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# CADENCE POINT

BYLAWS

OF

CADENCE POINT

PROPERTY OWNERS' ASSOCIATION, INC.

Return to:  
H. Paul Averette  
Attorney at Law  
P. O. Box 348  
Brevard, NC 28712

# CADENCE POINT



**BYLAWS  
OF  
CADENCE POINT  
PROPERTY OWNERS' ASSOCIATION, INC.**



*Come To Life*

**Brevard, North Carolina 28712**

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**ARTICLE I  
NAME, MEMBERSHIP AND PURPOSE**

**SECTION 1. NAME.** The name of the Association shall be the CADENCE POINT PROPERTY OWNERS' ASSOCIATION, INC. (hereinafter referred to as the "Association"), a not-for-profit North Carolina corporation.

**SECTION 2. MEMBERSHIP.** The Association's members shall include all Cadence Point Lot Owners, as well as Cadence Point, LLC, the Developer, as more fully described in the Declaration of Neighborhood Standards, Covenants, Conditions and Restrictions (hereinafter the "Neighborhood Standards" or "Standards.") for Cadence Point (the "Development" or "Neighborhood") recorded in Document Book 535, page 79, in the office of the Register of Deeds for Transylvania County, North Carolina (said Declaration, as amended, renewed, or extended from time to time, is hereinafter referred to as the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference).

**SECTION 3. PURPOSE.** The purpose of these Bylaws and Declaration of Neighborhood Standards is to provide a clear process in which to promote and preserve the integrity of the community and individual residential investments within the Development. These together are intended to help ensure the Development is aesthetically attractive, functionally sound, convenient, neighbor-oriented, and environmentally-conscious; attracting and retaining residents seeking a municipally-served, sociable and urban-oriented inter-generational lifestyle.

**ARTICLE II  
APPLICABILITY AND DEFINITIONS**

To the extent the words used in these Bylaws are used in the Declaration, they shall have the same meaning as set forth in the Declaration. The following definitions shall prevail:

**SECTION 1. ACT** means the North Carolina Planned Community Act, General Statute 47F.

**SECTION 2. ASSOCIATION** means and refers to the Association of all the Owners of Lots and/or homes within the development known as Cadence Point, said Association being known as Cadence Point Property Owners' Association, Inc., its successors, and assigns.

**SECTION 3. BOARD OR BOARD OF DIRECTORS** means the Board of Directors of Cadence Point Property Owners' Association, Inc.

**SECTION 4. MEMBER** means and refers to a person or entity entitled to membership in the Association by virtue of ownership of a Lot. Memberships shall be divided among Class A and Class B members. All members shall be subject to the Association fees or General Assessments. Only Class B members shall be assessed additional fees for perpetual care lawn services during the months of May through September. The Board may extend the months for services based upon at least fifty-one percent (51%) approval of Class B members. Class A members may petition the Board to convert to a Class B member, and upon approval shall subject themselves

to the same fees for the same services provided to Class B members. Such petition from a Class A member to a Class B shall be irrevocable.

**CADENCE POINT PROPERTY OWNERS' ASSOCIATION  
MEMBERSHIP CLASSES BY LOT**

| <u>Class A Lots</u> | <u>Class B Lots</u> |
|---------------------|---------------------|
| 1                   | 18                  |
| 2                   | 19                  |
| 3                   | 20                  |
| 4                   | 21                  |
| 5                   | 22                  |
| 6                   | 23                  |
| 7                   | 24                  |
| 8                   | 25                  |
| 9                   | 26                  |
| 10                  | 27                  |
| 11                  | 28                  |
| 13                  | 29                  |
| 14                  | 30                  |
| 15                  | 31                  |
| 16                  | 32                  |
| 17                  |                     |

Note: Lot 12 is a designated common area

**SECTION 5. BYLAWS** mean the Bylaws of Cadence Point Property Owners' Association, Inc., and subsequent amendments thereto.

**SECTION 6. COMMON ELEMENTS, COMMON AREA, OR COMMON AREAS AND FACILITIES,** means and includes all real property and all tangible personal property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the Owners and their guests.

**SECTION 7. COMMON EXPENSES FOR CLASS A AND CLASS B MEMBERS** means and includes (a) all expenses incident to the administration, maintenance, repair and/or replacement of common use areas, including but not necessarily limited to entrance landscaping and maintenance expenses, maintenance, electricity for common area lighting, repair or replacement of signage, cost to maintain and/or repair community buildings, maintenance, replacement, and inspection costs for the development's underground storm water retention system, maintenance and paving expenses of back alleys, and community park maintenance, after excluding therefrom any and all expenses which are the responsibility of a Lot Owner; (b) all expenses determined by the Association to be common expenses, which shall include the actual and/or estimated expenses of operating the Association, both for general and parcel purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws and the Articles of



Incorporation of the Association; and (c) all sums lawfully assessed against each Lot Owner by the Association as provided for in the North Carolina Planned Communities Act.

