

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY

### BOARD OF COMMISSIONERS

**MEETING DATE:** 8 September 2020

**SUBJECT:** Van Winkle Law Firm request for refund of deed excise tax

**ATTACHMENT(S):** Request letter; copies of deeds; waiver of notice

**SUMMARY OF REQUEST:**

Attorney Michael M. Thompson has requested, on behalf of The Van Winkle Law Firm, the refund of the sum of Three Thousand Three Hundred Fifty Dollars (\$3,350.00) in real property conveyance excise tax (“deed stamps”). The instrument in question was recorded twice (second time in error) due to a problem with the electronic recording system. The instrument can be found at Henderson County Book 3545, Page 397, *et al.*, and also at Buncombe County Book 5937, Page 394. These details have been verified by Lee King, Register of Deeds.

Pursuant to N.C. Gen. Stat. §105-228.37, a request for refund of overpayment of real property conveyance excise tax must be made within six months of the date of payment. The payment was made on or about August 18, 2020. A letter to the Board of Commissioners requesting refund is attached, as is an email waiving further notice of your determination in this matter.

If the Board determines that a refund is in order, the refund will be of the amount of the excise tax paid.

County staff will be present and prepared if requested to give further information on this matter.

**BOARD ACTION REQUESTED:**

Approval of the refund.

If the Board is so inclined, the following motion is suggested:

***I move that the Board grant the refund requested insofar as it conforms to the requirements of N.C. Gen. Stat. §105-228.37(b).***



THE  
VAN WINKLE  
LAW FIRM

August 25, 2020

Charles Russell Burrell  
County Attorney for Henderson County, North Carolina  
1 Historic Courthouse Sq, Suite 5  
Hendersonville, NC 28792

RE: Petition for Refund of Overpayment of Taxes and Fees on 101 Somerset Village Lane,  
Arden, NC 28704  
Our File #47573-0002- MMT

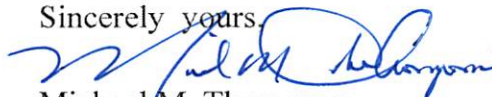
Dear Russ,

This letter constitutes my petition for refund of overpayment of taxes and fees, citing N.C. G.S. 105-228.37 for a transaction that was supposed to be recorded in Buncombe County, North Carolina but was erroneously recorded in Henderson County, North Carolina. I have enclosed copies of the Consent to Transfer under Right of First Refusal recorded in Henderson County Register of Deeds in Deed Book 3545 Page 397, Supplemental Declaration of Covenants, Conditions and Restrictions for Walnut Cove recorded in Henderson County Register of Deeds in Deed Book 3545 Page 400 and the North Carolina General Warranty Deed transferring the subject property from Somerset WC, LLC to Robert J. Zito and wife, Dana S. Cole, tenants by entireties recorded in Henderson County Register of Deeds in Deed Book 3545 Page 404. I have also enclosed the cost printout from the Simplifile website that gives the breakdown of costs for recording in Henderson County, North Carolina.

This transaction was also correctly recorded in Buncombe County, North Carolina and copies with recording information and costs for recording in Buncombe County, North Carolina have also been included.

I respectfully request a refund of the costs of the erroneous recording in the amount of \$3,350.00. Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely yours,



Michael M. Thompson

**§ 105-228.37. Refund of overpayment of tax.**

(a) **Refund Request.** – A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) **Hearing by County.** – A board of county commissioners must conduct a hearing on a request for refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the board must notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the board. The board must make a decision on the requested refund within 90 days after conducting a hearing under this subsection.

(c) **Process if Refund Granted.** – If the board of commissioners decides that a refund is due, it must refund the overpayment, together with any applicable interest, to the taxpayer and inform the Department of the refund. The Department may assess the taxpayer for the amount of the refund in accordance with G.S. 105-241.9 if the Department disagrees with the board's decision.

(d) **Process if Refund Denied.** – If the board of commissioners finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may request a departmental review of the denial of the refund in accordance with the procedures set out in G.S. 105-241.11.

(e) **Recording Correct Deed.** – Before a tax is refunded, the taxpayer must record a new instrument reflecting the correct amount of tax due. If no tax is due because an instrument was recorded in the wrong county, then the taxpayer must record a document stating that no tax was owed because the instrument being corrected was recorded in the wrong county. The taxpayer must include in the document the names of the grantors and grantees and the deed book and page number of the instrument being corrected.

