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Rancho Bernardo Swim and  
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10200 Willow Creek Road, Suite 100  
San Diego, California 92131

**2016 DECLARATION OF RESTRICTIONS  
FOR  
BERNARDO GREENS WEST UNIT NO. 2**

*(A Portion of the Planned Development known as  
Rancho Bernardo Swim and Tennis Club)*

[NOTE TO RECORDER: Please index according to the Declarants' names as listed on the signature pages.]

**NOTICE**

*(Gov. Code §12956.1)*

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

THIS 2016 DECLARATION OF RESTRICTIONS FOR BERNARDO GREENS WEST UNIT NO. 2 is made on the day and year hereafter written, by the undersigned, as lot owners (herein "Lot Owners" or "Owners") of a fee interest in the property described herein as Bernardo Greens West Unit No. 2.

## RECITALS

A. The parties executing this Agreement, hereafter collectively referred to as Declarants are some or all of the Owners of the real property in the City of San Diego, County of San Diego, State of California, described as follows:

Lots 24 through 45, inclusive, of Bernardo Greens West Unit No. 2, according to Map thereof No. 6161 filed in the Office of the County Recorder of San Diego County, August 5, 1968.

B. The above property was originally developed and subjected to a certain Declaration of Restrictions ("1968 Declaration") dated May 27, 1968 that was thereafter recorded in the Office of the County Recorder of San Diego County, California, on August 6, 1968 as Document No. 133749.

C. A new subdivision map for the above property was filed later with the following description:

Lots 24 through 45, inclusive, of Bernardo Greens West Unit No. 2, Resub. No. 1, according to Map thereof No. 6447 filed in the Office of the County Recorder of San Diego County, California, on August 5, 1969

which real property dwellings and other improvements on the lots ("Lots") are commonly referred to as Bernardo Greens West Unit No. 2 or the "Property" or the "Community."

D. The 1968 Declaration was later amended by a "First Amendment to Declaration of Restrictions" ("1969 Amendment") that was recorded in the Office of the County Recorder of San Diego County, California, on September 5, 1969 as Document No. 162961.

E. The 1968 Declaration and 1969 Amendment were further amended by an "Amendment to Declaration of Restrictions" ("1983 Amendment") that was recorded in the Office of the County Recorder of San Diego County, California, on May 10, 1983, as Document No. 83-153815.

F. The 1968 Declaration, 1969 Amendment and 1983 Amendment are collectively referred to as the "Original Declaration."

G. The Original Declaration contained a termination date and has expired.

H. The Declarants named in Exhibit A now desire to enact this 2016 Declaration of Restrictions ("2016 Declaration") containing substantially the same provisions in the expired Original Declaration but adding a new expiration date, clarifications to comply with "Applicable

Law” (as defined below), and provisions for voting on amendments that comply with the requirements of the Davis-Stirling Common Interest Development Act.

I. The Declarants collectively are the Owners of the real property legally described in Exhibit B attached hereto and made a part hereof (“Covered Property”) who have joined together to subject the Covered Property to the 2016 Declaration.

J. The Declarants' names along with abbreviated legal descriptions and Assessor's Parcel Numbers of their respective Lots are listed in Exhibit A attached hereto and made a part hereof.

K. The Declarants intend to subject the real property described in Exhibit B (“Covered Property”) to this 2016 Declaration and eventually intend that the real property legally described in Exhibit C (“Annexable Property”) will also become part of the Covered Property and be made subject to this 2016 Declaration, so that ultimately all the “Property,” specifically Lots 24 through 45, inclusive, of Bernardo Greens West Unit No. 2, Resub. No. 1 will be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth herein, as the same may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the entire Covered Property, to provide for membership in Rancho Bernardo Swim and Tennis Club, a California nonprofit mutual benefit corporation, and a planned development, that is responsible for review and enforcement of architectural restrictions and Rules (as defined below) and for providing swimming, tennis and other recreational facilities for the benefit of Owners of the Covered Property and to provide a mechanism by which Owners of the Annexable Property, who do not join in this 2016 Declaration initially may, by annexation as provided below, make their Lots part of the Covered Property and subject to this 2016 Declaration in the future.

