

Return to: Hope Derby Carmichael, Jordan Price, P.O. Box 10669, Raleigh NC 27605

Indexing: **Grantors/Grantees:** Skybrook Homeowners Association, Inc. and Skybrook Golf, LLC

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS/MECKLENBURG

JOINT USE AND COST SHARING AGREEMENT

THIS JOINT USE AND COST SHARING AGREEMENT (“Agreement”) is made and entered this ___ day of _____, 2019, by and between Skybrook Homeowners Association, Inc., a North Carolina non-profit corporation, and Skybrook Golf, LLC, a North Carolina limited liability company (individually each a “Party”, and collectively the “Parties”).

WITNESSETH:

WHEREAS, MVC, LLC (“Declarant”), a North Carolina limited liability company, was the owner of certain real property located in Cabarrus and Mecklenburg Counties, upon which the residential community more commonly known as Skybrook was developed; and

WHEREAS, in conjunction with the development of Skybrook, Declarant entered into a Land Development and Purchase Agreement dated April 26, 1999, related to the development of a golf course and related facilities within Skybrook, and recorded a Declaration of Restrictions, Covenants and Easements in Book 2562, Page 231 of the Cabarrus County Registry and in Book 10530, Page 272 of the Mecklenburg County Registry which subjected Skybrook to certain restrictions, covenants and easements in favor of the Golf Course Property, and subjected the Golf Course Property to certain easements benefitting Skybrook, which Declaration was thereafter amended and supplemented; and

WHEREAS, Declarant intended that the Golf Course Property would be, and the Golf Course Property is, an integral part of Skybrook; and

WHEREAS, Declarant recorded a Master Declaration of Covenants, Conditions and Restrictions of Skybrook in Book 2672, Page 119 of the Cabarrus County Registry and in Book 10806, Page 711 of the Mecklenburg County Registry; and

WHEREAS, on February 3, 2000, REES 34, L.L.C., the owner of the Golf Course Property at that time, recorded a Restrictive Covenant in Book 2782, Page 263 of the Cabarrus County Registry and in Book 11067, Page 326 of the Mecklenburg County Registry, which Restrictive Covenant provided that for fifteen (15) years following the date of recording, the Golf Course Property could be used only for the operation of a golf course facility, and related amenities such as a clubhouse, pro shop, and driving range; and

WHEREAS, by virtue of that deed recorded in Book 13441, Page 154 of the Cabarrus County Registry and in Book 33396, Page 860 of the Mecklenburg County Registry, Skybrook Golf, LLC (“SGLLC”) acquired the Golf Course Property; and

WHEREAS, in recognition of the benefit that continued maintenance and operation of the Golf Course Property provides to owners of lots within Skybrook, including, but not limited to protection of property values, the members of the Association agreed to amend the Master Declaration to provide for an amenity assessment, subject to certain conditions described herein, including contributions by SGLLC to maintenance and operations of the Skybrook Golf Club; and

WHEREAS, in furtherance thereof, the members of the Association authorized the Board of Directors of the Association to enter into this Joint Use and Cost Sharing Agreement with SGLLC, setting forth the terms and conditions of the Association’s participation in the maintenance of the Golf Course Property;

NOW THEREFORE, for the mutual promises herein contained and other good and valuable consideration, the undersigned agree as follows:

**ARTICLE I
RECITALS**

The recitals set out above are an integral part of this Agreement and are fully incorporated into the body of this Agreement.

**ARTICLE II
DEFINITIONS**

2.1 “Association” shall mean and refer to the Skybrook Homeowners Association, Inc., a North Carolina non-profit corporation.

2.2 “Association Board” shall mean and refer to the Board of Directors of the Association.

2.3 “Association Contribution” shall mean and refer to an annual sum to be paid to the per this Agreement to SGLLC.

2.4 “Golf Course Property” shall mean and refer to the real property acquired by SGLLC via that deed recorded in Book 13441, Page 154 of the Cabarrus County Registry and in Book 33396, Page 860 of the Mecklenburg County Registry, and all infrastructure and facilities located thereon, specifically including, but not limited to a clubhouse, golf course, irrigation ponds, water irrigation system, cart paths, driving range, and maintenance facilities.

2.5 “Master Declaration” shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions of Skybrook in Book 2672, Page 119 of the Cabarrus County Registry and in Book 10806, Page 711 of the Mecklenburg County Registry, as amended and supplemented.

2.6 “SGLLC” shall mean and refer to Skybrook Golf, LLC, the North Carolina limited liability company that is the owner of the Golf Course Property.

2.7 “SGLLC Contribution” shall mean and refer to the minimum sums to be contributed by SGLLC to the operation of the Golf Course Property per this Agreement.

2.8 “Restrictive Covenant” shall mean and refer to the Restrictive Covenant recorded in Book 2782, Page 263 of the Cabarrus County Registry and in Book 11067, Page 326 of the Mecklenburg County Registry.

