RESOLUTION NO. HO-2009-014

A RESOLUTION OF HEARING OFFICER THOMAS W. ALLEN, DESIGNATED BY THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH TO CONDUCT HEARINGS PURSUANT TO CHAPTER 20.91A OF THE NEWPORT BEACH MUNICIPAL CODE, APPROVING USE PERMIT NO. 2008-030 FOR A RESIDENTIAL CARE FACILITY LOCATED AT 1115 WEST BALBOA BOULEVARD (PA2008-101)

WHEREAS, an application was filed by Ocean Recovery, LLC with respect to property located at 1115 West Balboa Boulevard, and legally described as Lots 19 and 20 in Block 11 of Tract No. 234 in the City of Newport Beach, County of Orange, State of California (APN 047-251-08), as per map recorded in Book 013, Page(s) 36-37 of Miscellaneous Maps, in the Office of the County Recorder of Orange County, requesting approval of Use Permit No. 2008-030 to allow a residential care facility to operate an adult alcohol and/or drug abuse recovery treatment facility for males only; and

WHEREAS, on February 12, 2009, and May 7, 2009, the Hearing Officer held a noticed hearing in the City Hall Council Chambers, at 3300 Newport Boulevard, Newport Beach, California at which time the project application was considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to, and considered by, the Hearing Officer at the hearing; and

WHEREAS, the Hearing Officer has evaluated and weighed the testimony from the February and May hearings. While differences of opinion were expressed, and on occasion the Applicant responded to specific allegations by saying it was not aware of the circumstances alleged, these differences do not constitute grounds to change the Hearing Officer's decision to grant the permit, particularly in view of the fact that the Conditions of Approval imposed on the Use Permit address the issues where disagreement was evident; and

WHEREAS, a use permit for the proposed residential care facility has been prepared in accordance with the provisions of Chapter 20.91A of the Municipal Code, which states that in addition to the required findings in Section 20.91.035, the findings required for a use permit in Section 20.91A.060 must also be made; and

WHEREAS, the required findings of Section 20.91.035 and facts in support of such findings are as follows:

1. Finding: That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.

   Facts in Support of Finding: The subject property is within an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. Pursuant to this chapter, any property in a residential district which became nonconforming as a result the passage of Ordinance 2008-05 may seek the issuance of a conditional use permit to continue the use so long as the application for that permit was filed within the

time limits required by Chapter 20.91A. The application for Use Permit No. 2008-030 is in accord with the objectives and requirements of Chapter 20.91A with respect to the required time limits for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The approval of Use Permit No. 2008-030, subject to conditions included with the use permit, complies with the objectives of the code and does not result in an overconcentration of residential care facilities within the neighborhood of the use as outlined in Finding No. 8 below.

2. Finding: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

   Facts in Support of Finding: General Plan Policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of Use Permit No. 2008-030 includes conditions to regulate the use and operational characteristics of this facility consistent with this policy requiring that the facility be operated in a manner to ensure that its operation will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

   Current and future operational standards to be used by the facility will be implemented through the adopted conditions of approval which address the following operational characteristics of the facility:

   a. Ocean Recovery shall have at least one qualified supervisor on-site at all times (24 hours a day, seven days a week);
   b. The facility must maintain Quiet Hours to the extent that persons on the street or on adjacent properties cannot hear any noise from 1115 West Balboa Boulevard between the hours of 9:00 p.m. to 8:00 a.m. daily. During these quiet hours, all residents must be inside except during emergencies;
   c. This facility's maximum number of permitted resident beds shall be reduced to eighteen (18);

d. Security shall be enhanced by increasing the height of the property's eastern side yard "pony wall" up to a maximum of six feet, subject to City approval, with landscape screening added;
e. Smoking shall be restricted to an enclosed area inside the facility. Smoking outdoors shall be prohibited;
f. The facility shall abide by the City's regulations regarding trash disposal, including providing the proper number of cans for the facility's use to ensure that cans do not overflow, by placing the cans out no earlier than 7:00 p.m. the evening prior to collection, and by placing the cans back in the side yard (or other contained area) no later than 6:00 p.m. the day of collection; and
g. In the event the Operator provides counseling or educational sessions to family members of persons housed at the facility the following conditions shall apply:

    1. The counseling and educational sessions shall be expressly authorized within the facility's ADP license;
    2. In no event shall the facility provide counseling or educational or alumni sessions to persons who do not have a relative receiving in patient treatment at the facility.
    3. In no event shall the facility conduct "AA" type meetings or group sessions for persons who do not reside at the facility.

3. Finding: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

   Facts in Support of Finding: Approval of Use Permit No. 2008-030, subject to conditions included with the use permit, will comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Finding No. 5 below.

