

## **BY LAWS OF ALMADEN CABANA CLUB**

(A Non-profit Corporation)

### **ARTICLE I Principal Office**

The principal office of the corporation shall be located at such place in the County of Santa Clara, State of California, as the Board of Directors may, from time to time establish. All meetings of the members and all meetings of the Board of Directors shall be held either at the principal office of the corporation or at such other place in the Counties of Santa Clara, San Mateo or San Francisco as the Board of Directors, from time to time, may determine upon.

### **ARTICLE II Corporate Seal**

The corporate seal shall consist of two concentric circles with the name "Almaden Cabana Club" and the word "California" between them and the words and figures "Incorporated January 8, 1968, California" and "a nonprofit corporation" within the smaller circle.

### **ARTICLE III Membership**

**Section 1:** There shall be one two classes of members: Proprietary Members and Guest Members.

**Section 2:** Members shall be natural persons over the age of eighteen (18) years.

**Section 3:** Except as herein, in these By-laws, otherwise expressly provided, in all matters which shall come before the members of the corporation, and in all corporate matters, the voting powers of the proprietary members shall be distributed equally per unit equal, with each proprietary member having one (1) vote (see Article XIII); guest members having no vote.

**Section 4:** No person shall hold more than one membership (see Article XIII).

**Section 5:** All members shall, in all respects, conform to and abide by the By-laws of the corporation, and all amendments and changes thereto, and any and all rules and regulations now or hereafter adopted by the Board of Directors.

**Section 6:** The Board of Directors shall have the right to discipline any proprietary member for violation of these By-laws or any rule or regulation of the corporation, or for conduct contrary to the best interests of the corporation. Any proprietary members guilty of such violation shall be notified thereof by the Secretary at least five (5) days prior to the meeting of the Board of Directors at which such violation is to be considered. Such member shall have the right to appear before the Board at such meeting and be heard. Suspension of a proprietary member shall require the majority affirmative vote of at least three (3) members of the Board of Directors. No proprietary member shall be suspended for more than thirty (30) days for any one violation, except in the case of failure to pay sums of money due the corporation.

**Section 7:** Any member who has been suspended shall be denied the privileges of the corporation during the term of such suspension.

**Section 8:** The Board of Directors, in its discretion, may exclude the privileges of the corporation to any person or persons for reasonable periods of time. The Board of Directors shall make such rules and regulations as it may deem proper respecting the use of the facilities of the corporation by guests of members and the fees to be charged therefore.

**Section 9:** The collection of any indebtedness of any member to the corporation for dues, assessments or other charges, shall be enforceable by the corporation at law.

**Section 10:** The corporation shall have no liability or responsibility, and no member or guest of a member, or any other person, shall have any claim against the corporation, for any personal injury to, or death of any member or guest, or for loss or damage to the property of any member or guest.

**Section 11:** Any loss or damage resulting to any of the properties of the corporation from the acts or conduct of any member, or the guest of a member, any indebtedness to the corporation

incurred by the guest of a member, shall be assessed to such member and shall be paid as in the case of other assessments.

**Section 12:** Notice of any kind required to be given to any member shall be conclusively deemed to have been given when the same has been deposited in the United States mail, in a sealed envelope, postage prepaid, addressed to the member at the address shown on the books of the corporation, any notice so mailed to his last address known to the Secretary or to the address of the corporation, shall be deemed properly given and made.

## **ARTICLE IV**

### **Proprietary Members**

**Section 1:** The number of proprietary members shall not at any time exceed four hundred twenty-eight (428).

**Section 2:** Within the limits and provisions of Section 1 and 3 of this Article, proprietary memberships shall be limited and restricted to persons owning or residing in homes in the subdivision sometimes called "Almaden Park," or Shadow Brook II, Santa Clara County, California (Tract 4174 and subsequent units).

**Section 3:** Each beneficial owner (as distinguished from a security owner) of a single family residential unit in said subdivision shall be a proprietary member, and there shall be no other qualifications for such membership, provided that if any such single family residential unit shall be owned by two or more persons, only one of such persons, as they may elect, shall be a member.

**Section 4:** Each such person shall have all of the rights and privileges of a proprietary member on filing with the Secretary proof of his qualification therefore, in such form as the Board of Directors may, from time to time, specify, and on payment of any dues or assessments then payable. All Such dues and assessments, in the amount fixed as herein provided, shall accrue and be payable by such proprietary member from the date title to such residential unit is conveyed to him or the date on which he first occupied such unit, whichever is the earlier.