When a taxpayer records a corrected instrument, the taxpayer must inform the register of deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the register of deeds a copy of the decision granting the refund that shows the correct amount of tax due. The correcting instrument must include the deed book and page number of the instrument being corrected. The register of deeds must notify the county finance officer and the Secretary when the correcting instrument has been recorded.

(f) **Interest.** – An overpayment of tax bears interest at the rate established in G.S. 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an overpayment 30 days after the request for a refund is filed by the taxpayer with the board of county commissioners. (2000-170, s. 2; 2007-491, s. 24; 2011-330, s. 30(a).)

## Package Details [\(/sf/ui/app/help/submitter#1-Submitter/x-PackageDetailsPage.htm\)](#)

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[DETAILS \(/sf/ui/submitter/package/79F09F2E-F467-77E7-21DE-9810DCF09EC9/details\)](#)

Package Name	Zito 101 Somerset Village Lane 47573-0002	Package Status	Recorded
Recipient	Henderson County, NC	Remote ID	29448.29470
Submitter	Van Winkle Law Firm	Estimated Recording Time	5 minutes - 2 hours <a href="#"> (/sf/ui/submitter/recipient) </a>
Created By	Morgan Gordon	Last Modified By	Morgan Gordon

[HISTORY \(/sf/ui/submitter/package/79F09F2E-F467-77E7-21DE-9810DCF09EC9/history\)](#)

[MESSAGES \(/sf/ui/submitter/package/79F09F2E-F467-77E7-21DE-9810DCF09EC9/messages\)](#)

### Documents

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<input type="checkbox"/>	<a href="#"> Supplemental Declaration of Covenants, Conditions and Restrictions for Walnut Cove (/sf/ui/submitter/package/79F09F2E-F467-77E7-21DE-9810DCF09EC9/docViewer/51C01D17-1CF5-2562-5B97-66CE5B352C02/true) </a> DECLARATION	4 pages \$28.00	E 931494 B 3545 P 400 Tue 8/18/20 4:44 PM ET 
<input type="checkbox"/>	<a href="#"> Zito Deed (/sf/ui/submitter/package/79F09F2E-F467-77E7-21DE-9810DCF09EC9/docViewer/83EB3D18-B132-2F71-90E2-A06885CDC9B2/true) </a> DEED	3 pages \$3,378.00	E 931495 B 3545 P 404 Tue 8/18/20 4:44 PM ET 

### Fees [\(/sf/docs/sf/Content/1-Submitter/y-EstimatedFees.htm\)](#)

Fee Description	Amount	Payment Account
Recording Fees	\$84.00	Client Expense Account - Hometrust (ACH *****3000) ▼
Taxes	\$3,350.00	Client Expense Account - Hometrust (ACH *****3000) ▼
Submission Fees	\$15.00	Client Expense Account - Hometrust (ACH *****3000) ▼
<b>Total</b>	<b>\$3,449.00</b>	

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[Morgan Gordon](#)

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BK 3545 PG 397 - 399 (3)

DOC# 931493

This Document eRecorded:

08/18/2020 04:44:17 PM

Fee: \$26.00

Henderson County, North Carolina

William Lee King, Register of Deeds

Prepared by and Return to  
Annika Brock  
The Brock Law Firm, PLLC-  
ROD Box 27

CONSENT TO TRANSFER UNDER RIGHT OF FIRST REFUSAL

THIS waiver of Right of First Refusal made and entered into this the 20<sup>th</sup> day of July, 2020, by and between URBANA CLIFFS RE, LLC (hereinafter referred to as "Urbana"); SOMERSET WC, LLC, a North Carolina limited liability company ("Seller") and Robert J. A. Zito and Dana S. Cole (collectively "Buyer").

WITNESSETH:

That Whereas, Urbana, through an Assignment of Declarants' Rights recorded in Deed Book 4972, Page 1960 of the Buncombe County, NC Register's Office, holds a Right of First Refusal, said right being set forth in Article 4.26 (Repurchase Option) of the Declaration of Covenants, Conditions and Restrictions for Walnut Cove as recorded in Deed Book 2856 at Page 7 of the Buncombe County, NC Register's Office (herein "Right of First Refusal"); and

Whereas, Seller is the owner of that Lot 1, containing 0.45 acre, more or less, as shown on that plat recorded in Plat Book 176, Page 15, Buncombe County Registry, reference to which plat is hereby made for a more particular description (hereinafter referred to as "Property"), said Property being subject to the above-referenced Right of First Refusal; and

Whereas, Seller and Buyer desire to have the Property released from the Right of First Refusal; and

Whereas, Urbana has agreed to such transfer and is desirous of executing this instrument to memorialize such consent to the transfer of the Property.