4. Finding: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.

   Facts in Support of Finding: The use is a nonconforming use as specified in Chapter 20.91A of the NBMC, and an application for a use permit requesting to continue the use was filed by Ocean Recovery, LLC, the project applicant, consistent with the requirements of Chapter 20.91A. Approval of Use Permit No. 2008-030 includes conditions of approval requiring that the continued use of the subject property as a residential care facility be operated in a manner that conforms to all requirements of Chapter 20.91A by reducing the number of resident beds within the facility, providing for adequate parking, raising the height of the property side-yard "pony wall," restricting the potential for secondhand smoke impacts to neighboring properties, ensuring that contact information for the facility is available at all times, that the facility operates pursuant to the terms

of the license issued to the facility by ADP, that other certifications, as appropriate be obtained by the facility, and requiring the names of all owners of the facility to be available to the City.

WHEREAS, the required findings of Section 20.91A.060 and facts in support of such findings are as follows:

5. Finding: The use conforms to all applicable provisions of Section 20.91A.050 (Development and Operational Standards). These development and operational standards are summarized as follows:

   a. No secondhand smoke can be detectable outside the property.

   b. Operations must comply with state and local law and the operator's submitted management plan including any modifications required by this Use Permit.

   c. A contact name and number be provided.

   d. No services requiring a license can be provided if the facility does not have a license for those services.

   e. There shall be no more than 2 persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.

   f. If certification from an entity other than ADP's licensing program is available, applicants must get that certification.

   g. All individuals and entities involved in the facility's operation and ownership must be disclosed.

   h. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.

   Facts in Support of Findings (Items a through h, above): The use conforms to the standards set forth in Section 20.91A.050, as follows.

   a. Approval of the use permit includes a condition of approval that smoking be permitted only inside the facility. Smoking outdoors is prohibited.

   b. The operations of this facility are in compliance with the State ADP license, and as conditioned, the facility will comply with the approved Operations and Management Plan for the facility.

c. Appropriate names and contact information numbers are provided within the application, and as a condition of approval of this application, the appropriate "after hours" names and contact information numbers will be provided to the City.

d. The Operation and Management Plan for the facility provides that only those services permitted by the facility's ADP license are performed within the facility. The ADP license does not permit treatment services to non-resident clients, nor does it allow non-clients to interact with clients unless all clients have signed privacy rights waivers authorizing non-clients to know that the clients are in recovery.

e. The facility is licensed for a maximum occupancy of 22 residents. The facility contains 11 bedrooms currently occupied by a maximum of two persons per bedroom. As a condition of approval of the use permit, the maximum occupancy permitted for client residents shall be reduced to 18 residents with no more than two persons per bedroom consistent with the residential occupancy design of the building and the occupancy standards of NBMC Section 20.91A.050 of two residents per bedroom.

f. A condition of approval is included as part of the approval of the use permit, requiring the applicant to consider the merits of additional certification available, including but not limited to an Orange County Adult Alcohol and Drug Sober Living certification. In the event that the applicant deems such certification inapplicable to this treatment use, the applicant is required to prepare a letter so stating these facts and to submit the letter to the City within 60 days of the issuance of a use permit.

g. All employees and management personnel have been disclosed in the application documentation.

h. According to information provided in the application documentation the owners and managers of the facility own and operate a similar facility located at 1601 West Balboa Boulevard in the City of Newport Beach. The State of California ADP license for each facility is in good standing and expires in December 2010. However, in the exercise of caution, a condition of approval is included directing specifically that all actions, whereby a client resident's identity is released or made known to non-clients, must comply with ADP's privacy rules and regulations.

6. Finding: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.

Facts in Support of Finding: The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides a total of six off-street parking spaces. To ensure that the

facility provides adequate off-street parking to meet the parking requirements of the NBMC, conditions of approval are included as part of the approval of Use Permit 2008-030 as follows:

a. The maximum client bed occupancy for the facility shall be reduced from 22 to 18 residents.
b. Client residents are not permitted to have personal vehicles on-site.
c. On-site parking garages shall be kept clear of any permanent or semi-permanent physical obstruction, and made available for parking of vehicles.
d. Use of on-street parking is limited to staff and visitors during special sessions, and family counseling. In order for these activities to continue, the following conditions shall apply:

    - Assembly uses are not permitted, except those that involve client residents of the facility (and in some cases small meetings of a client's family members with facility staff);
    - The operator shall make parking available for a minimum of four staff members per daytime shift and one staff member per nighttime shift;
    - The operator shall purchase three master parking permits from the City for use of on-street parking;
    - The facility's use shall not occupy more than three on-street parking spaces at any time; and

A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and unloading is conducted in front of the facility along Balboa Boulevard. As part of the approval of this use permit, a condition of approval is included that restricts loading and unloading of van passengers to be conducted within open parking spaces along Balboa Boulevard and prohibits van drivers from stopping or double-parking in a traffic lane.

