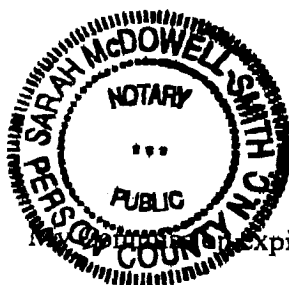
K & L PROPERTIES

By: Steven L. Kelly  
Steven L. Kelly, Managing Partner

NORTH CAROLINA  
PERSON COUNTY

I, SARAH MCDOWELL-SMITH, a Notary Public of the aforesaid State and County do hereby certify that Steven L. Kelly personally appeared before me this date and acknowledged that he is Managing Partner of K & L Properties, a General Partnership, and further acknowledged the execution of the foregoing instrument on behalf of the General Partnership.

Witness my hand and official seal, this 23RD day of MAY, 2002.



Sarah McDowell-Smith  
Notary Public

Expires: 3/10/2007

**NORTH CAROLINA  
PERSON COUNTY**

The foregoing certificate(s) of Sarah McDowell-Smith (Person County, N.C),  
a Notary(ies) Public of the governmental unit designated is certified to be correct. This  
instrument was presented for registration and recorded in this office at Book 377  
Page 389. This 24th day of May, 2002, at 11:41:54  
o'clock A.m.

Amanda W. Garrett by Jill C. Edwards,

AMANDA W. GARRETT, REGISTER OF DEEDS IN PERSON COUNTY

*Deputy*