Now therefore, for a valuable consideration paid to Urbana, the receipt and sufficiency of which is hereby acknowledged, Urbana does hereby consents to the sale of the Property from Seller to Buyer and hereby waives its right to purchase the Property from Seller.

Now therefore, for a valuable consideration paid to Urbana, the receipt and sufficiency of which is hereby acknowledged, Urbana does hereby waiver its right to purchase the Property, and Urbana does hereby consent to the Sellers' transfer of the Property to Buyer.

This Consent shall be a waiver as to such transfer only and shall not be deemed to be a waiver of any such other and future conveyances.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Urbana has caused this instrument to be executed by its duly authorized officers, the day and year first above written.

URBANA CLIFFS RE, LLC, a Delaware limited liability company

By: *A. Henry Armistead*  
A. Henry Armistead, Authorized Signatory

STATE OF North Carolina  
COUNTY OF Mecklenburg

I, a Notary Public of the State and County aforesaid, certify that A. Henry Armistead, Authorized Signatory, personally came before me this day and acknowledged that he is an Authorized Signatory of URBANA CLIFFS RE, LLC, a Delaware limited liability company, and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and seal this 20<sup>th</sup> day of July, 2020.

*Bennette Cornwell Hopper*  
Notary Public

My commission expires: 4-25-2024

BENNETTE CORNWELL HOPPER  
NOTARY PUBLIC  
MECKLENBURG COUNTY, NC  
My Commission Expires 04-25-2024.

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*[Handwritten signature]*

BENNETTE CORNWELL HOPPER  
NOTARY PUBLIC  
MECKLENBURG COUNTY, NC  
My Commission Expires 04-28-2024

BK 3545 PG 400 - 403 (4)

DOC# 931494

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Fee: \$26.00

Henderson County, North Carolina

William Lee King, Register of Deeds

Prepared by and Return to:  
Annika M. Brock, Esq.  
The Brock Law Firm, PLLC  
(ROD Box 27)

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

**SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WALNUT COVE**

**[Adding Lot 1, Plat Book 176, Page 15]**

This Supplemental Declaration of Covenants, Conditions and Restrictions for Walnut Cove ("Amendment") is made this 4th day of August, 2020 by Urbana Cliffs RE, LLC, a Delaware Limited Liability company ("Declarant") and Somerset WC, LLC ("Owner").

WITNESSETH:

WHEREAS, Declarant is the successor developer of The Cliffs at Walnut Cove, a planned community located in Buncombe County, North Carolina (herein the "Cliffs"); and

WHEREAS, the original Declarant, The Cliffs at Walnut Cove, LLC, as the developer of the Cliffs, recorded that certain Declaration of Covenants, Conditions and Restrictions for Walnut Cove, recorded in Book 2856, Page 7, which Declaration has been amended, restated and supplanted by documents recorded in the Buncombe County, NC Registry (and as may be further amended from time to time, the "Declarations"); and

WHEREAS, The Cliffs at Walnut Cove, LLC assigned all of its declarant rights to Urbana Cliffs RE, LLC by and through the recording of that certain Assignment of Declarant Rights recorded in Book 4972, Page 1960, Buncombe County Registry; and

WHEREAS, Owner is the owner of Lot 1, The Cliffs at Walnut Cove, Somerset, as shown on that plat recorded in Plat Book 176, Page 15, Buncombe County Registry ("Lot 1"), which property is not yet subject to the Declarations; and

WHEREAS, pursuant to the provisions of Section 2.2 of the Declarations, the Declarant possesses the option and right to submit from time to time additional property to the operation and control of



the Declaration, said right to be exercised by Declarant by the execution and filing of a supplement to the Declaration in the Office of the Register of Deeds for Buncombe County; and

WHEREAS, Declarant wish to and has agreed to subject the Property to the Declarations for The Cliffs at Walnut Cove.