**Section 5:** The proprietary members in good standing shall be entitled to use of all of the facilities and properties of the corporation, subject to such rules and regulations as the Board of

Directors may, from time to time, prescribe.

**Section 6:** Persons residing with a proprietary member as a member of the household, shall have and enjoy the full privileges of the corporation to the same extent as such proprietary member, subject to such rules, regulations, restrictions and limitations as the Board or Directors may, from time to time prescribe.

## **ARTICLE V**

### **Certification of Membership**

**Section 1:** Each proprietary member shall be duly registered in his or her name upon the books of the corporation.

**Section 2:** Each proprietary member shall notify the corporation, in writing, of its intention to sell the property in questions fifteen (15) days prior to the close of escrow of any such sale. Said proprietary member shall include within such notice the name of the company handling the escrow. It should further be the duty of each proprietary member to make known to the escrow company, prior to the close of escrow, that the property carries with it a membership within this corporation and that said sale includes the transfer of the sellers rights to the buyer with regards to the rights within this corporation. The corporation address is:

Almaden Cabana Club  
P.O. Box 20313  
San Jose, CA 95160

**Section 3:** A transfer of membership shall be effective only after the same be registered upon the books of the corporation and by payment to the corporation of all indebtedness due to the corporation from the member surrendering transfer.

**Section 4:** A proprietary member may assign his membership rights to a tenant residing in said member's residential unit, such assignment to be effective upon filing with the Secretary of the corporation a written notice and assumption agreement signed by the member and the tenant and in such form as the Board of Directors shall from time to time prescribe, provided that all such assigned rights shall revert to said member when said tenant shall cease to reside in said residential unit.

**Section 5:** All proprietary memberships in the corporation are liable for all indebtedness, dues, assessments, charges, fines and impositions accruing thereupon, against the member owning the same, until transferred upon the books of the corporation, as herein provided, and after such transfer a proprietary membership shall be liable in like manner, in the name of every subsequent transferee.

## **ARTICLE VI**

### **Guest Members**

**Section 1:** The Board of Directors may set a geographic boundary outside the subdivision described in Article IV, Section 2, as the limit for proprietary members. Persons residing in this wider geographic area may be invited to apply for Guest Membership. The setting of the boundary for the wider geographic area requires the approval of a 2/3 majority of the Board of Directors. Ratification of the area selected by the Board of Directors requires a majority vote of those persons at a general meeting.

**Section 2:** The Board of Directors may from time to time set a numerical limit on the number of Guest Memberships, in which case applications from residents of the geographic area of Section 1 will be accepted up to the limit, in the order received by the Secretary. This section has the same voting requirements as Section 1.

**Section 3:** Other than former proprietary members accepted as Guest Members under Article VI, Section 7, no criteria other than geographic and order of receipt will be used to determine Guest Membership.

**Section 4:** The Board of Directors may set the annual dues required of Guest Members and may require that such dues accompany any application for Guest Membership. The Board may also prorate the dues charged Guest Members accepted after the official opening of the pool.

**Section 5:** Guest Memberships are valid for a calendar year. A Guest Member is one whose dues have been paid and whose application has been accepted. Guest members may use and enjoy the facilities of the Almaden Cabana Club. They have no voting privileges.

**Section 6:** Persons residing with a Guest Member, as a member of the household, shall have and enjoy the full privileges of a Guest Member, subject to such rules, regulations, restrictions, and limitations as the Board of Directors may from time to time prescribe.

**Section 7:** The Board of Directors may create a special category of Guest Members, reserved for proprietary members who have moved out of the proprietary membership area. This category shall be limited to no more than 5 Guest Members at any one time. Upon the addition of any new Guest Member under the special program, the next eligible Guest Member will also be admitted to the club from the regular Guest Member Waiting List. A waiting list of former proprietary members wanting to become Guest Members in this category may be maintained by the Board of Directors, such list to be separate from the waiting list for Guest Members. All guest members in this special category shall have and enjoy the full privileges of a Guest Member, and shall be subject to the rules, regulations, and limitations of Guest Members as listed in Article VI.