**SECTION 8. LAWN MAINTENANCE EXPENSES FOR CLASS B MEMBERS** means those charges assessed for the care of exterior yards on those Lots designated in the Neighborhood Standards during the months of May through September. Such lawn maintenance fees shall be determined by the Board through a competitive bidding process with contracts for lawn care services not exceeding two years in term. The Board shall have the sole right to determine the selected service provider based on quality and cost.

Seasonal lawn care services for lots with homes shall include, but not necessarily limited to grass cutting, edging, shrub trimming, fertilizing, lime, weed control, mulching, and lawn disease treatment. The Board, at its sole discretion, may increase or decrease such fees based on actual costs and shall notify Class B Members of any increase or decrease in such fees during its annual meeting and submission of annual budget. The Association and/or its designated management are responsible for contracting for lawn care services and ensuring the consistency and quality of services to ensure continuing attractiveness of landscape designs.

**SECTION 9. DECLARANT** means Cadence Point, LLC, a North Carolina limited liability company.

**SECTION 10. DECLARANT'S AGENT** means RCG SE, LLC.

**SECTION 11. DECLARATION** means the Declaration of Neighborhood Standards, Covenants, Conditions and Restrictions for Cadence Point recorded in Document Book 535, page 19, in the office of the Register of Deeds for Transylvania County, North Carolina, which establishes, defines and submits the property submitted to its provisions to all covenants, conditions, reservations and restrictions set out therein, together with all subsequent lawful supplemental declarations and amendments to said Declaration appearing of record in the office of the Transylvania County, North Carolina Register of Deeds.

**SECTION 12. DEVELOPMENT** means and refers to the real property described in the Declaration or which has been submitted to the terms of the Declaration by any amendments or supplemental declarations thereto appearing of record in the office of the Transylvania County Register of Deeds.

**SECTION 13. ELIGIBLE MORTGAGE HOLDER** shall mean a holder, insurer or guarantor of a first mortgage on a Lot who has requested notice of certain matters from the Association as provided for in these Bylaws.

**SECTION 14. ELIGIBLE VOTES** means those votes available to be cast for or against an issue at hand by a Lot Owner. A vote which is for any reason suspended is not available to be cast.

**SECTION 15. GENERAL ASSESSMENT** means the assessments levied to fund expenses applicable to all members of the Association and does not include additional special lawn care assessments for Class B members or other special assessments.

**SECTION 16. LOT** means a portion of the Development or Property other than the common areas intended for any type of independent ownership and use as a single family home site and as may be shown on the *plats of survey* referred to in the Declaration and any amendments or supplemental declarations thereto appearing of record.

**SECTION 17. MAJORITY** means more than fifty percent (50%) of the total of those eligible to vote.

**SECTION 18. MEMBER** means and refers to a person or entity entitled to membership in the Association and an owner of a Lot.

**SECTION 19. SPECIAL ASSESSMENTS** shall mean levied assessments in excess of general assessments and lawn care service fees required to address specific infrastructure or amenity improvements requiring approval of a majority of Association Members or the existence of a state of emergency, approved in the sole discretion of the Board of Directors.

**SECTION 20. QUORUM** shall mean more than 50% of all eligible members.

**ARTICLE III  
ASSOCIATION MEETINGS, QUORUM, VOTING AND PROXIES**

**SECTION 1. PLACE OF MEETINGS.** Meetings of the Association shall be held in a suitable place convenient to Members within the City of Brevard, North Carolina to be designated by the President of the Association and to be clearly communicated in all notice of meetings.

**SECTION 2. ANNUAL MEETINGS OF MEMBERS.** An annual meeting of Members of the Association shall be held at an hour and on a day to be fixed by the President during the month of January of each year for the purpose of electing Directors, approval of an annual budget, and the transaction of such other business as may be brought before the meeting. Conduct of business at the Annual Meeting shall be allowed if a Quorum of all Lot Owners is present either in person or by proxy. During the annual meeting the Board shall review the previous year's financial statement of the Association, present the coming year's work agenda and associated operating and capital budgets.

**SECTION 3. SPECIAL MEETINGS OF MEMBERS.** The President, at his or her discretion, may call special meetings. Additionally, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of the Board of Directors or upon receipt by the Secretary of a petition signed by voting members representing at least ten percent (10%) of the total votes of the Association demanding that such a meeting be held and describing the purpose or purposes for which it is to be held.

**SECTION 4. NOTICE OF MEETINGS.** Not less than ten (10) or more than sixty (60) days in advance of any meeting, the Secretary shall cause notice to be hand-delivered or sent prepaid by U.S. mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner or sent by electronic means, including by electronic mail over the

Internet, to an electronic mailing address designated in writing by the Lot Owner. The notice of any meeting shall state the time, date, and place of the meeting, as well as items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a Director or officer.

In the case of a special meeting only those matters that are within the purpose or purposes described in the notice of the meeting may be acted upon.

