

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF MCDOWELL

This Agreement, made this 14 day of September, 2011, by and between the Linville Falls Club Property Owners Association, Inc., a North Carolina Nonprofit Corporation of PO Box 145, Linville Falls, NC 28657, herein referred to as "Association" and RDLG, LLC, a North Carolina Limited Liability Company, Attention: Glenn G. Goldan, 555 H Street, Suite G, Eureka, CA 95501, herein referred to as "Developer".

BACKGROUND STATEMENT

WHEREAS, the Association is the duly incorporated association of property owners within the Linville Falls Mountain Club and Preserve which is located at 17677 Highway 221N, Marion, North Carolina 28752; and

WHEREAS, Developer is the current owner of certain developed and undeveloped residential building lots in the Linville Falls Mountain Club and Preserve; and


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WHEREAS, Association and Developer desire to restate their respective responsibilities with regard to the water and sewage systems of the Linville Falls Club as described in Article IV, Section 5 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Blue Ridge Country Club Subdivision, now known as Linville Falls Mountain Club and Preserve, as recorded at Book 773 at Page 155 of the McDowell County Register of Deeds Office (Covenants”); and

WHEREAS, the Association and Developer desire to memorialize their understanding regarding the ownership and operation of the water and “Disposal System” as described therein.

THEREFORE, for and in consideration of the mutual covenants contained herein, including the establishment of the understanding between the Association and Developer regarding the ownership and operation of the water and Disposal System at the Linville Falls Mountain Club and Preserve, the receipt of which is hereby acknowledged as being full and adequate consideration to support this Agreement, the Association and Developer agree as follows:

1. **Water and Disposal System:** By virtue of a deed from Blue Ridge Country Club I, Ltd. to Blue Ridge Country Club Property Owners Association, Inc., now known as Linville Falls Club Property Owners Association, Inc., dated November 7, 1996 and recorded at Book 522 at Page 94 of the McDowell County Register of Deeds Office, the Association is the owner and operator of a wastewater treatment plant (“the Disposal System”) for the Linville Falls Mountain Club and Preserve. The Association and Developer hereby ratify the ownership of the wastewater treatment plant by the Association. The Association and the Developer hereby ratify that the domestic water supply, fire protection and irrigation supply system is owned by the Association excepting only the domestic water Well Site currently owned by the Developer, part of which is leased to the Association under the terms and conditions of a certain Well Site Easement Agreement recorded March 23, 2001 at Book 639 at Page 38 of the McDowell County Register of Deeds Office. The Association and the Developer recognize that the Well Site needs to be expanded to accommodate future development within the Linville Falls 

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Mountain Club and Preserve and that the Developer is using all due diligence in determining the Well Site footprint, and after the determination is made, will legally describe the Well Site so that it can be deeded in fee simple to the Association. Any expansion of the domestic water system resulting solely from the extension of services to any additional residential building lots now not served but owned by the Developer, including the infrastructure to deliver water to property within Linville Falls Mountain Club and Preserve, shall be the responsibility of the Developer, its successor and assigns.

2. **Discharge Water Quality Permit:** Developer shall cause the Discharge Water Quality permit issued to it by the State of North Carolina through the Department of Environment and Natural Resources (DENR) for the Linville Falls Mountain Club and Preserve, NC0080098, to be transferred to the Association, and the Association will accept the same. All costs, including, but not limited to, permit fees, transfer fees associated with the transfer shall be paid by Developer.