The facility's current client transport van does not fit inside any of the facility's onsite garage spaces, and must therefore be parked on the street or at an alternate offstreet location when not in use. A condition of approval is included that requires any replacement or additional client transport vehicles acquired or used by the operator to be of a size that can be parked within the garage, and that onsite parking space(s) be used for this purpose when such vehicles are obtained.

7. Finding: The property and existing structures are physically suited to accommodate the use.

<u>Facts in Support of Finding:</u> The building is similar to many other residential structures along West Balboa Boulevard constructed on a parcel that measures

approximately 60 feet wide by 100 feet deep. The six-unit apartment building was constructed on two lots in 1952 with the approval of Use Permit No. 56, when the subject property was zoned R-3.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated January 3, 2005, for a maximum occupancy of 22 residents, as well as staff. Separate from this use permit, the applicant may be required to conduct an architectural code analysis of the facility to determine if the facility complies with current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially issued a "fire clearance."

8. Finding: The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer and/or City Council shall consider, as appropriate, the following factors:

   a. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;

   b. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007, and on file with the Director of Planning; and

   c. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in

standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.

Facts in Support of Finding (Items a through c, above): The Ocean Recovery facility is approximately 1,220 feet from an existing large licensed day care facility and approximately 730 feet from Newport Elementary School. This is a sufficient distance from these facilities so that the use will not impact or be impacted by the operations or use of these facilities.

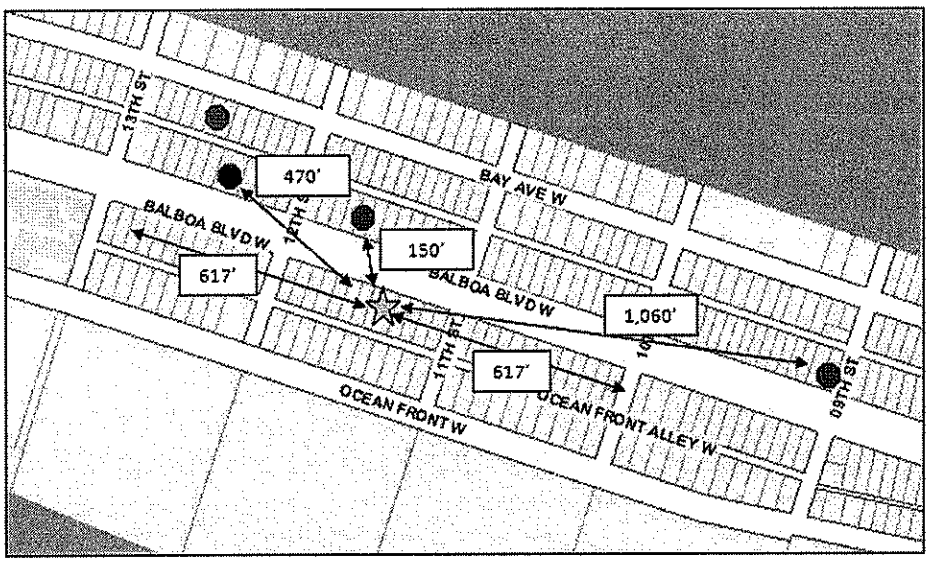
The objectives of the code include provisions to ensure, through the use permit process, that a proposed residential care facility is compatible with the surrounding residential neighborhood, and specifically, that the approval of a use permit for the continued operation of a residential care facility does not result in an institutionalization of the surrounding neighborhood through an overconcentration of facilities. The use is located in the mid-Balboa Peninsula area, which is a part of the Nonstandard Subdivision Area. Inasmuch as Section 20.91A 060 (D.3) indicates median block lengths in different areas of Newport Beach widely range from 300 feet in the nonstandard subdivision areas to as much as 1,422 feet in standard subdivision areas, a block length for the mid-Balboa Peninsula area where this use is located may be established. In order to establish a block length for the mid-Balboa Peninsula area, the City has determined that it is appropriate to apply a median block length pursuant to the standards of the American Planning Association. The City's Hearing Officer has determined that a calculable median block length of 617 feet is a reasonable block length for purposes of evaluating the mid-Balboa Peninsula area. The placement of more than one residential care facility per this median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood.

The Hearing Officer hereby determines that the center of Balboa Boulevard is a dividing line for purposes of applying the previously established block length standard of 617' on the mid-Balboa Peninsula. The Hearing Officer further determines that in this area a block is more or less rectangular in shape (depending on street direction) and "an area that is bounded on all sides by streets," as described in the City's ordinance. West Balboa Boulevard is a 100' wide primary roadway with a median divider and is therefore a significant neighborhood dividing line and barrier to institutionalization of the area. The areas on the opposite (north) side of West Balboa Boulevard are therefore separate blocks. By applying the block length standard as being adjacent on one side of West Balboa Boulevard, and including smaller streets such as 12th and 11th Streets, there can be streets within a "block"; the differences in block lengths can be overcome to provide a 617-foot block length standard. The Hearing Officer rejects the concept of "block length" radii around recovery facilities on the basis that the concept would create an inflexible distancing standard between

recovery uses, and would not be in keeping with the recommended APA standard.