**SECTION 5. WAIVER OF NOTICE.** A member may waive any notice required by the Bylaws before or after the date and time stated in the notice. The notice shall be in writing, be signed by the member entitled to the notice, and be delivered to the Association for inclusion in the minutes or filing with the corporate records.

A member's attendance at a meeting waives such member's objection to a lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or conducting business at the meeting, and such member's attendance at a meeting also waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter before it is voted upon.

**SECTION 6. QUORUM.** A Quorum is present throughout any meeting of the Association if more than fifty percent (50%) of the Lot Owners eligible to vote are present in person or by proxy at the beginning of the meeting.

In the event that business cannot be conducted at any meeting because a Quorum is not present, that meeting may be adjourned to a later time by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirements applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce a quorum by fifty percent (50%) from that required in the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

In the event of any adjournment of a meeting to a later date by the affirmative vote of a majority of those present in person or by proxy as hereinabove provided for, the announcement of the person presiding over such meeting of the time and place of the recessed meeting shall be sufficient notice of the time and place of such meeting.

**SECTION 7. ORGANIZATION.** The President, or in the President's absence, the Treasurer shall preside over all meetings and the Secretary of the Association shall act as Secretary at all meetings of the members; provided, however, in the Secretary's absence the President may appoint a temporary Secretary for the meeting of the members.

**SECTION 8. VOTING.** The voting rights of the members are set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

The vote of the Owners of a majority of the Lots at a meeting of members at which a Quorum is present shall be the act of the members on that matter, unless the vote of a greater number is required by law, or by the Articles of Incorporation or other provisions of the Bylaws of the Association.

If only one of the multiple Owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast the vote allocated to the Lot. If more than one of the multiple Owners are present, the votes allocated cannot exceed one per Lot owned and shall be cast in fractions in accordance with their fractional ownership, or one of the multiple Owners may be allowed to cast a full vote so long as the other multiple Owner(s) present allows such a vote with protest being made promptly to the presiding person over the meeting. No votes allocated to a Lot owned by the Association may be cast.

**SECTION 9. VOTING BY PROXY.** Votes allocated to a Lot may be cast pursuant to a proxy duly executed by a Lot Owner(s). If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. In no case shall the cumulative vote of all multiple Owners of a single Lot exceed one vote. A Lot Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates six (6) months after its date, unless it specifies a shorter term.

#### ARTICLE IV BOARD OF DIRECTORS

**SECTION 1. GOVERNING BODY AND COMPOSITION.** The affairs of the Association shall be governed by a Board of Directors. Except as may be provided in Section 2 of this Article, the Directors shall be members or spouses of such members, provided however, no person and his or her spouse may serve on the Board at the same time.

**SECTION 2. DIRECTORS DURING DECLARANT CONTROL.** The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant, so long as the Declarant owns and controls more than fifty percent (50%) of the Lots within the Development, unless the Declarant shall earlier surrender this right to select Directors in writing to all members of the Association. The Directors selected by the Declarant need not be Owners or residents in the Development. After the period of Declarant controlling more than fifty percent (50%) of the Lots, the majority of the Directors must be members of the Association.

**SECTION 3. NUMBER OF DIRECTORS.** The number of Directors of the Association shall not be less than three (3) nor more than five (5), as the Declarant or Board of Directors may from time to time determine by resolution. Declarant shall determine the number so long as Declarant controls a majority of lots.

**SECTION 4. NOMINATION OF DIRECTORS.** Except with respect to Directors selected by the Declarant during its majority Lot ownership, nominations for election to the Board of Directors

shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directions as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate *their qualifications to the members and to solicit votes.*

**SECTION 5. ELECTION AND TERMS OF OFFICE.** Notwithstanding any other provision contained herein, at the first annual meeting of the membership after the termination of majority Lot control by the Declarant, and at each annual meeting of the membership thereafter, all Directors shall be elected by the Members.

The initial terms of the Directors shall be fixed at the time of their election. So long as there are three (3) Directors, the term of one (1) Director shall be fixed at one (1) year, the term of one (1) Director shall be fixed at two (2) years, and the term of one (1) Director shall be fixed at three (3) years. Should more than three Directors be authorized, the additional two (2) Directors shall serve terms of two (2) years during the initial term. After the initial term and the expiration of the initial terms of office of each respective member of the Board of Directors, a successor shall be elected to serve for a term of three (3) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by Members of the Association.

**SECTION 6. REMOVAL OF DIRECTORS.** Directors may be removed for cause or for no cause by a vote of a majority of the voting members present at a meeting called for that purpose. *Any Director whose removal is sought will be given written notice prior to any meeting called for that purpose.* A Director who was elected solely by the votes of voting Members other than the Declarant may be removed from office prior to the expiration of his or her term by the votes of a majority of voting members other than the Declarant.