## **ARTICLE VII**

### **Dues and Assessments**

**Section 1:** The dues payable by each member shall be payable at such times as the Board of Directors shall determine. The Board of Directors may increase the dues for any class of member up to 10% per year above the previous year's dues. The amount of said dues shall not be otherwise changed, except upon vote or written consent of the majority of proprietary members.

**Section 2:** No assessment shall be made or levied for the purpose of making any capital addition or improvement to the property of facilities of the corporation without approval of at least two-thirds ( $\frac{2}{3}$ ) of the ballots cast. Notification of any proposed assessment will be provided to proprietary Members via U.S. mail not less than 30 days in advance of the vote.

**Section 3:** All dues, assessments and other charges referred to herein are free of governmental taxes.

**Section 4:** The Board of Directors at any meeting, after notice and hearing as provided in Article III, Section 6, may impose a fine, not to exceed Fifty Dollars (\$50.00) for any single infraction or violation, against any member or any person enjoying the privileges of the corporation, for any infraction or violation of these By-laws or of the rules and regulations of the corporation, and the amount of such fine shall be payable (in the same manner and at the same

time as dues, assessments, and other charges are payable).

**Section 5:** If a member fails to pay any dues, fines, assessments, or other indebtedness within fifteen (15) days after the same become due, the Secretary shall notify such member of his delinquency. If such indebtedness shall not be paid within fifteen (15) days after such notice, the Board may at its option i) charge the member interest on the outstanding amount, such interest to compound at a rate not to exceed one half of one percent ( $\frac{1}{2}\%$ ) per month, and ii) place a lien on the member's property equal to the amount owed by the member, including any interest or legal costs, and iii) suspend the member from the Club. The Secretary shall notify the member of the steps being taken by the Board to recover the debt.

**Section 6:** The name of any delinquent member, and the amount owing by may be posted in a conspicuous place on the property of the corporation.

**Section 7:** The transfer fee payable to the corporation on the transfer of a certification of membership shall be in such amount as the Board of Directors may, from time to time, fix.

**Section 8:** Any legal or other costs incurred on behalf of the Club by the Board of Directors in fulfilling its obligations under this Article may be added to any debt outstanding to the member, and such costs be included in assessment of interest charged, or amount of any lien placed on the member's property.

## **ARTICLE VIII**

### **Membership Meetings**

**Section 1:** The regular annual meeting of the proprietary members shall be held during October of each year, or during such other month as the Board of Directors may from time to time determine, on a day to be fixed by the Board of Directors at least fifteen (15) days prior to such meeting.

**Section 2:** Special meetings of the proprietary members for any purpose may be called at any time by the president, the Board of Directors, or upon the written request of forty (40) proprietary members.

**Section 3:** Notice of the regular annual meeting and of each special meeting of the proprietary members shall be given by the Secretary to each proprietary member of the corporation at least ten (10) days and not more than sixty (60) days prior to such meeting, and such notice shall specify the date, time and place of such meeting and the general nature of the business to be transacted thereat.

**Section 4:** Proprietary members may vote at any meeting either in person, or by proxy in writing or by electronic message filed with the Secretary. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution; and a proxy is revoked upon transfer of a proprietary membership by the person executing such proxy. A quorum for the transaction of business shall consist of at least twenty percent (20%) of the proprietary members, present either in person or by proxy. The proprietary members present at a duly called meeting at which a quorum is present may continue to do business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum

**Section 5:** Except otherwise expressly provided in these By-laws, or by law, the vote of a majority of the proprietary members present at any duly and regularly called meeting at which a quorum is present, shall be and constitute the act of the members.

**Section 6:** In the event that a quorum for the transaction of business is not met, the Board of Directors shall assume the proxy voting rights for those proprietary members not present by either personal attendance or by proxy.

## **ARTICLE IX**

### **Directors**

**Section 1:** All of the powers of the corporation shall be vested in and shall be exercised by, and the properties of the corporation controlled by, and the affairs of the corporation conducted by a Board to be known as the Board of Directors. The Board of Directors shall constitute the governing body of the corporation and shall be empowered to do any and all things necessary or proper to carry out the objects and purposes of the corporation consistent with law, the Articles of Incorporation and these By-laws. The Board of Directors shall consist of nine (9) voting members, composed of four (4) officers and five (5) proprietary directors, and a number of non-voting Directors as set from time to time by proprietary members; all elected as hereinafter provided.