NOW THEREFORE, in consideration of ten dollars and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and the Declarant do hereby agree as follows:

1. All of Lot 1, as shown on that plat recorded in Plat Book 176, Page 15, Buncombe County Registry, shall be and is hereby added to the plan and operation of the Declaration for The Cliffs at Walnut Cove and the same shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to said Declarations, including but not limited to all covenants, restrictions, conditions, easement and affirmative obligations set forth therein.

2. This Amendment shall be effective upon its filing in the Office of the Buncombe County Register of Deeds and shall be binding upon and inure to the benefit of the Declarant and all Owners of Lots in The Cliffs at Walnut Cove and their respective heirs, executors, administrators, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed and sealed as of the date and year first above written.

**[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES]**

DECLARANT:

URBANA CLIFFS RE, LLC,  
a Delaware limited liability company

By: [Signature]  
Rob Duckett, President

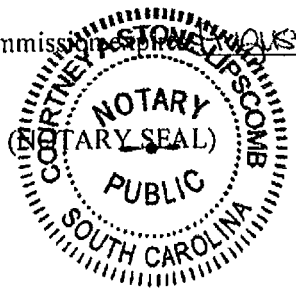
STATE OF South Carolina  
COUNTY OF Greenville

I, a Notary Public, of the aforesaid State and County, do hereby certify that Rob Duckett, President for Urbana Cliffs RE, LLC, personally appeared before me this day and being personally known by me, acknowledges the due execution of the foregoing instrument on behalf of Urbana Cliffs RE, LLC.

WITNESS my hand and notary seal at office, this 4<sup>th</sup> day of August, 2020.


[Signature]  
Notary Public  
Courtney A Stone-Lipscomb  
Print Name

My Commission Expires August 26, 2020



OWNER:

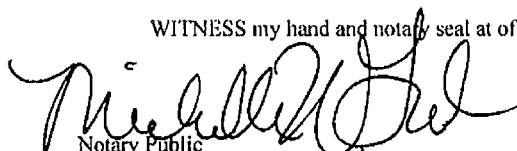
SOMERSET WC, LLC

By:   
Denis Beaulieu, Manager

STATE OF North Carolina  
COUNTY OF Buncombe

I, a Notary Public, of the aforesaid State and County, do hereby certify that Denis Beaulieu, Manager of Somerset WC, LLC, personally appeared before me this day and being personally known by me, acknowledges the due execution of the foregoing instrument on behalf of Somerset WC, LLC.

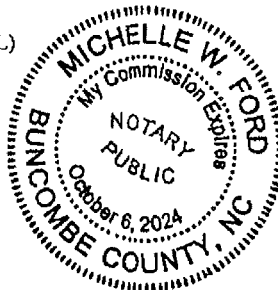
WITNESS my hand and notary seal at office, this 4 day of August, 2020.

  
Notary Public  
Michelle W. Ford

My Commission expires: 10/06/2024

Print Name

(NOTARY SEAL)



BK 3545 PG 404 - 406 (3)

DOC# 931495

This Document eRecorded:

08/18/2020 04:44:19 PM

Fee: \$26.00

Henderson County, North Carolina

William Lee King, Register of Deeds

**NORTH CAROLINA GENERAL WARRANTY DEED**

Excise Tax: \$3,350.00

Parcel No. 9624-73-3279

Prepared by: The Brock Law Firm, PLLC, Annika M. Brock, a licensed NC attorney (Box 27)

Return to: Van Winkle Law Firm, 11 N. Market Street, Asheville, NC 28801

Brief description for the Index: Lot 1, Somerset Subdivision, The Cliffs at Walnut Cove, PB 176, PG 15

THIS DEED made this 30th day of July, 2020, by and between

GRANTOR	GRANTEE
<p><b>SOMERSET WC, LLC, a North Carolina limited liability company</b></p> <p><b>158 Walnut Valley Parkway</b> <b>Arden, NC 28704</b></p>	<p><b>ROBERT J. A. ZITO and wife,</b> <b>DANA S. COLE, Tenants by the Entireties</b></p> <p><b>101 Somerset Village Lane</b> <b>Arden, NC 28704</b></p>

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in Buncombe County, North Carolina and more particularly described as follows (the "Property"):

**SEE EXHIBIT A, ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.**

This instrument prepared by Annika M. Brock a licensed NC attorney. Delinquent taxes, if any, to be paid by the closing attorney to the County Tax Collector upon disbursement of closing proceeds.