**SECTION 7. VACANCIES.** Vacancies in the Board of Directors caused by any reason shall be filled by a vote of the majority of the remaining Directors, even though less than a quorum, at any meeting of the Board. Each person so elected shall serve the unexpired portion of the vacated term.

**SECTION 8. VOTING PROCEDURE FOR DIRECTORS.** The voting members may cast, in respect to each vacancy, the vote for the Lot which they represent, as provided under the provisions of the Declaration. Votes shall be cast as provided in Section 5 above. The persons receiving the largest number of votes shall be elected.

**SECTION 9. ORGANIZATION MEETINGS.** The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within at least sixty (60) days thereafter at such time and place as shall be fixed by the Board.

**SECTION 10. REGULAR MEETINGS.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the President of the Association, but at least one (1) such meeting shall be held during a fiscal year. Notice of the time and place of the meeting shall be communicated to the Directors by one of the methods specified in Section 11, of this Article III, within the time period therein specified for each method of notification; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

**SECTION 11. SPECIAL MEETINGS.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Treasurer, or Secretary of the Association, by a written notice by a majority of Board members, or by a petition delivered to an Officer of the Board signed by at least ten percent (10%) of the Association Members. The notice of such meeting shall specify the time and place of the meeting and the specific nature of any special business to be conducted. The notice shall be given to each Director by one of the following means: (a) by personal delivery to the Director's residency; (b) written notice by first class mail to the Directors home address or post office box, postage prepaid; or (c) by electronic mail (e-mail) to the Directors e-mail address. All addresses shall be those provided by the Directors to the Association and shall be deemed current unless specifically notified of such change of address by the Director. Notices sent by first class mail or electronic mail with shall be post marked no less than twenty (20) days before the time set for the meeting. Notices given by personal delivery or electronic mail must be delivered at least fifteen (15) days before the time set for the meeting.

**SECTION 12. WAIVER OF NOTICE.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be valid as though taken at a meeting duly held after a regular call and notice if (a) a Quorum is present, (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting without protesting before or at its commencement about the lack of adequate notice.

**SECTION 13. QUORUM OF BOARD OF DIRECTORS.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a Quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a Quorum is present shall constitute the decision of the Board of Directors.

**SECTION 14. COMPENSATION.** No Director shall receive any compensation from the Association for acting as such. However, Directors may be reimbursed for actual and reasonable out-of-pocket expenses. Any Director expense in excess of \$100 must be approved by the Board of Directors prior to the expenditure, unless a state of emergency exists. At which time a Director may expend more than \$100 to address or correct a state of emergency and

such expenditure shall later be ratified by the Board of Directors. A state of emergency is defined as an event wherein systems failure within the development threatens health, safety and welfare of residents and/or their Property.

**SECTION 15. CONDUCT OF MEETINGS.** The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. All meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

**SECTION 16. OPEN MEETINGS.** All meetings of the Board shall be open to all members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a Quorum of the Board. However, on at regular intervals, the Board meeting shall provide Lot Owners an opportunity to attend such meetings and speak to the Board about their issues and concerns. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on the number of persons who speak.

**SECTION 17. EXECUTIVE SESSION.** The Board may, with approval of a majority of a quorum of the Board, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**SECTION 18. ACTION WITHOUT A FORMAL MEETING.** Any action to be taken at a meeting of the Directors or that may be taken at a meeting of the Directors may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all Directors. An explanation of the action taken shall be mailed to each member of the Association by first class mail, postage paid within seven (7) days after the written consents of all the Board members have been obtained.

**SECTION 19. POWERS.** The Board of Directors shall be responsible for the affairs of the Association and shall have the powers and duties necessary for the administration of the Association's affairs, and, as provided by law, may do all acts and things as are not by the Declaration, Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the members. These powers are defined in the North Carolina Planned Communities Act.

The Board of Directors shall in its best judgment make decisions and take actions that are in the best interest of all Lot Owners, helping to ensure the physical, aesthetic, neighborhood, economic, security, social and environmental values of the Development for the long-term.

The Board of Directors shall delegate to its duly elected President the authority to act on behalf of the Board of Directors on all matters relating to the duties of the Managing Agent or Manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power and responsibility to:

- a) Prepare and with a majority vote of those individuals present at the annual meeting adopt an annual budget in which there shall be established the contribution of each Owner to the common expenses, lawn care services and any other necessary costs or special assessments. Upon approval of an annual budget, the Board shall communicate to all Lot Owners the annual assessments for the year.
- b) Make assessments to defray common expenses, establish the means and methods to collect such assessments, and establish the period of the installment payments of the annual assessment; (unless otherwise determined by the Board of Directors, the annual assessment against the proportionate share of the annual common expenses shall be paid annually to the Association). All common expenses shall be assessed against all Lots in the Development in accordance with the allocations set forth in the Declaration. All past due common expense assessments over thirty or more days delinquent shall be assessed the owed fee plus the greater of an additional ten percent (10%) of the balance due or \$20 per month for each and every month the fee(s) is not paid.