3. **Water and Disposal System Infrastructure:** The Association will accept the water and Disposal System that has been permitted by the State of North Carolina pursuant to permit NC0080098. The permitting for, and any expansion of the water and Disposal System, resulting solely from the extension services to any additional residential building lots now not served but owned by the Developer, shall be the responsibility of the Developer, its successors and assigns, including, but not limited to improvements, upgrades, extension of utility lines or other items necessary to extend additional water or sewage utility service within the Linville Falls Mountain Club and Preserve. The Developer, for itself, its successors and assigns, acknowledges that the Association shall not be responsible for any water and Disposal System extension of utility lines or other items necessary to extend or provide additional water or sewage utility service within the Linville Falls Mountain Club and Preserve including infrastructure improvements or upgrades resulting directly from the extension of services to building lots not currently served, which responsibility shall be the Developer's, its successors and assigns. This responsibility includes, but is not limited to, any local, state or federal permits, design, and engineering. The Association acknowledges that it is responsible for any improvement to the water or Disposal System ("Systems") that result from the Systems operation including but not limited to repairs and replacements or maintenance of any portion of the Systems or upgrades required by operation of law or regulation.

4. **Waste Treatment:** The Developer hereby affirms that it has assigned to Association all of its right, title and interest with regard to water and waste treatment as provided by Article IV, section (5) and Article XII of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Blue Ridge Country Club Subdivision, now known as Linville Falls Club, as recorded at Book 773 at Page 1555 of the McDowell County Register of Deeds Office.

5. **Acknowledgement:** The Association and Developer acknowledge that the water and Disposal System that is the subject of this Agreement is a water and sewer system owned by a homeowner's association that provides water and sewer service only to members or leaseholds of members within the Linville Falls Mountain Club and Preserve.

6. **Dispute Resolution and Attorney Fees:** Any controversy or claim arising out of or related to this Agreement involving an amount of less than Five Thousand Dollars (\$5,000.00), or the dollar limit established for jurisdiction of the Small Claims Division of the District Court, must be heard in the Small Claims Division of the District Court in McDowell County, NC. Any controversy or claim arising out of or related to this Agreement which is over the dollar limit of the Small Claims Court must be submitted to mediation by a mediator acceptable to both parties. In the event the parties cannot agree upon a mediator, the resident Senior Superior Court Judge for McDowell County shall be authorized to select a mediator. The cost for the mediation shall be split evenly by the Association and the Developer. In the event that the dispute cannot be resolved by mediation, the controversy must be submitted to arbitration in accordance with the North Carolina Arbitration Act, by an arbitrator acceptable to both parties. In the event the parties cannot agree upon an arbitrator, the Resident Senior Superior Court Judge for McDowell County shall be authorized to select an arbitrator. Judgment upon the award may be entered in any Court having jurisdiction thereof. The prevailing party in any legal proceeding related to this Agreement shall be entitled to payment of reasonable attorney's fees, costs, and expenses.

7. **Miscellaneous:** This Agreement shall be interpreted pursuant to the laws of the State of North Carolina. This Agreement contains the entire agreement between the parties relating to the transaction contemplated hereunder. All prior negotiations between the parties are merged in this Agreement and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between them other than as herein set forth. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement or any other agreement referred to herein shall be valid unless in writing and signed by the party against whom it is sought to be enforced. This Agreement shall be binding upon the Association and Developer, their successors and assigns. The Association and Developer acknowledge and agree that this Agreement shall be recorded in the Register of Deeds Office of McDowell County, North Carolina.


IN WITNESS WHEREOF, this Agreement has been duly executed by the duly appointed and authorized representatives of the Association and Developer 

Association

**Linville Falls Club Property
Owners Association, Inc.**

By: _____
William Giles Rucker, President

Developer

RDLG, LLC

By: _____
Glenn G. Goldan, Manager

_____ County, North Carolina

I certify that the following person, **William Giles Rucker, President of Linville Falls Club Property Owners Association, Inc.**, personally appeared before me this day, and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Date: _____

(Official Seal)

Print Name: _____

My Commission expires: _____

ACKNOWLEDGMENT

State of California
County of Humboldt)

On Sept. 14, 2011 before me, Jean Gillmore, Notary Public
(insert name and title of the officer)

personally appeared Glenn G. Goldan,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~
subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in
his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Jean Gillmore*

(Seal)