The Property was acquired by Grantor by instrument recorded in Book 5371, Page 1275, Buncombe County Registry.

The Property does not include the primary residence of Grantor.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor is seized of the Property in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Utilities physically located on the Property, ad valorem taxes for the current year and subsequent years, easements and restrictions of record.

IN WITNESS WHEREOF, Grantor has duly executed the foregoing as of the day and year first above written.

SOMERSET WC, LLC

By: *Denis Beaulieu*  
Denis Beaulieu, Manager

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

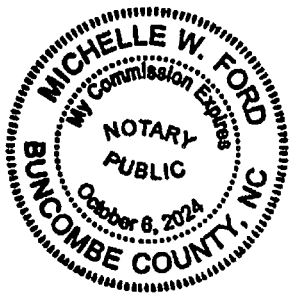
I, the undersigned notary public of the aforesaid jurisdiction, certify that Denis Beaulieu, Manager of SOMERSET WC, LLC, personally appeared before me this day and, having produced adequate proof of identity, acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 30 day of July, 2020.

My Commission Expires: 10/06/2024

*Michelle W. Ford*

(Notary Public)

Print Name: Michelle W. Ford



**EXHIBIT A**

BEING all of Lot 1, containing 0.45 acre, more or less, as shown on that plat recorded in Plat Book 176, Page 15, Office of the Register of Deeds, Buncombe County, North Carolina, reference to which plat is hereby made for a more particular description of said Lot 1.

Together with easements for ingress, egress and regress and utilities over and upon that certain Fifty Foot (50') right-of-way known as Walnut Valley Parkway, as shown on that plat recorded in Plat Book 177, Page 195, Buncombe County Registry. Also together with those easements known as Club Village Way as shown on Plat Book 176 Page 15 and Somerset Village Lane as shown on Plat Book 170 Page 182, Buncombe County Registry.

AND BEING a portion of that real property conveyed by deed recorded in Deed Book 5371 at Page 1275 in the Office of the Register of Deeds for Buncombe County, North Carolina.

## Package Details [\(/sf/ui/app/help/submitter#1-Submitter/x-PackageDetailsPage.htm\)](/sf/ui/app/help/submitter#1-Submitter/x-PackageDetailsPage.htm)

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Package Name	Zito 47573-0002	Package Status	Recorded
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Submitter	Van Winkle Law Firm	Estimated Recording Time	5 minutes - 10 hours <a href="/sf/ui/submitter/recipient"> (/sf/ui/submitter/recipient)</a>
Created By	Morgan Gordon	Last Modified By	Morgan Gordon

### Documents

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<input type="checkbox"/>	<a href="/sf/ui/submitter/package/D96B5FA4-2C6B-5EE1-D501-6783127B310B/docViewer/C162916F-88C3-A88E-B363-4EA187AE36D5&gt;true">Supplemental Declaration of Covenants, Conditions and Restrictions for Walnut Cove (/sf/ui/submitter/package/D96B5FA4-2C6B-5EE1-D501-6783127B310B/docViewer/C162916F-88C3-A88E-B363-4EA187AE36D5&gt;true)</a> OTHER PAPERS W/VERIFICATION	4 pages \$26.00	B 5937 P 396 Tue 8/18/20 4:48 PM ET	
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### Fees [\(/sf/docs/sf/Content/1-Submitter/y-EstimatedFees.htm\)](/sf/docs/sf/Content/1-Submitter/y-EstimatedFees.htm)

Fee Description	Amount	Payment Account
Recording Fees	\$78.00	Client Expense Account - Hometrust (ACH *****3000) ▾
Taxes	\$3,350.00	Client Expense Account - Hometrust (ACH *****3000) ▾
Submission Fees	\$15.00	Client Expense Account - Hometrust (ACH *****3000) ▾
<b>Total</b>	<b>\$3,443.00</b>	

Support Chat

Send Feedback

[Morgan Gordon \(/sf/ui/settings/personal\)](/sf/ui/settings/personal)

**BK 5937 PG 394 - 395**

**Prepared by and Return to  
Annika Brock  
The Brock Law Firm, PLLC-  
ROD Box 27**

**CONSENT TO TRANSFER UNDER RIGHT OF FIRST REFUSAL**

This Waiver of Right of First Refusal made and entered into this the 20<sup>th</sup> day of July, 2020, by and between **URBANA CLIFFS RE, LLC** (hereinafter referred to as "Urbana"); **SOMERSET WC, LLC**, a North Carolina limited liability company ("Seller") and Robert J. A. Zito and Dana S. Cole (collectively "Buyer").