Assessments to pay a judgment against the Association may be made only against the Lots in the Development at the time the judgment is entered in proportion to their common expense liabilities, and any common expense caused by the negligence or misconduct of any Lot Owner or occupant, may be assessed exclusively against that Lot Owner. Any fine imposed by the Board of Directors against the Owner of a Lot, regardless of occupancy pursuant to the provisions of Section 24 of this Article III of these Bylaws shall be an assessment which shall be assessed exclusively against such Lot Owner;

- c) Make assessments upon Class B members for perpetual care lawn services to be provided by the Association for the months of May through September. Assessments shall be based on the actual bid cost for provision of required lawn care services invoiced annually.
- d) Provide for the operation, care, inspection, upkeep and maintenance of all common areas, private infrastructure and facilities. Annually, the Board of Directors will contract with a licensed and qualified consulting engineer to inspect the Development's storm water retention system and it shall undertake necessary maintenance based on the engineer's recommendation to ensure the effective operations and integrity of the subsurface system. Such inspection report and a summary of completed maintenance shall be provided to the City of Brevard's Planning Department.



- e) Designate, hire and dismiss personnel necessary for maintenance, operation, repair and replacement of the Association, its property and the area of common responsibility and, where appropriate, providing for the compensation of such personnel, contractors and for the purchase of equipment, supplies and materials to be used by such personnel or contractors in the performance of their duties;
- f) Collect the assessments, deposit the proceeds thereof in a bank depository, which it shall approve, and use proceeds to administer the work on behalf of the Development by the Association;
- g) Make and amend rules and regulations;
- h) Open bank accounts on behalf of the Association and designate signatories required;
- i) Make or contract for the repair, addition, and improvement to or alterations of common areas and private infrastructure, together with those areas upon each Lot the maintenance or replacement of which is the responsibility and/or right of the Association in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty, or the failure of the Owner of a Lot to maintain it in the manner required by the Declaration;
- j) Enforce by legal means the provisions of the Declaration, these Bylaws; and the rules and regulations adopted by it and bring any proceedings, which may be instituted on behalf of or against the Owners concerning the Association;
- k) Obtain and carry such insurance against casualties and liabilities, as may be provided for in the Declaration, and such other insurance coverage as the Board of Directors shall deem prudent, including such coverage as required to satisfy the requirements of Section 47F-3-113 of the North Carolina General Statutes, and reasonable liability coverage for the officers, Board of Directors, employees and agents of the Association and paying the premium cost thereof;
- l) Pay the cost of all services rendered to the Association and its members and not chargeable to Owners;
- m) Keep books with detailed accounts of the receipts and expenditures affecting the Association and its administration specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices;

- n) Make available to any prospective purchaser of a Lot, any Owner of a Lot, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any Lot current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules governing the Lot, and all other books, records and financial statements of the Association;
- o) Upon written request, furnish to a Lot Owner or the Lot Owner's authorized agent a statement setting forth the amount of unpaid assessments and other charges against the Lot Owner's Lot. The statement shall be furnished within thirty (30) business days after the receipt of the request and shall be binding on the Association, the Board of Directors and every Lot Owner;
- p) Permit utility suppliers to use portions of the common area reasonably necessary to the ongoing development and operation of the Development;
- q) Obtain, in addition to the insurance coverage provided for under the provisions of Subsection (j) of this Section 19 of Article III of these Bylaws, as a common expense, a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Directors' best judgment, but may not be less than one (1) year's assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.
- r) Levy special assessments to address specific repairs, improvements or other common cost of the Association.
- s) Commission the review of the Association's books annually by an independent Certified Public Accountant. At its discretion the Directors may commission an audit.

**SECTION 20. BUDGET.** The Board of Directors or the Executive Board, as defined hereinafter, shall develop a proposed annual operating and capital budget for the coming fiscal year, submitting such proposed budget to the Members of the Association during the prior November. The budget shall provide written explanation of the budget and the projected general and special assessments for the coming year, including Class B Member perpetual care lawn service fees. The budget mailing shall include a statement that the budget shall be ratified during the Association's Annual Meeting and that the budget, as provided for in the North Carolina Planned Community Act, may be ratified without a Quorum. Should the budget be rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors or Executive Board. The proposed budget may be hand delivered, sent by prepaid U.S. Mail or sent electronically over the Internet to the last address provided to the Board of Directors in writing or by electronic mail along with the notice of the Annual Meeting.

**SECTION 21. PUBLICATION OF NAMES AND ADDRESSES:** The Association shall publish the names and addresses of all Officers and Board Members of the Association within thirty (30) days of their election.

**SECTION 22. MANAGEMENT AGENT.** The Board of Directors or Declarant may:

- a) Employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors may authorize. The Board of Directors may delegate to the *managing agent or manager*, subject to the Board's supervision, all the powers granted to the Board of Directors by these Bylaws, other than the powers set forth in paragraphs (a), (b), (f), (g), and (i) of Section 19 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as the managing agent or manager; and
- b) No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without termination fee after receipt of a written termination notice delivered through certified U.S. mail thirty (30) days prior.