The proposed Ocean Recovery facility is the only residential care facility located on the south side of West Balboa Boulevard within a calculable median block of 617 feet in length proposed for continued operation pursuant to an approved use permit. As indicated in Diagram A below, the nearest other operating residential care facilities are Balboa Horizons, located at 1132 West Balboa Boulevard, and Newport Coast Recovery, located at 1216 West Balboa Boulevard. These other facilities are in a separate block located on the north side of West Balboa Boulevard, a 100-foot wide primary roadway separating the blocks. Balboa Horizons was granted approval of a use permit to continue operations, and Newport Coast Recovery has been denied a use permit (subject to a re-opened public hearing).

Diagram A
1115 West Balboa Proximity



LEGEND:
- Red Dot = Newport Coast Recovery, 1216 West Balboa (denied Use Permit)
- Green Dots = Balboa Horizons, 1132 West Balboa; LMS Properties, 900 West Balboa (approved Use Permit or approved reasonable accommodation, respectively)
- Blue Dot = Ocean Recovery, 1217 West Bay (not subject to Use Permit)
- Star = Ocean Recovery, 1115 West Balboa (use permit pending)

9. Finding: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.

<u>Facts in Support of Finding:</u> A facility van provides transportation for residents of the use and will provide van transportation for non-resident family members, on a weekly schedule dispersed throughout the day and among the days of the week

so that van transportation is not concentrated during peak traffic times. A condition of approval is included as part of the approval of Use Permit No. 2008-030 requiring the loading and unloading of the transportation van passengers to occur only in open parking spaces on West Balboa Boulevard and prohibiting the van drivers from stopping or double-parking in a traffic lane.

10. Finding: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

    Facts in Support of Finding: Business products and other packages and goods are delivered to the facility by staff members using their private vehicles during weekdays between the hours of 9:00 a.m. to 5:00 p.m. These days and hours for deliveries are consistent with normal working hours, and as such, are compatible with and will not adversely affect the peace and quiet of neighboring properties.

11. Finding: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

    Facts in Support of Finding: A condition of approval is included as part of the approval of Use Permit No. 2008-030 requiring Ocean Recovery to abide by the City's regulations regarding trash disposal, including provision of a proper number of cans for the facility's use to ensure that cans do not overflow, placement of cans out no earlier than 7:00 p.m. the evening prior to collection, and placement of cans back in the side yard (or other contained area) no later than 6:00 p.m. the day of collection.

WHEREAS, the project qualifies for a Categorical Exemption pursuant to Section 15301 of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. The Hearing Officer on behalf of the City of Newport Beach hereby approves Use Permit No. 2008-030, to operate an adult alcohol and/or drug abuse recovery treatment facility for a maximum of 18 male resident clients, subject to Conditions of Approval in Exhibit "A" attached hereto and made part hereof.

Section 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk

in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 20TH DAY OF MAY 2009.

BY: _____
Thomas W. Allen, Hearing Officer

ATTEST:

_____
City Clerk

EXHIBIT "A"

CONDITIONS OF APPROVAL

USE PERMIT NO. 2008-030
OCEAN RECOVERY, LLC
1115 WEST BALBOA BOULEVARD

1. **Grant of Use Permit.** Use Permit No. 2008-030 is granted to Ocean Recovery, LLC to operate an adult alcohol and/or drug abuse recovery treatment facility for 18 males only. The Operator shall limit occupancy of the facility at 1115 West Balboa Boulevard to 18 resident client beds. No more than 18 resident clients may reside at the facility at any time.

2. **Governmental Referrals.** The Operator of Ocean Recovery, LLC, hereinafter referred to as "Operator," shall not provide any services to any client or house any client who has been referred or caused to be referred to Ocean Recovery's facility by any governmental agency, including but not limited to probationers or parolees, due to the limitations that Section 509.9 of the California Building Code places on Group I and R occupancies.

3. **Medical Waste.** Any and all medical waste generated through the operation of the facility shall be disposed of in accordance with the City of Newport Beach's Municipal Code, all other laws and best industry standards and practices.

4. **Trash & Trash Enclosures.** Operator shall comply with City code provisions pertaining to trash enclosures, and if directed by the Planning Director, shall secure and maintain commercial bin service at the subject property. Operator shall provide a sufficient number of plastic trash cans with sealable covers to contain all of the refuse generated by the facility, which are to be used at all times. Trash cans shall be put out for pick up no earlier than 7:00 p.m. and before 8:00 p.m. on the evening before trash collection day, and shall be put back within the property by 6:00 p.m. on the day of collection.