**WITNESSETH:**

That Whereas, Urbana, through an Assignment of Declarants' Rights recorded in Deed Book 4972, Page 1960 of the Buncombe County, NC Register's Office, holds a Right of First Refusal, said right being set forth in Article 4.26 (Repurchase Option) of the Declaration of Covenants, Conditions and Restrictions for Walnut Cove as recorded in Deed Book 2856 at Page 7 of the Buncombe County, NC Register's Office (herein "Right of First Refusal"); and

Whereas, Seller is the owner of that Lot 1, containing 0.45 acre, more or less, as shown on that plat recorded in Plat Book 176, Page 15, Buncombe County Registry, reference to which plat is hereby made for a more particular description (hereinafter referred to as "Property"), said Property being subject to the above-referenced Right of First Refusal; and

Whereas, Seller and Buyer desire to have the Property released from the Right of First Refusal; and

Whereas, Urbana has agreed to such transfer and is desirous of executing this instrument to memorialize such consent to the transfer of the Property.

Now therefore, for a valuable consideration paid to Urbana, the receipt and sufficiency of which is hereby acknowledged, Urbana does hereby consents to the sale of the Property from Seller to Buyer and hereby waives its right to purchase the Property from Seller.

Now therefore, for a valuable consideration paid to Urbana, the receipt and sufficiency of which is hereby acknowledged, Urbana does hereby waiver its right to purchase the Property, and Urbana does hereby consent to the Sellers' transfer of the Property to Buyer.

This Consent shall be a waiver as to such transfer only and shall not be deemed to be a waiver of any such other and future conveyances.

[SIGNATURE ON FOLLOWING PAGE]

Submitted electronically by "Van Winkle Law Firm"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Buncombe County Register of Deeds.



IN WITNESS WHEREOF, Urbana has caused this instrument to be executed by its duly authorized officers, the day and year first above written.

URBANA CLIFFS RE, LLC, a Delaware limited liability company

By: *A. Henry Armistead*  
A. Henry Armistead, Authorized Signatory

STATE OF North Carolina  
COUNTY OF Mecklenburg

I, a Notary Public of the State and County aforesaid, certify that A. Henry Armistead, Authorized Signatory, personally came before me this day and acknowledged that he is an Authorized Signatory of URBANA CLIFFS RE, LLC, a Delaware limited liability company, and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and seal this 20<sup>th</sup> day of July, 2020.

*Bennette Cornwell Hopper*  
Notary Public

My commission expires: 4-25-2024

BENNETTE CORNWELL HOPPER  
NOTARY PUBLIC  
MECKLENBURG COUNTY, NC  
My Commission Expires 04-25-2024.

**BK 5937 PG 396 - 399**

Prepared by and Return to:  
Annika M. Brock, Esq.  
The Brock Law Firm, PLLC  
(ROD Box 27)

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

**SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WALNUT COVE**

**[Adding Lot 1, Plat Book 176, Page 15]**

This Supplemental Declaration of Covenants, Conditions and Restrictions for Walnut Cove ("Amendment") is made this 4<sup>th</sup> day of August, 2020 by Urbana Cliffs RE, LLC, a Delaware Limited Liability company ("Declarant") and Somerset WC, LLC ("Owner").

**WITNESSETH:**

WHEREAS, Declarant is the successor developer of The Cliffs at Walnut Cove, a planned community located in Buncombe County, North Carolina (herein the "Cliffs"); and

WHEREAS, the original Declarant, The Cliffs at Walnut Cove, LLC, as the developer of the Cliffs, recorded that certain Declaration of Covenants, Conditions and Restrictions for Walnut Cove, recorded in Book 2856, Page 7, which Declaration has been amended, restated and supplanted by documents recorded in the Buncombe County, NC Registry (and as may be further amended from time to time, the "Declarations"); and

WHEREAS, The Cliffs at Walnut Cove, LLC assigned all of its declarant rights to Urbana Cliffs RE, LLC by and through the recording of that certain Assignment of Declarant Rights recorded in Book 4972, Page 1960, Buncombe County Registry; and