**SECTION 23. BORROWING, RESERVE MARGINS, AND SPECIAL ASSESSMENTS.** The Board of Directors shall have the power to borrow money for the purpose of repair, improvement, and/or restoration of common areas, facilities and private Development infrastructure without approval of the voting members of the Association; provided that the proposed borrowing is for the purpose of modifying, improving, repairing, and/or adding amenities and the total amount of such borrowing does not exceed twenty percent (20%) of the budgeted and approved gross expenses of the Association for that fiscal year, including a prudent reserve margin. In no event shall the Borrowings of the Association exceed forty percent (40%) of the previous year's approved gross expenses of the Association, including a prudent reserve margin, unless a state of emergency exists. If a state of emergency exists, the Association is empowered to borrow necessary funds to ensure the safety, security and operability of systems within the Development.

The Declarant shall contribute to the Association a one-time initial reserve fund of \$2,000 to be deposited in an interest bearing account in the Association's name to be contributed upon acceptance of the Final Plat of the Development by the City of Brevard. These funds shall not be part of normal operating expenses and shall be used for emergency funds only. No reduction in fees shall be allowed until such time as the Association has amassed a reserve fund of \$10,000. Once a sum of \$10,000 has been set aside in a reserve fund, thereafter at no time shall the Association allow the reserve fund to fall below \$5,000. Reserve funds shall be recorded and accounted for by Association Member and any interest shall be allocated based on a pro-rata share basis.

The Board of Directors shall have the right and responsibility to levy special assessments to address any funding shortfall resulting from the need to undertake emergency repairs and to ensure the health, safety, welfare and compliance of the Development. Annual budgeting and resulting monthly fees should ensure the maintenance of a prudent reserve fund whose

maximum is to be determined by the Board of Directors, but shall not exceed more than \$750 reserve per Lot, unless approved by a majority of all Lot Owners or required by law.

Portions of the common areas, facilities and private Development infrastructure may be subjected to a security interest by the Association in order to secure a loan for investment or repair in common areas, facilities and private Development infrastructure so long as a majority of all Lot Owners and members of the Association agree in writing to such action.

**SECTION 24. RIGHTS OF THE ASSOCIATION.** With respect to the common area and private Development infrastructure or other Association responsibilities owned, and in accordance with the Articles of Incorporation and Bylaws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, the right shall entitle the Association to enter into common management, operation, or other agreements with trusts, or neighborhood and other associations of home Owners or residents, both within and without the Development. Such agreements shall require the consent of a majority of the total votes of all Board members.

**SECTION 25. HEARING PROCEDURE.** The Board shall have the power to impose fines, which shall be assessments secured by liens under Section 47F-3-116 of the North Carolina General Statutes and shall constitute a lien upon the property of the violating Lot Owner, regardless of their occupancy, and to suspend an Owner's right to vote and their use or occupant's use of the common elements for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association of the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, the fine shall be assessed against the Lot Owner upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter. If it is decided that a fine shall be imposed, a fine not to exceed one hundred dollars (\$100) may be imposed every five days for the violation without further hearing. After thirty days and the posting of a hearing, should the Board determine a violation has occurred and that a fine or other sanction should be imposed, the Board shall enforce the fine at the stated rate. During this period and before the Board's recognition of the violation or delinquency cure, the Owner's and any occupants' privileges or services in the Development shall be suspended without further notice or hearing.

Hearings involving issues with a member of the Board of Directors shall result in the appointment of an adjudicatory panel appointed by the full Board to determine if any Lot Owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the Association. Any adjudicatory panel appointed by the Board shall be composed of Members of the Association who are not Officers of the Association or Members of the Board. The Lot Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after

the decision that the violation occurs. Such fines shall be assessments secured by liens under North Carolina G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The Lot Owner may appeal the decision of an adjudicatory panel to the Board by delivering written notice of appeal to the Board within 15 days after the date of the decision. The Board may affirm, vacate, or modify the prior decision of the adjudicatory body.

- a) **Notice.** Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator and Lot Owner, if not one in the same, with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Board of Directors for a hearing; and (iv) a statement of the proposed sanctions that shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.
- b) **Hearing.** If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the Owner a reasonable opportunity to be heard and to present evidence. Prior to the effectiveness of any sanction hereunder, proof of notice, together with a statement of the date and manner of delivery, is entered by the officer, Director or agent who delivered the notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any imposed. The decision of the Board of Directors after the hearing shall be final.
- c) **Additional Enforcement Rights.** Notwithstanding anything to the contrary contained in the Declaration or Bylaws, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner, even if in the event of an occupant's responsibility for a violation for which abatement is sought, shall pay all costs, including reasonable attorney's fees actually incurred by the Association.