L. The Declarants anticipate that it may take some period of time to obtain the consents of all the Owners in the Property that are necessary to convert all of the Annexable Property into Covered Property subject to this 2016 Declaration. Thus, rather than attempting to wait until the consents of all Owners have been obtained with respect to all of the Annexable Property, the Declarants intend and agree that, Owners of the Lots in the Annexable Property may record one or more Declarations of Annexation to authorize annexation of their Lots into the Covered Property, to authorize membership in the Association (as defined below) and to authorize being subject to all the provisions of this 2016 Declaration, as amended from time to time. Upon the recording of any such Declaration of Annexation, that portion of the Annexable Property shall be annexed to and shall become part of the Covered Property, and such annexations may continue until the entire Annexable Property has become subject to this 2016 Declaration;

NOW THEREFORE, Declarants declare that, based on the consents of the parties holding an interest in the Covered Property that are identified in Exhibit B hereto, the Covered Property shall be subject to this 2016 Declaration and to the plan for the Covered Property and Annexable Property described above. Declarants further declare that all provisions of this 2016 Declaration, as the same may be amended from time to time, including without limitation the

easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes on the Covered Property, and shall run with and burden the Covered Property, and shall be binding on and for the benefit of the Covered Property, and on all persons having or acquiring any interest in the Covered Property, including without limitation, successors in interest, lessees, heirs and assigns. If any Annexable Property is later annexed, the same provisions shall be applicable to any such annexed Property as are applicable to the Covered Property.

1. **DEFINITIONS.**

(a) **“Applicable Law”** means statutes, public laws, ordinances, regulations and rulings of administrative agencies, court rulings having value as precedent and any other requirements having the force of law that are in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Document provision in question. Statutes and ordinances specifically referenced in the Governing Documents are “Applicable Law” on the date of the Governing Document in question, and are not intended to apply to the Covered Property if they cease to be applicable by operation of law, except to the extent they are replaced or superseded by one or more statutes or ordinances.

(b) **“Club” or “Association,”** as defined in Civil Code § 4080, means Rancho Bernardo Swim and Tennis Club, a California nonprofit mutual benefit corporation that has been created for the purpose of managing a common interest development, specifically including the Covered Property.

(c) **“Governing Documents,”** as defined in Civil Code § 4150, mean this 2016 Declaration and any other documents, such as bylaws, Operating Rules, articles of incorporation or other documents that govern the operation of the Covered Property and the Club.

(d) **“Rules” or “Operating Rules,”** as defined in Civil Code § 4340, mean regulations adopted by the Club’s board of directors that apply generally to the management and operation of the Covered Property or the conduct of the business and affairs of the Association.

2. **RESIDENTIAL PURPOSES ONLY.** Each of the Lots in the Covered Property shall be used for residential purposes only, and no building or buildings shall be erected, constructed, altered or maintained on any of the said Lots other than detached single-family dwellings, together with customary outbuildings, as permitted from time to time by San Diego City Zoning Ordinances.

3. **ARCHITECTURAL COMMITTEE AND ARCHITECTURAL CONTROL.**

(a) The Board of Directors of the Club may appoint an architectural committee (“Architectural Committee”) of at least three but no more than five persons. Each Architectural Committee member shall serve until his removal by the Board of Directors of the Club. Any person who is a regular member of the Club may be appointed an Architectural Committee member. The members of the Architectural Committee shall receive no

compensation for services rendered, but Architectural Committee members may be reimbursed for their actual out-of-pocket expenditures incurred in performing their duties.

(b) The Architectural Committee shall provide guidelines for the submission of plans and specifications which may be amended by the Architectural Committee from time to time. Failure to comply with the requirements for the architectural approval shall be deemed sufficient basis for the Architectural Committee to disapprove the submission.