5. **Smoking, Tobacco Products, and Cigarette Litter**. No guests, clients, or any other users of the facility may smoke in any area from which secondhand smoke may be detected on any parcel, other than the subject parcel, upon which the facility is located. Operator shall contain secondhand smoke generated by patients, clients, customers, and staff within the lot line of the subject property. Operator shall use its best efforts to:

   a. Limit smoking to a designated smoking area located inside the facility and equipped with an air filter and smoke containment device or structure.
   b. Prohibit smoking outside of the facility to prevent unreasonable annoyance to adjacent residences.

c. Rapidly address neighbor complaints of secondhand smoke, when it can be reasonably determined that the smoke comes from the facility.

In addition, Operator shall not allow clients, staff, or residents to litter cigarette butts on the ground, floor, deck, sidewalk, gutter, boardwalk, or street. Operator's administrators and managers shall actively enforce, on the City's behalf, the City's prohibition on clients' tobacco use on beaches, boardwalks, and piers (NBMC §11.08.080), including when Operator's clients are at "AA" meetings.

6. **Off-Street Parking, and Loading and Unloading.** Operator shall provide six (6) off-street parking spaces for the use of the facility at all times. The additional following conditions shall apply:

a. Client residents shall not be permitted to have vehicles during their stay at Ocean Recovery.
b. On-site parking garages shall be kept clear and available for parking of vehicles at all times.
c. The operator shall purchase three master parking permits from the City for use of on-street parking.
d. The operator shall make parking available for a minimum of four staff members per daytime shift and one staff member per nighttime shift;
e. The current transportation van may use one of the three master parking permits for on-street parking purpose. However, any replacement or additional client transport vehicles acquired or used by the Operator shall be of a size that can be parked within the garage, and onsite parking space(s) shall be used for this purpose when and if such vehicles are obtained.
f. The facility use by visitors or staff shall not occupy more than three on-street parking spaces at any time.
g. The operator shall familiarize clients with local OCTA bus stops and routes and keep a current route map and OCTA schedule in the facility at all times.

Loading and unloading of passengers of the facility's transportation van shall occur only in open parking spaces on West Balboa Boulevard. The van driver is strictly prohibited from stopping or double-parking in a traffic lane to load and unload passengers. In addition:

a. Client drivers shall respect all City rules regarding parking and/or stopping and waiting to load residents. Client transport vehicles shall not block adjacent alleys or street ends.
b. Client drivers shall not leave vehicles in reverse gear if reverse has an audible back-up warning sound.
c. Client drivers shall speak to residents at a level protective of neighborhood peace, cognizant of the hour, to avoid waking neighbors.

7. **Assembly, Family Counseling, and Special Sessions.** Assembly uses, including but not limited to, meetings and group counseling sessions involving persons who do not reside at the facility where the meeting is taking place, are prohibited except that house staff and family members of persons residing at the facility may meet with residents provided such meetings preserve the quiet of the neighborhood. In the event the operator provides counseling or educational sessions to family members of persons housed at the facility the following conditions shall apply:

   a. The counseling and educational sessions shall be expressly authorized within the facility's ADP license;
   b. In no case shall the facility provide counseling, educational or alumni sessions to persons who do not have a relative receiving in-patient treatment at the facility.
   c. In no case shall the facility conduct "AA" type meetings or group sessions for persons who do not reside at the facility.

8. **Hotline.** Operator shall establish, provide public notice of, and operate a hotline for receiving inquiries and/or complaints in reference to its operation of its facility. The phone number need not be staffed 24 hours a day seven days a week, however callers should be responded to within the next 24-hour period.

9. **Quiet Hours**. Operator shall enforce the Quiet Hours of 9:00 p.m. to 8:00 a.m. daily to its patients, clients and customers occupying beds in its facility. During these Quiet Hours, all residents shall be inside except during emergencies. Quiet means noise, including music, television, and voices, is not audible beyond the perimeter of the facility except in a demonstrable emergency.

10. **Route Plans**. Operator shall adhere to the Route Plans for transport of its staff, residents, clients, and customers. The Route Plans are included in the Operations and Management Plan. Short-term interruptions, such as medical emergencies or street maintenance beyond Operator's control, are allowable modifications to the Route Plans.

11. **Operations and Management Plan.** The Operator shall adhere to the Operations and Management Plan attached as Exhibit B. Minor modifications to the Operations and Management Plan deemed acceptable to the Planning Director do not constitute a reason to amend the Use Permit.

12. **Deliveries**. Any deliveries to the facility shall only be made between 8:00 a.m. and 5:00 p.m. on weekdays and prohibited on Saturdays or Sundays, unless urgently necessary. In addition, delivery vehicles may not block the alley.

13. **Stakeholder Group**. Upon invitation by the City, Operator shall participate in the activities of any stakeholder committee or group established by the City to

address complaints and concerns of residents of the City regarding the operation of Residential Care Facilities in the City.

14. **Persons per Bedroom**. Operator shall not allow more than two (2) clients in one bedroom. This is consistent with the provisions of the ADP license.