**SECTION 26. DECLARANT'S VETO.** Until such date as the Declarant no longer owns Lots in the Development or until January 1, 2016, whichever occurs first the Declarant shall have exclusive veto power over all Board decisions. This veto power shall be exercisable only by the Declarant, its successors, and assigns. The veto shall be as follows: No action authorized by the Board of Directors shall become effective, nor shall any action, policy, or program be implemented, until and unless:

- a) Declarant shall have been given written notice of all meetings by certified mail, return receipt requested or by delivery at the address it has registered with the Secretary of the Association, as it may change from time to time which notice complies with Article III, Sections 10 and 11 of the Bylaws as to regular and special meetings of the Directors, and which notice shall, except in the case of regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting, and
- b) Declarant shall be given the opportunity at any meeting of the Association, including Executive Sessions, if Declarant so desires, to join in or to have its representatives or agents join in discussion, whether a member of the Board or from the floor, of any prospective action, policy, or program to be implemented by the Board. Declarant and/or its representatives shall make its concerns, thoughts, and suggestions known to the members of the Association and/or Board. At such meeting, Declarant shall have and is hereby granted a veto power over any such action, policy or program authorized by the board of Directors to be taken by said Board, the Association, or any individual member of the Association if Board approval is necessary for said member's action. Said veto may be exercised by Declarant, its representatives, or agents at the meeting held pursuant to the terms and provisions hereof. Any veto power shall not extend to the requiring of any action or counteraction on behalf of the Board or Association. This Section 25 may not be amended without the express written consent of the Declarant until Declarant no longer owns any land which is subject to the Declaration or until January 1, 2016, whichever is first.

## **ARTICLE V OFFICERS**

**SECTION 1. OFFICERS.** The Officers of the Association shall be a President, Secretary and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries/Treasurers, as it shall deem prudent, such officers to have the authority and shall perform the duties prescribed from time to time by the Board of Directors. During the Declarant's control, the Declarant may serve as President and the offices of Secretary and Treasurer may be held by a single person. Post Declarant control, no two or more offices may be held by the same person, unless less than the necessary number of members of the Association to fill all positions with differing individuals fail to volunteer or accept appointment. All members of the Board shall be elected by the members of the Association.

**SECTION 2. ELECTION, TERM OF OFFICE AND VACANCIES.** The Officers of the Association shall be elected annually by the Board of Directors following each annual meeting of the members, as herein set forth in Article III. A vacancy in any office arising due to death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired term.

**SECTION 3. REMOVAL.** Any Officer may be removed from the Board by verbal or written vote of greater than 50% of all Lot Owners.

**SECTION 4. POWERS AND DUTIES.** The Officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such power and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification.

**SECTION 5. RESIGNATION.** Any officer may resign at any time by giving written notice to the Board of Directors, President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**SECTION 6. AGREEMENTS, CONTRACTS, DEEDS, LEASES, CHECKS AND OTHER DOCUMENTS.** All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by the President or such other Board of Director Officer as designated by the President.

## **ARTICLE VI AMENDMENTS TO DECLARATION OR BYLAWS**

**SECTION 1. PREPARATION, EXECUTION, CERTIFICATION AND RECORDATION OF AMENDMENTS TO DECLARATION OR BYLAWS.** Except in cases of amendments that may be executed by the Declarant under the terms of the Declaration and/or Bylaws, or by certain Lot Owners as detailed in the North Carolina General Statute 47F-2-118(b), the Declaration and/or Bylaws may be amended only by affirmative vote or written agreement signed by Lot Owners of Lots to which greater than fifty percent (50%) of the votes in the Association are allocated.

No action to challenge the validity of an amendment adopted pursuant to this Section may be brought more than one year after the amendment is recorded. Every amendment to the Declaration or Bylaws shall be recorded by the Secretary of the Board of Directors of the Association in the office of the Transylvania County Register of Deeds and shall be effective only upon recordation. An amendment shall be indexed in the Grantee index in the name of Cadence Point and the Cadence Point Property Owner's Association and in the Grantor index in the name of each Lot Owner executing the amendment.

## **ARTICLE VII COMMITTEES**

**SECTION 1. GENERAL.** Committees may be created by the Board of Directors to perform specific tasks. Committee members shall be appointed from members of the Association and shall serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

**ARTICLE VIII  
INSURANCE**

**SECTION 1. INSURANCE.** Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available:

- a) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and
- b) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

**SECTION 2. AVAILABILITY.** If the insurance described above is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners. The Declaration may require the Association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the Association, its Board of Directors, or the Lot Owners. The Association shall follow those guidelines for insurance and risk management as defined in the North Carolina Planned Communities Act.

**ARTICLE IX  
MISCELLANEOUS**

**SECTION 1. FISCAL YEAR.** The fiscal year of the Association shall be the calendar year beginning in January and ending in December of each year.