(c) Neither the Architectural Committee, nor any member thereof, nor their duly authorized representatives shall be liable to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the project generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features.

(d) The approval by the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans or specifications, drawings or matter whatsoever subsequently or additionally submitted for approved, or consent.

(e) Any enforcement action set forth in the 2016 Declaration may be brought by the Owner of a Lot, the Architectural Committee, or by the Club. Any violation of the Architectural Committee's order or directive may be remedied by the Club, the Architectural Committee or any Owner of a Lot through litigation seeking an order to mandate removal and/or prohibit construction of nonconforming improvements.

(f) Any legal action authorized by this 2016 Declaration may also be brought by the Club.

4. **NEW BUILDING ONLY.** No building of any kind shall be moved from any other place onto any of said Lots, or from Lot to another Lot, without prior written permission of the Architectural Committee.

5. **HEIGHT LIMIT OF DWELLINGS.** No dwelling without the written approval of the Architectural Committee shall be more than two stories in height.

6. **MINIMUM FLOOR AREA OF DWELLINGS.** The floor square foot area exclusive of porches, patios, exterior stairways and garages, of any building shall not be less than 1400 square feet on the ground floor of a one story building and 1600 square feet for a two story building.

7. **BALCONIES AND DECKS.** No balcony or deck shall be higher above the ground than the second floor level except on written approval of the Architectural Committee.

8. **ARCHITECTURAL CONTROL.** No building or other structure or improvement shall be commenced upon any of said Lots until the location and the complete plans and specifications including the color scheme of each building, fence and/or wall to be erected upon the Lot have been approved in writing by the Architectural Committee, and no building shall be located on any Lot nearer than the set-back lines as shown on the recorded plat. Provided, however, that in the event the Architectural Committee fails to approve or disapprove such location, plans and specifications within sixty (60) days after the submission thereof to it, then such approval will not be required, provided any building so to be erected conforms to all other conditions and restrictions herein contained and is in harmony with similar structures erected within the Covered Property.

9. **NO SECOND-HAND MATERIALS, PAINTING REQUIRED.** No second-hand material shall be used in the construction of any building or other structure without the prior written approval of the Architectural Committee; and all buildings and fences which are of frame construction shall be painted or stained with at least two coats upon completion. Exception to this may be given by the Architectural Committee by written approval.

10. **DILIGENCE IN CONSTRUCTION REQUIRED.** The work of constructing and erecting any building or other structure shall be prosecuted diligently from the commencement thereof and the same shall be completed within a reasonable time in accordance with the requirements herein contained. No outbuilding shall be completed prior to the completion of the dwelling on the premises, but such temporary quarters must be removed as soon as the dwelling is completed.

11. **PLANTING.** No later than six (6) months after the completion of any building there shall be expended by each individual Owner on each individual Lot for ornamental plants, trees, shrubs, lawns and flowers and care as hereinafter provided, a sum of not less than one percent (1%) of the cost of said dwelling and Lot, exclusive of any cost of grading, walks, driveways and construction features exterior to said building. Size, type and location of materials to be used shall be submitted to the Architectural Committee prior to any construction. The use of materials other than living plant materials for landscaping shall not be allowed. Notwithstanding the foregoing, and subject to reasonable Rules that may be adopted by the Board, these restrictions shall not prohibit or include conditions that have the effect of prohibiting, the use of artificial turf or any other synthetic surface that resembles grass. (California Civil Code §4735).

12. **BUILDING AND LOT MAINTENANCE.** Each individual Lot Owner must maintain exterior structures, keep, maintain, water, plant and replant all landscaping and slope banks located on such Owner's Lot so as to prevent erosion and to present an attractive appearance and to keep in good repair and maintenance all improvements on his own Lot. The Architectural Committee shall be the sole judge in determining compliance with the provisions of this Section 12, and each individual Lot Owner must promptly perform or conform to all directives issued by the Architectural Committee for compliance with the provisions of this Section 12.