15. **Good Neighbor Rules.** The operator shall post and enforce at all times the Good Neighbor Rules adopted by Ocean Recovery attached as Exhibit C. Minor modifications to the Rules deemed acceptable to the Planning Director do not constitute a reason to amend the Use Permit.

16. **State Licensing, Treatment, and Occupancy.** All occupancies at the subject property shall comply with the State ADP License Record ID 300144BP, which expires on December 31, 2010, and any successor license offering the same treatment services. Operator shall maintain ADP licensing throughout the duration of this use permit.

17. **Building and Zoning Codes**. Operator recognizes that subject property has specific setbacks from the side yards, front yard, and/or back yard per the City's Building and Zoning Codes. Operator shall keep these setbacks clear of obstruction, including building obstruction. The orderly storage of trash cans is acceptable in setbacks.

18. **Staffing**. Operator shall have adequate staff to appropriately and responsibly manage the facility and shall limit the staff to no more than five full-time staff members on-site at any one time, so as to avoid overwhelming the facility's neighborhood with cars, shuttles, trash cans, or other aspects of a high-staff commercial use in a residential neighborhood. Ocean Recovery shall staff the facility with qualified on-site managers, one of whom shall be present at all times.

19. **Nuisances**. The subject property shall not be unsafe, unsightly or poorly maintained. If Operator receives a nuisance violation from the City in regards to any of these issues, Operator shall correct the violation within seven days or contact the City directly to implement a remediation plan in accordance with the City's municipal code.

20. **Profanity and Lewd Behavior.** Operator shall not tolerate lewd behavior, lewd speech, or profanity at the subject property, nor shall the operator tolerate profanity by staff or clients at levels audible to neighboring residents. The operator shall enforce the house rules against lewd speech, lewd behavior, or profanity. Profanity at a level audible to neighboring residents may result in an administrative citation issued by the City upon the property owner and operator.

21. **Noise**. Operator shall strictly adhere to the City's noise standards (NBMC §10.26.025; 10.26.030). Operator shall be responsible for minimizing clapping,

stomping, or other noises at meetings or gatherings at the subject property, consistent with NBMC §10.26.030.

22. **Beaches and Other Common Gathering Areas**. Operator's use of the beaches for meetings, prayer, conversation, or other gatherings shall show due respect to non-resident visitors, residents, and other beachgoers, thus allowing them to take full enjoyment of the beach. Operator shall not conduct business on the beach (per NBMC §10.08.030).

23. **Services to Facility's Clients or Residents**. Operator shall use industry's best practices to ensure that the facility's clients or residents stay in recovery (including scheduled substance testing, random substance testing, and required counseling). Operator shall ensure that any client or resident removed from Operator's program or facility has the resources necessary to return home.

24. **Federal, State and Local Laws.** Operator shall comply with all federal, state, and local laws. The issuance of this use permit shall not constitute a waiver of the requirements of any federal, state or local law, including the requirements of the California Building Code.

25. **On-Street Parking.** Visitors and staff of the facility are prohibited from parking on public streets in Newport Beach, except for on-street spaces utilized following notification to the City by Ocean Recovery and following the purchase of three master parking permits by the Operator from the City for use by visitors and staff of the facility. Residents are not permitted to have their personal vehicles at the facility.

26. **Confirmation of Resident Disability**. All clients of the facility shall be classified as disabled, as that term is defined by federal and state fair housing laws. The Operator shall execute an affidavit declaring that all clients receiving services from this facility are disabled persons.

27. **Compliance with Conditions of Approval.** Any changes in operational characteristics, including but not limited to the following, may, at the Planning Director's sole discretion, require an amendment to this use permit or issuance of a new use permit:

    a. Modification, expiration without renewal, or loss of ADP license.

    b. Increase in number of resident clients.

    c. Increase or decrease in on-site staffing.

    d. Increase in physical capacity of facility including number of beds, number of bedrooms, floor area of facility, etc.

e. Significant change in the Operations and Management Plan.

f. Request for amendment to any condition or conditions of approval.

g. Alteration and/or loss of approved on-site parking.

h. Upon determination by the City's Planning Director, a change in facility management, a change in facility ownership, or a change in the population served by this facility. The Planning Director may require an amendment or review and subsequent issuance of a new Use Permit if a change in facility management, facility ownership, or land ownership results in this facility being managed or owned by a person or entity that has not demonstrated competence in operating a facility such as this facility under similar operational standards and conditions.

i. Any other material change in the operational characteristics that is not in substantial conformance with the Operation and Management Plan or the Good Neighbor Rules, upon determination by the City's Planning Director.

28. **Security & Safety.** The entrances and exits of each facility shall be secured and monitored. Fire exits shall be marked in accordance with the California Building Code. Smoke detectors and fire extinguishers shall be kept in operable condition. Exit passages shall be kept clear at all times.