**SECTION 2. RULES OF PROCEDURE.** Except as may be modified by Board resolution establishing modified procedures, Roberts Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict when North Carolina law, the Articles of Incorporation, the Declaration or these Bylaws.

**SECTION 3. CONFLICTS.** If there are conflicts or inconsistencies between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

**SECTION 4. BOOKS AND RECORDS.**



- a) **Inspection by Members.** The membership register, books of account, and minutes of meetings of the members, the Board, and committees shall be made available for inspection and copying by any member of the Association or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a member at the office of the Association or at such other place within the Development or in the City of Brevard, Transylvania County, North Carolina, as the Board shall prescribe.
  
- b) **Rules for Inspection.** The Board shall establish reasonable rules with respect to:
  - i. Notice to be given to the custodian of the records by the member desiring the inspection;
  - ii. Hours and days of the week when such an inspection may be made; and
  - iii. Payment of the cost of reproducing copies of documents requested by a member.
  
- c) **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents at the expense of the Association.

**SECTION 5. NOTICES.** Unless otherwise provided in these Bylaws, all notices, demand, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage, prepaid;

- a) If to a member or voting member, at the address which the member or voting member has designated in writing and filed with the Secretary/Treasurer or, if no such address has been designated, at the address of the Lot of such Owner; or
- b) If to the Association, the Board of Directors, or the Managing Agent, at the principal office of the Association or the Managing Agent, if any, or at such other address as shall be designated by the notice in writing to the Owners pursuant to this Section.

**ARTICLE X  
OWNER ACKNOWLEDGEMENT**

**SECTION 1. OWNER ACKNOWLEDGEMENT.** By accepting a deed for a Lot in Cadence Point, a Purchaser is acknowledging his or her understanding of these Bylaws and the Declaration of Neighborhood Standards by which to measure a member's responsibilities, assessment liabilities, and the purpose for said assessments.

**SECTION 2. EFFECT OF NONPAYMENT OF ASSESSMENTS.** Any assessments which are not paid when due as determined by these Bylaws, Declaration, and/or the Association's Board shall be deemed delinquent. If the assessments are not paid within thirty (30) days after the due date, the assessment shall increase by twenty dollars (\$20) per month or ten percent (10%) of any assessment installment unpaid, whichever is larger. After notice and an opportunity to be heard, the Board may suspend a Member's privileges or services provided by the Association (except the rights of access to lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer.

I the undersigned, being the Declarant and founding member of the Cadence Point Property Owners Association, Inc., do hereby certify:

That I am entitled to exercise all the voting power of said Corporation; and

That we hereby assert to the within and foregoing Bylaws and hereby adopt the same as the Bylaws of said Corporation.

IN WITNESS WHEREOF, we have hereunto subscribed our names this 15 day of March, 2010.

Jan D. Bayne  
\_\_\_\_\_  
President – Signature

[Signature]  
\_\_\_\_\_  
Secretary/Treasurer – Signature

James U. Bayne  
\_\_\_\_\_  
President – Printed Name

Ghi Masterson  
\_\_\_\_\_  
Secretary/Treasurer – Printed Name

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

CADENCE POINT PROPERTY OWNERS' ASSOCIATION, INC.

By: James N. Bayne (Seal)  
James N. Bayne, President

Attest: Gail Masterson (Seal)  
Gail Masterson, Secretary/Treasurer

DECLARANT:

CADENCE POINT, LLC

By: James N. Bayne (Seal)  
James N. Bayne, Manager

STATE OF NORTH CAROLINA

COUNTY OF TRANSYLVANIA

I certify that **JAMES N. BAYNE** personally came before me this day and acknowledged that he is President of **CADENCE POINT PROPERTY OWNERS' ASSOCIATION, INC.**, a North Carolina corporation, and acknowledged, on behalf of **CADENCE POINT PROPERTY OWNERS' ASSOCIATION, INC.**, the due execution of the foregoing instrument.

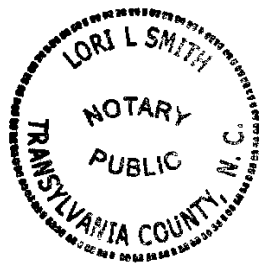
Date: March 15, 2010

My Commission Expires:  
09/10/2011

Lori L. Smith

Notary Public

Lori L. Smith  
Printed Name of Notary Public



STATE OF NORTH CAROLINA

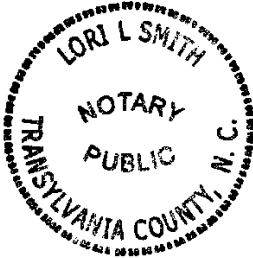
COUNTY OF TRANSYLVANIA

I, Lori L. Smith, Notary Public of the State of North Carolina, County of Transylvania, do hereby certify that **JAMES N. BAYNE**, Manager of **CADENCE POINT, LLC**, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my official seal, this the 15th day of March, 2010.

My Commission Expires:

09/10/2011



Lori L. Smith  
Notary Public