**Section 2:** The Directors shall be elected at the regular annual meeting as members and shall



hold office for a period of one (1) year or until their successors have been elected and are ready to enter upon the duties of the office. Voting Directors shall be proprietary members, and all Directors shall be elected by the proprietary members.

**Section 3:** (a) In the event of a vacancy on the Board, the remaining Directors shall appoint an appropriate member to fill the vacancy, and the person so named shall hold office upon the duties of the office.

**Section 4:** A quorum of the Board of Directors shall be at least five (5) voting members thereof. Any action of the Board of Directors shall require a majority vote of the voting members present.

**Section 5:** Any member of the Board of Directors who shall be absent from its meetings without leave voted by the Board, may be considered as having resigned, and the vacancy thus created shall be filled as herein above provided.

**Section 6:** The members of the Board of Directors shall receive no compensation for acting as Directors, provided, however, if any Director perform services for the corporation other than as a Director, he may be compensated therefore as the Board of Directors may determine, provided however, that no Director may be so compensated except upon the unanimous vote or written consent of the Board of Directors.

**Section 7:** Regular meetings of the Board of Directors shall be held at such time and on such day and at such place as the Board, by resolution, may, from time to time, determine. Special meetings of the Board of Directors may be called by the President or any two (2) voting members of the Board of Directors and shall be held at the principal office of the corporation or at such other place as the Board may select. Notice of all meetings of the Board of Directors shall be given by the Secretary of the corporation to each member of the Board at least forty-eight (48) hours prior to the time of such meeting. Such notice shall be either verbal, by telephone in writing or by electronic communication.

**Section 8:** The Board of Directors shall have the power, and shall:

- a) Make and prescribe rules and regulations for the conduct of the members and the use of the properties and facilities of the corporation.
  
- b) Make and prescribe rules and regulations necessary or convenient for carrying into effect the requirements of these By-laws, and such other rules and regulations as, in the judgment of the Directors, may be proper, provided that such rules and regulations shall not be contrary to applicable statutes or governmental rules or regulations.
  
- c) Conduct, manage and control the affairs and business of the corporation.
  
- d) Appoint and remove as necessary all agents and employees of the corporation, prescribe their duties, fix their compensation, and if deemed necessary, require from them security for the faithful performance of their duties.
  
- e) Authorize all necessary expenditures and incur indebtedness from time to time, and secure payment thereof by pledge, hypothecation, mortgage, indenture, deed of trust, or other form of security.
  
- f) Except as otherwise herein provided, deal conclusively with all matters relating to the discipline of members, and as it may deem proper, suspend or fine a member for infraction of the rules, regulations or By-laws.
  
- g) Construe or interpret these By-laws.
  
- h) Keep or appoint one or more of the officers of the corporation to keep a complete record of all minutes and to present at the regular annual meeting of the members a full statement showing in detail the assets and liabilities of the corporation and its income and expenses.
  
- i) The specification of particular powers and duties herein shall not be construed to in any manner or to any extent limit or restrict the powers and duties of the Board of Directors, and the

Board of Directors shall do all thing necessary and proper for the control, management and operations of the corporation, its properties and affairs.

**Section 9:** The Board of Directors may create such committees as in its judgement may be necessary for properly conducting the affairs of the corporation. The members of such committees shall be members of the corporation. The Board of Directors may delegate to the President the authority to appoint the members of such committee.

**Section 10:** Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all voting members of the Board individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as an unanimous vote of the Directors.

## **ARTICLE X**

### **Officers**

**Section 1:** The officers of the corporation shall be a President, a Vice President, a Secretary, a Treasurer. The offices of Secretary and Treasurer may be held by the same person. The President, Vice President, Secretary and Treasurer shall each be a proprietary member, or an adult member at the household of a proprietary member.

**Section 2:** The officers of the corporation shall be elected annually by the proprietary members at the regular annual meeting of the members. Unless he shall sooner resign or shall be removed, or otherwise disqualified to serve, each officer shall hold office for a period of one (1) year, or until a successor has been elected and is ready to enter upon the duties of the office. A vacancy in any office, for any reasons, shall be filled by the Board of Directors, until such time as a successor is elected by the proprietary members, either at a special meeting called for that purpose, or at the next regular annual meeting of the members.