2.9 “Skybrook” shall refer to the Skybrook residential development located in Cabarrus and Mecklenburg Counties, which is more particularly described in the Master Declaration.

2.10 “Skybrook Golf Club” shall generally refer to the Golf Course Property and the amenities and facilities located thereon.

ARTICLE III COST-SHARING

3.1 Association Contribution. The Association shall pay to SGLLC an annual payment of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) per year, subject to inflationary CPI increase as defined below (“Annual Contribution”), with the first Annual Contribution being due on April 1, 2020 and subsequent Annual Contributions being due on April 1st of each year thereafter, through and including April 1, 2029. Beginning and after April 1, 2021 the Annual Contribution shall be increased by a percentage which may not exceed the percentage increase reflected in the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for the twelve month period immediately preceding July 1 of the prior calendar year.

3.2 Use of Association Contribution. The Association Contribution shall be used solely for purposes of (i) capital projects or (ii) maintenance of the grounds located on the Golf Course Property. A “capital project” is a project that helps maintain or improve the Golf Course Property in the form of expansion, renovation, or replacement of an existing facility. The phrase “maintenance of the grounds” means irrigation, mowing, edging, planting, fertilizing and other landscaping associated with any portion of the Golf Course Property, including the greens.

3.3 SGLLC Contribution. Before December 31, 2019, SGLLC shall invest not less than One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) in the Golf Course Property. The parties acknowledge that SGLLC has already invested One Million Fifty Thousand and 00/100 Dollars (\$1,050,000.00) in purchasing the Golf Course Property prior to execution of this Agreement. On or before December 31, 2019, SGLLC shall invest additional capital over and above operating revenues from the Golf Course Property of not less than Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) to improve the Golf Course Property.

3.4 Use of SGLLC Contribution. The SGLLC Contribution shall be used for the purpose of maintenance, repair and capital expenses for the Golf Course Property, as well as One Hundred Twenty Five Thousand and 00/100 Dollars (\$125,000.00) to offset a loss of operating revenue during the course closure due to conversion of the greens to Bermuda grass.

3.5 Budgeting. On or before December 1 of each year, SGLLC shall present a budget for the upcoming year to include operating expenses, and project costs. The budget will specifically allocate the proposed use of the Association Contribution and any SGLLC Contribution for the upcoming year.

3.6 Provision of Financial Information. On or before January 31 of each year, SCLLC shall provide the Association with financial records sufficient to show the Association and SGLLC Contributions for the preceding calendar year and the manner in which those contributions were utilized. Separate records will be maintained for operational expenses and capital projects.

**ARTICLE IV
RIGHT OF FIRST REFUSAL**

SGLLC hereby grants the Association a right of first refusal and option to purchase the Golf Course Property, the terms of which will be memorialized in a separate agreement recorded in the Cabarrus and Mecklenburg County Registries. Termination of this Agreement shall likewise terminate the right of first refusal.

**ARTICLE V
RESTRICTION OF PROPERTY TO GOLF COURSE USE**

In conjunction with recording of this Agreement, SGLLC will cause to be recorded a document substantially similar to the Restrictive Covenant, which shall provide that for a period of TEN (10) YEARS following the date of recording, or the termination of this Joint Use Agreement, whichever first occurs, the Golf Course Property can be used only for the operation of a golf course facility, and related amenities such as a clubhouse, pro shop, and driving range.

**ARTICLE VI
ASSOCIATION'S INTEREST IN SALES PROCEEDS**

If on or before January 1, 2025, SGLLC accepts an offer to purchase the Golf Course Property that is thereafter consummated, SGLLC and the Association shall each be reimbursed out of the net sales profit in accordance with their respective pro rata share of Contributions

which shall have been actually paid before closing, pursuant to Section 3.1, 3.2, 3.3 and 3.4 of this Agreement. Solely by way of example to illustrate the foregoing formula for pro rata sharing in the net sales proceeds:

Example 1: If SGLLC sells the course for \$2,000,000 after the second year of this Agreement and the Association contributions total \$300,000, SGLLC contributions remain at \$1,500,000, net sales proceeds would be distributed 1/6 to HOA (\$333,333) and 5/6 to SGLLC (\$1,666,667).

Example 2: If SGLLC sells the course for \$2,000,000, after January 1, 2025, 100% of net sales proceeds are distributed to SGLLC and Association ceases all further contributions.

ARTICLE VII TERM AND TERMINATION

7.1 Termination at End of Term. This Agreement will terminate on December 31, 2029, unless the Parties agree in writing to extend the Agreement.

7.2 Termination by Agreement. This Agreement may be terminated by the mutual written agreement of all Parties.

7.3 For Cause. This Agreement may be terminated by the Association or SGLLC in the event that the other fails to make its contribution, or for any other material breach this Agreement. However, no such termination shall be effective unless the aggrieved party gives written notice of the breach to the accused party, and a 15 day period to cure.