29. **Side Property Wall.** The "pony wall" that exists along the eastern side property line of the facility shall be increased to up to 6 feet in height, except within the 10-foot front yard setback. All construction associated with this condition shall be subject to issuance of a City Building Permit and shall comply with the California Building Code. Ocean Recovery shall make a good faith effort to complete construction work within 60 days of the issuance of a Use Permit. Ocean Recovery shall install landscaping screening material, such as bamboo or other appropriate vegetation, along the interior of the raised walls to further reduce the interactions of facility residents with adjacent neighbors.

    The City Manager or his designee shall review and approve the construction and landscape plans for improvements to the side property walls to assure that they are aesthetically appropriate.

30. **Additions or Modifications to Conditions of Approval, or Revocation of Use Permit.** The Hearing Officer or City Council may add or modify conditions of approval to this Use Permit, or revoke this Use Permit upon a finding of failure to comply with the conditions set forth. The City Council may also revoke, modify, or amend this Use Permit if it determines the conditions under which this facility is being operated or maintained are detrimental to the public health, safety, peace, morals, comfort, or general welfare of the community, or if the facility is materially injurious to property or improvements in the vicinity, or if the facility is

operated or maintained so as to constitute a public nuisance. In any proceeding to revoke this Use Permit, the cumulative effect of two or more violations of conditions shall be considered.

# # #

EXHIBIT B

Operations and Management Plan

OCEAN RECOVERY
NEWPORT BEACH, CA

FACILITY OPERATIONS AND MANAGEMENT PLAN

Note: In addition to the below, Ocean Recovery will comply with the terms and obligations of Ocean Recovery's ADP Licenses.

1 – Bed Caps
All occupancies at the Properties shall comply with the following:

- At 1601 West Balboa – 14 beds (including up to two house managers), women only.
- At 1115 West Balboa – 18 beds (including up to two house managers), men only.
- At 1217 West Bay – 6 beds (including up to one house manager), women only.

2 – Quiet Hours
Each facility manager shall enforce 9:00 p.m. to 8:00 a.m. Quiet Hours for each of the Properties. During these periods, no noise (including music, TVs, voices) shall be audible from beyond each Property's property line except during emergencies.

3 – Assembly Uses
Assembly uses (meetings, group counseling sessions, more) involving persons who do not reside at the Facility where the meeting is taking place are prohibited, except that house staff and family members of persons residing at the Facility may meet with residents provided such meetings preserve the quiet of the neighborhood.

4 – Client and Staff Transportation, Garages
Ocean Recovery's clients shall not have personal vehicles during their stay at the Properties. Garages shall be cleared and available for staff vehicle parking. Staff shall park in the garage whenever possible. Staff shall familiarize clients with local OCTA bus stops and routes, keeping a current route map and schedule in the facility at all times.

5 – Security & Safety
The entrances and exits of each facility shall be secured and monitored. Fire exits shall be marked in accordance with the California Building Code. Smoke detectors and fire extinguishers shall be kept in operable condition. Exitways shall be kept clear at all times.

6 – Clients Referred by Governmental Agencies
Ocean Recovery shall not provide any services to any client or house any client who has been referred or caused to be referred to Ocean Recovery's facility by any governmental agency, including, but not limited to, probationers or parolees, due to the limitations that California Building Code §509.9 places on Group I and R occupancies.

7 – Trash
Ocean Recovery shall abide by the City's regulations regarding trash disposal, including providing the proper amount of cans for the Property's use (so that cans do not overflow), placing the cans out no

earlier than 7:00 p.m. the evening prior to collection, and placing the cans back in the side yard (or other contained area) no later than 6:00 p.m. the day of collection.

8 – Recovery Program and Industry Practices
Ocean Recovery shall preserve and maintain its present (May 2009) recovery model, which provides State-licensed non-medical residential treatment for persons in recovery from alcohol and/or drug addiction. Ocean Recovery shall not operate its Facilities in a manner not compliant with its state license.

Ocean Recovery will use its industry's best practices to ensure that Ocean Recovery's clients or stay in recovery (including House Rules prohibiting the use of alcohol or drugs, the possession against items containing alcohol or drugs; providing for scheduled testing, random testing, counseling, etc.).

9 – House Staffing
Ocean Recovery shall staff each Property with at least one qualified on-site manager, who shall be present at all times unless an emergency draws them elsewhere.

10 – Nuisances
Ocean Recovery's Properties shall not be unsafe, unsightly or poorly maintained. If Ocean Recovery receives a nuisance violation from the City, Ocean Recovery shall correct the violation within (7) seven days or contact the City directly to negotiate a mutually-agreeable timeline.

11 – Client or Staff Behavior
Ocean Recovery shall not tolerate lewd behavior or lewd speech at the Properties, nor shall Ocean Recovery tolerate profanity spoken or yelled by staff or clients at a level heard by neighboring residents. Ocean Recovery shall enforce house rules against lewd speech, lewd behavior, or profanity.