**Section 3:** Any officer may be removed from office, either with or without cause, by the majority vote of the proprietary members present at any regular or special meeting at which a quorum is present. Any officer may resign at any time by giving written notice to the corporation, and any such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

**Section 4:** The President, subject to the direction and control of the Board of Directors, shall be the principal executive officer of the corporation, and shall in general supervise and control all of the business and affairs of the corporation. He shall preside at all meetings of the members and shall attend all meetings of the Board of Directors. He shall be an ex-officio member of all committees. He shall execute as President all deeds, contracts and other instruments in writing which have been first approved by the Board of Directors, provided that the Board of Directors may delegate authority to execute any such document or instrument in writing to any other officer of the corporation or to a member of the Board of Directors. He shall render a report annually to the members, and shall perform such other duties and have such other powers as shall be, from time to time, assigned to him by the Board of Directors.

**Section 5:** In the absence of the President, or in the event of his inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all of the powers of, and be subject to all the restrictions upon the President. The Vice President shall perform such other duties and have such other powers as shall be, from time to time, assigned to him by the Board of Directors.

**Section 6:** In the absence of the President and Vice President, or in the event of their inability or refusal to act, the Board of Directors shall appoint a proprietary member as Acting President, in whom shall be vested for the time being all the duties, functions and powers of the President.

**Section 7:** The Secretary shall keep a record of the proceedings of all meetings of the members and of the Board of Directors, give all notices required by law or by these Bylaws, have custody of the corporate books, records and documents and the corporate seal, keep and maintain a register of the members, and in general perform all duties incident to the office of Secretary, and such other duties as, from time to time, may be assigned to him by the Board of Directors.

**Section 8:** The Treasurer shall supervise the accounting records of the corporation and shall have charge and custody of, and be responsible for all funds and securities of the corporation; receive and give receipts for all monies paid to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks or other depositories as shall be designated by the Board of Directors, which funds shall be withdrawn by such person or persons as the Board of Directors shall, from time to time, designate, and in general perform all of the duties incident to the office of Treasurer, and such other duties as, from time to time, may be assigned to him by the Board of Directors.

## **ARTICLE XI**

### **Amendments**

**Section 1:** The Articles of Incorporation of By-laws may be altered, amended or repealed by the members only by:

The written assent of a majority of proprietary members, or the vote of a majority of the proprietary members present, either in person or by proxy, at any annual meeting or at a special meeting duly called for such purpose, at which a quorum is present provided, however, that no vote in regard to alteration, amendment or repeal of the Articles of Incorporation or By-laws shall be taken at any meeting of proprietary members unless the nature of the action proposed to be taken in regard to alteration, amendment or repeal has been fully set forth in the notice of such meeting previously given to the proprietary members.

**Section 2:** Except as otherwise provided in these By-laws, other than a by-law or amendment thereof changing the authorized number of Directors, these by-laws may be adopted, amended or repealed by the Board of Directors, provided any such action of the Board of Directors adopting, amending or repealing any By-law shall require the affirmative vote of at least three (3) Directors, and providing further that the authority of the Board of Directors to adopt, amend or repeal by-laws shall be exercised only in the event that such adoption, amendment or repeal is required by or is necessary to conform with the requirement of a governmental body or governmental agency.

## **ARTICLE XII**

### **Property Right of Members**

**Section 1:** The proprietary members shall during the existence in good standing of their membership, be the beneficial owners of all of the properties and assets of the corporation, each in an undivided share. Such beneficial interests of the proprietary members cannot be alienated, transferred, assigned, bequeathed, devised or passed by the laws of inheritance or intestate succession or any judicial proceeding or by the operation of any law or in any other manner. In the event of the dissolution of this corporation, in accordance with applicable proceedings as provided by law, all property, cash and assets of this corporation shall be distributed and paid over to the proprietary members then in good standing, share and share alike.

## **ARTICLE XIII**

### **Ownership of More Than One Residential Unit**

**Section 1:** If and in the event that any proprietary member shall be the beneficial owner (as distinguished from a security owner) of more than one (1) single family residential unit in said subdivision, such proprietary member (any other provision of these By-laws to the contrary or apparently to the contrary notwithstanding) shall be entitled to as many votes as the number of such units so owned, and shall have the rights and obligations of a proprietary member with respect to each such unit owned, to the end that the rights and obligations of such proprietary member shall be the same as though such member held a separate proprietary membership for each such unit so owned.