7.4 Upon Transfer. Except by mutual written agreement of the parties, this Agreement shall automatically terminate upon transfer of title of the Golf Course Property or any portion thereof, whether such transfer is voluntary or involuntary. Further, upon transfer, the net sales proceeds shall be distributed pursuant to the provisions of Article VI above.

7.5 Effect of Termination. Upon termination of this Agreement, no further installments or payments of any type shall be owed by the Association to SGLLC. Within 30 days of termination of this Agreement, SGLLC shall be obligated to provide the Association a final set of financial records sufficient to show the Association and SGLLC Contributions for the period since the last such financial records were provided. Additionally upon termination of this Agreement, the Right of First Refusal and terms of the restrictive covenant recorded pursuant to Article V of this Agreement shall likewise terminate.

ARTICLE VIII CLUB MEMBERSHIP

Every owner shall be considered a Community Member of the Skybrook Golf Club, and, subject to the rules and regulations set forth by SGLLC, shall be entitled to (a) full access to Clubhouse and use of Clubhouse dining facilities; (b) Fifty percent (50%) reduction in rental rate for any

Clubhouse facilities below the rate such rental is offered to the general public; (c) Five percent (5%) discount on daily fee golf usage below the public rate; (d) Five percent (5%) discount on monthly/annual Golf Course memberships below the public rate; (e) Five percent (5%) discount on golf shop merchandise; (f) Five percent (5%) discount for food purchases in the clubhouse *does not include alcohol; and (g) 14 day advance tee time privileges for daily fee golf play.

ARTICLE IX GENERAL PROVISIONS

9.1 Remedy. In the event any Party breaches any of its obligations under this Agreement, then the non-defaulting Party may pursue any lawful right or remedy which the non-defaulting Party may have at law or in equity.

9.2 No Waiver. No Party shall be deemed to have waived or forfeited the right to take action to ensure compliance with the terms, conditions and purposes of this Agreement by a prior failure to act.

9.3 Not Assignable. This Agreement is not assignable without permission of all Parties.

9.4 Amendments. All amendments to this Agreement shall be executed in writing. No amendment to this Agreement shall become effective until executed by the Parties and recorded in the office of the Register of Deeds of Cabarrus and Mecklenberg Counties, North Carolina.

9.5 Notice. All notices under this Agreement shall be given in writing to the Party's registered agent on file with the North Carolina Secretary of State, and shall be: (a) mailed by registered or certified mail of the United States Postal Service, return receipt requested, postage prepaid, or (b) delivered to a nationally recognized overnight courier service for next business day delivery. Each such notice, demand or request, shall be deemed to have been given upon the earlier of (a) actual receipt or refusal by the addressee or (b) three business days after deposit thereof in any main office or branch office of the United States Post Office if sent in accordance with section (b) above and one day after the deposit thereof with a courier if sent pursuant to section (c) above.

9.6 Attorneys' Fees. If any legal action is commenced by any party to enforce any provision of this Agreement, the losing party will pay to the prevailing Party all actual expenses incurred by the prevailing party including reasonable costs and attorneys' fees.

9.7 Counterparts. This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the Parties and each of which shall be deemed an original.

9.8 Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of North Carolina, both substantive and remedial.

9.9 Invalid Provision. In the event any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal or unenforceable in any respect, for any reason,

such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Paragraph headings in this Agreement are for convenience only and shall not affect or alter the meaning of any provision of this Agreement.

TO HAVE AND TO HOLD the aforesaid rights, privileges and easements herein granted to the Parties, their successors in title and assigns forever.

[Signature Pages Follow]

IN TESTIMONY WHEREOF, the Parties have caused this instrument to be executed in its name as of the day and year set forth herein.

MVC, LLC

By: _____
D.R. Bryan, Jr.
Managing Member

By: _____
John T. Coley, IV
Managing Member

STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that **D.R. Bryan, Jr.** of whose identity I have personal knowledge, personally appeared before me and acknowledged that the signature on the record presented is his signature and that he voluntarily executed the foregoing instrument for the purpose stated therein and in the capacity indicated and with full authority to do so.

Witness my hand and official stamp or seal, this ____ day of _____, 2019.

Notary Public

Printed Name

My Commission Expires: _____

STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that **John T. Coley, IV** of whose identity I have personal knowledge, personally appeared before me and acknowledged that the signature on the record presented is his signature and that he voluntarily executed the foregoing instrument for the purpose stated therein and in the capacity indicated and with full authority to do so.

Witness my hand and official stamp or seal, this ____ day of _____, 2019.

Notary Public

Printed Name

My Commission Expires: _____

**SKYBROOK HOMEOWNERS
ASSOCIATION, INC.**

By: _____
President

STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____, of whose identity I have personal knowledge, personally appeared before me and acknowledged that the signature on the record presented is his/her signature and that he/she voluntarily executed the foregoing instrument for the purpose stated therein and in the capacity indicated and with full authority to do so.

Witness my hand and official stamp or seal, this ___ day of _____, 2019.

Notary Public

Printed Name

My Commission Expires: _____