WHEREAS, Owner is the owner of Lot 1, The Cliffs at Walnut Cove, Somerset, as shown on that plat recorded in Plat Book 176, Page 15, Buncombe County Registry ("Lot 1"), which property is not yet subject to the Declarations; and

WHEREAS, pursuant to the provisions of Section 2.2 of the Declarations, the Declarant possesses the option and right to submit from time to time additional property to the operation and control of

Submitted electronically by "Van Winkle Law Firm"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Buncombe County Register of Deeds.

the Declaration, said right to be exercised by Declarant by the execution and filing of a supplement to the Declaration in the Office of the Register of Deeds for Buncombe County; and

WHEREAS, Declarant wish to and has agreed to subject the Property to the Declarations for The Cliffs at Walnut Cove.

NOW THEREFORE, in consideration of ten dollars and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and the Declarant do hereby agree as follows:

1. All of Lot 1, as shown on that plat recorded in Plat Book 176, Page 15, Buncombe County Registry, shall be and is hereby added to the plan and operation of the Declaration for The Cliffs at Walnut Cove and the same shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to said Declarations, including but not limited to all covenants, restrictions, conditions, easement and affirmative obligations set forth therein.

2. This Amendment shall be effective upon its filing in the Office of the Buncombe County Register of Deeds and shall be binding upon and inure to the benefit of the Declarant and all Owners of Lots in The Cliffs at Walnut Cove and their respective heirs, executors, administrators, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed and sealed as of the date and year first above written.

**[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES]**

DECLARANT:

URBANA CLIFFS RE, LLC,  
a Delaware limited liability company

By: [Signature]  
Rob Duckett, President

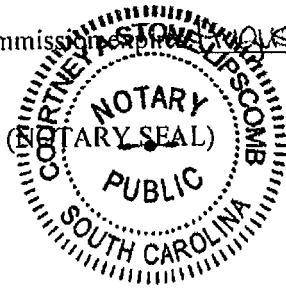
STATE OF South Carolina  
COUNTY OF Greenville

I, a Notary Public, of the aforesaid State and County, do hereby certify that Rob Duckett, President for Urbana Cliffs RE, LLC, personally appeared before me this day and being personally known by me, acknowledges the due execution of the foregoing instrument on behalf of Urbana Cliffs RE, LLC.

WITNESS my hand and notary seal at office, this 4<sup>th</sup> day of August, 2020.

[Signature]  
Notary Public  
Courtney A Stone-Lipscomb  
Print Name

My Commission Expires August 26, 2020



OWNER:

SOMERSET WC, LLC

*DBu*

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

Denis Beaulieu, Manager

STATE OF North Carolina  
COUNTY OF Buncombe

I, a Notary Public, of the aforesaid State and County, do hereby certify that Denis Beaulieu, Manager of Somerset WC, LLC, personally appeared before me this day and being personally known by me, acknowledges the due execution of the foregoing instrument on behalf of Somerset WC, LLC.

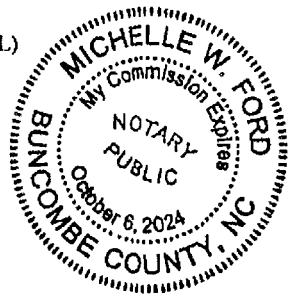
WITNESS my hand and notary seal at office, this 4 day of August, 2020.

*Michelle W. Ford*  
Notary Public  
Michelle W. Ford

My Commission expires: 10/06/2024

Print Name

(NOTARY SEAL)



BK 5937 PG 400 - 402

**NORTH CAROLINA GENERAL WARRANTY DEED**

Excise Tax: \$3,350.00

Parcel No. 9624-73-3279

Prepared by: The Brock Law Firm, PLLC, Annika M. Brock, a licensed NC attorney (Box 27)

Return to: Van Winkle Law Firm, 11 N. Market Street, Asheville, NC 28801

Brief description for the Index: Lot 1, Somerset Subdivision, The Cliffs at Walnut Cove, PB 176, PG 15

THIS DEED made this 30th day of July, 2020, by and between

GRANTOR	GRANTEE
<b>SOMERSET WC, LLC, a North Carolina limited liability company</b>  <b>158 Walnut Valley Parkway</b> <b>Arden, NC 28704</b>	<b>ROBERT J. A. ZITO and wife,</b> <b>DANA S. COLE, Tenants by the</b> <b>Entireties</b>  <b>101 Somerset Village Lane</b> <b>Arden, NC 28704</b>

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in Buncombe County, North Carolina and more particularly described as follows (the "Property"):

**SEE EXHIBIT A, ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.**

This instrument prepared by Annika M. Brock a licensed NC attorney. Delinquent taxes, if any, to be paid by the closing attorney to the County Tax Collector upon disbursement of closing proceeds.