12 – Smoking & Cigarette Litter
Per NBMC Section 20.91A.050(A), no clients, guests, or any other users of the Properties may smoke in an area from which the secondhand smoke may be detected on any parcel other than the parcel upon which each Property is located. Ocean Recovery will use an enclosed area interior to the facility with an air filter to minimize or eliminate second hand smoke on its Property.

Ocean Recovery will enforce house rules against litter, including prohibiting allow clients, staff, or residents from littering cigarette butts on the ground, sidewalk, gutter or street.

13 – Deliveries
Business and food or supply deliveries shall only be made during normal business hours, which are between 8:00 a.m. and 5:00 p.m. on weekdays.

14 – Contact Information
Ocean Recovery will provide its neighbors and the City with the contact name, phone number, and e-mail address of the on-site manager or a higher level position to assist residents and the City with problems or concerns arising from the Properties. E-Mails or messages left with Ocean Recovery's contact name shall be returned in a prompt manner.

15 – House Rules
Ocean Recovery shall post and enforce the House Rules as shown in Exhibit C to the Use Permit.

EXHIBIT C

Good Neighbor Rules

OCEAN RECOVERY
Foundation for Hope

OCEAN RECOVERY GOOD NEIGHBOR RULES

NOTE: IT IS IMPERATIVE THAT ALL CLIENTS UNDERSTAND AND ABIDE BY THESE RULES. VIOLATION OF ANY OF THESE RULES SHALL SUBJECT THE CLIENT TO REMOVAL FROM THE PROGRAM.

- Clients are reminded that this facility is in a residential neighborhood with families including children in close proximity. Clients are to respect the quality of life and neighborhood character of the community and treat all neighbors with respect.
- Profanity and lewd speech is strictly prohibited. Profanity spoken or yelled at a level heard by neighboring residents will not be tolerated. Violation of this rule shall subject the client to dismissal from the program.
- Loud music is prohibited. Stereos can only be played at a reasonable level so as not to disturb roommates or neighbors. After 9:00 p.m. headphones must be used. TV's will be turned off between the hours of 8:00 a.m. and 5:00 p.m.
- No personal TV's or radios are allowed without permission of the house manager.
- Curfew hours are 10:00 p.m. Sunday through Thursday, and 11:00 p.m. Friday and Saturday. Special arrangements can be made with the house manager in advance for special circumstances.
- Lights out at 11:00 p.m. Sunday through Thursday and midnight Friday and Saturday.
- Quite time (meaning that televisions, music, and talking cannot be heard off the facility) is observed from 9:00 p.m. to 8:00 a.m. daily.

3419 Via Lido #310 Newport Beach, California 92663
Ph. (949) 723-2388, (800) 641-2388 Fax. (949) 723-1288

- Loitering in alleyways and gathering outside the facility in a manner disruptive to our neighbors is strictly prohibited.
- Clients should refrain from engaging neighboring residents in conversation unless the conversation is initiated by the neighboring resident.
- Clients should refrain from all times from any verbal altercations with neighboring residents.
- Musical instruments are not allowed on the premises unless special arrangements are made with, and approved by, the House Manager. Drums are not allowed on the premises. In no event shall musical instruments be played after 9:00 p.m.
- No smoking in Ocean Recovery buildings, surrounding sidewalks, streets or alleys – smoking is only permitted on the patio away from neighbors homes.
- When smoking does occur on the designated patio, no more than 4 people shall be permitted to smoke at any one time. Smoking should be done in a manner that does not send second hand smoke to adjacent residences' doors and windows or onto neighbors' patio areas.
- Clients recognize that cigarette butts are unsightly litter and will be disposed of properly. In no circumstances will clients leave cigarette butts on the ground, floor, deck, sidewalk, gutter, or street.
- Clients recognize and respect the City's prohibition against smoking on beaches, the ocean front walk and other public places.

3419 Via Lido #310 Newport Beach, California 92663
Ph. (949) 723-2388, (800) 641-2388 Fax. (949) 723-1288

- Friends may only visit the house with the permission of the house manager. Visitors are confined to the designated visiting area and are not permitted in the apartments. No visitors after 9:00 p.m. All visitors must check in with and be approved by the manager. No overnight visitors. Visitors are not allowed to participate in recreations or workshops that are held during visiting hours. Visiting must not conflict with scheduled group times. Clients are responsible for directing and ensuring that visitors abide by all of the rules contained herein.
- Clients are not allowed cars, motorcycles, or any other motorized form of transportation.
- Clients are strictly prohibited from attending Saturday 9:30 a.m. NA Beach meetings.
- Clients are strictly prohibited from attending Sunday 9:30 a.m. AA Beach meetings.

3419 Via Lido #310 Newport Beach, California 92663
Ph. (949) 723-2388, (800) 641-2388 Fax. (949) 723-1288