The Property was acquired by Grantor by instrument recorded in Book 5371, Page 1275, Buncombe County Registry.

The Property does not include the primary residence of Grantor.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor is seized of the Property in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Utilities physically located on the Property, ad valorem taxes for the current year and subsequent years, easements and restrictions of record.

IN WITNESS WHEREOF, Grantor has duly executed the foregoing as of the day and year first above written.

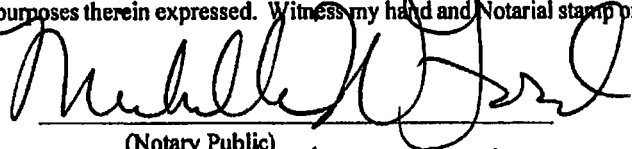
SOMERSET WC, LLC

By:   
Denis Beaulieu, Manager

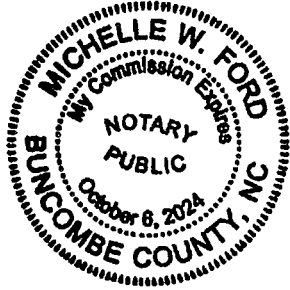
STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, the undersigned notary public of the aforesaid jurisdiction, certify that Denis Beaulieu, Manager of SOMERSET WC, LLC, personally appeared before me this day and, having produced adequate proof of identity, acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 30 day of July, 2020.

My Commission Expires: 10/06/2024



(Notary Public)  
Print Name: Michelle W. Ford



**EXHIBIT A**

BEING all of Lot 1, containing 0.45 acre, more or less, as shown on that plat recorded in Plat Book 176, Page 15, Office of the Register of Deeds, Buncombe County, North Carolina, reference to which plat is hereby made for a more particular description of said Lot 1.

Together with easements for ingress, egress and regress and utilities over and upon that certain Fifty Foot (50') right-of-way known as Walnut Valley Parkway, as shown on that plat recorded in Plat Book 177, Page 195, Buncombe County Registry. Also together with those easements known as Club Village Way as shown on Plat Book 176 Page 15 and Somerset Village Lane as shown on Plat Book 170 Page 182, Buncombe County Registry.

AND BEING a portion of that real property conveyed by deed recorded in Deed Book 5371 at Page 1275 in the Office of the Register of Deeds for Buncombe County, North Carolina.



**From:** [Michael M. Thompson](#)  
**To:** [Russ Burrell](#)  
**Cc:** [Lee W. King](#)  
**Subject:** RE: Refund request, 101 Somerset Village Lane  
**Date:** Tuesday, August 25, 2020 2:11:47 PM

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Yes I consent to the September 8 date and waive any further notice.

Michael M. Thompson  
Attorney

The Van Winkle Law Firm  
422 S. Main St  
Hendersonville, NC 28792  
828-697-6196  
828-693-3999 (fax)  
[mthompson@vwlawfirm.com](mailto:mthompson@vwlawfirm.com)

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**From:** Russ Burrell <[rburrell@hendersoncountync.gov](mailto:rburrell@hendersoncountync.gov)>  
**Sent:** Tuesday, August 25, 2020 12:40 PM  
**To:** Michael M. Thompson <[mthompson@vwlawfirm.com](mailto:mthompson@vwlawfirm.com)>  
**Cc:** Lee W. King <[LKing@Hendersoncountync.gov](mailto:LKing@Hendersoncountync.gov)>  
**Subject:** RE: Refund request, 101 Somerset Village Lane

With your permission, I will put this on the Board's September 8 agenda. Could you email me your consent to such a date?

If past practice is any indicator, you will not need to appear on that date. But you are entitled to notice, and I would interpret an email consenting to the date as a waiver of any further notice.

Thanks!

Russ

**Charles Russell Burrell**  
County Attorney



**Office of the County Attorney**  
**Henderson County**

1 Historic Courthouse Square, Suite 5  
Hendersonville, North Carolina 28792  
Telephone (828) 697-4719  
Facsimile (828) 697-4536