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Office of the City Attorney
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA, 92658

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Tom Daly, Clerk-Recorder
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ZONING IMPLEMENTATION
AND
PUBLIC BENEFIT AGREEMENT

ZONING IMPLEMENTATION AND PUBLIC BENEFIT AGREEMENT

(Pursuant to California Government Code §§65864-65869.5)

This Zoning Implementation and Public Benefit Agreement (the "Zoning Agreement") is entered into on September 30, 2009, by and between the CITY OF NEWPORT BEACH, a charter city ("City") and SOBER LIVING BY THE SEA, INC., a CALIFORNIA CORPORATION, COMPREHENSIVE ADDICTION PROGRAMS, INC., a Delaware Corporation, CRC HEALTH CORPORATION, a Delaware Corporation, CRC HEALTH GROUP, INC., a Delaware Corporation (collectively referred to as "Operator"). City and Operator and Operator's Affiliates as herein defined, are sometimes collectively referred to in the Zoning Agreement as the "Parties" and individually as a "Party."

RECITALS

A. The City Council hereby finds this Zoning Agreement is consistent with provisions of California Government Code §65867, and the City of Newport Beach Municipal Code Chapter 15.45 and the City's General Plan.

B. On November 20, 2008, City's Planning Commission held a public hearing on this Zoning Agreement, made findings and determinations with respect to this Zoning Agreement, and recommended to the City Council that the City Council approve this Zoning Agreement.

C. On January 27, 2009, the City Council also held a public hearing on this Zoning Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Operator and members of the public. On February 10, 2009, pursuant to the applicable state law (California Government Code §§65864-65869.5) and local law (City of Newport Beach Municipal Code Chapter 15.45), the City Council passed its Ordinance No. 2009-4 finding this Zoning Agreement to be consistent with the City of Newport Beach General Plan and approving this Zoning Agreement.

D. This Zoning Agreement allows Sober Living a vested right to: (i) operate 156 beds of recovery facilities within the area they are currently operating, and as more particularly defined in **Exhibit D** attached (the "Peninsula Zone"); and (ii) up to an additional 48 beds outside of the Peninsula Zone and within zones accommodating multi-family residential uses, in compliance with the terms of this Zoning Agreement.

E. This Zoning Agreement also memorializes uses granted to and conditions agreed to by Sober Living on August 25, 2006 regarding its administrative offices at 2811 Villa Way (**Exhibit C** attached hereto).

AGREEMENT

NOW, THEREFORE, City and Operator agree as follows:

1. Definitions. The following terms when used in this Zoning Agreement shall have the meanings set forth below:

A. "Affiliate" shall mean a person or entity that is directly or indirectly controlled by Operator.

B. "City Council" shall mean the governing body of City.

C. "Control" (including the terms "controlling," "controlled by," and "under common control with") shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

D. "Facility" (or "Facilities") is a residential unit used or occupied by persons in recovery from alcoholism and or drug abuse. Facilities may be "Licensed Facilities" or "Sober Living Homes." As used in this Agreement, all Facilities constitute "residential care facility" uses within the context of the City's zoning ordinance.

E. "General Plan" shall mean City's 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

F. "Licensed Facilities" shall mean alcoholism and drug abuse recovery facilities licensed by the California Department of Alcohol and Drug Programs ("ADP").

G. "Party" or "Parties" shall mean either City or Operator or any of Operator's Affiliates or both, as determined by the context.

H. "Property" is described in **Exhibit A** and consists of a list of addresses of properties currently operated by Operator as Licensed Facilities and Sober Living Homes in R-1, R-1½ , R-2 and multi-family residential ("MFR") and certain Specific Plan District zones within City. "Property" includes the rights to operate all of those properties as well as other properties not presently identifiable which may be utilized by Operator as Facilities hereunder.

I. "Sober Living Homes" shall mean alcoholism and drug abuse recovery facilities not licensed by ADP.

J. "Term" shall have the meaning ascribed in Section 11 of this Zoning Agreement.

2. Significant Public Benefits. The significant public benefits that this Zoning Agreement provides include, but are not limited to:

A. Settlement and avoidance of costs of a pending lawsuit, including attorneys fees;

B. Preservation of the regulatory ordinance which was the subject matter of the lawsuit,

C. Requested termination of a related federal administrative proceeding,

D. A reduction of and limitation on the size of a residential care operation in the City, including a limitation on 6 or under Licensed Facilities,

E. Dispersal of Licensed Facilities and Sober Living Homes to reduce the concentration thereof;

F. The placement of operational controls on said facilities to reduce perceived negative impacts on residential neighborhoods.

3. General Plan Consistency and Zoning Implementation. This Zoning Agreement and the regulations applied herein to the Property ("Applicable Regulations" hereinafter) will cause City's zoning and other land use regulations for the Property to remain consistent with the General Plan.

4. Warranties and Representations. Both parties represent that they have legal authority to enter into this Zoning Agreement and the remainder of the agreements and documents that comprise the settlement documents herein, and that the necessary authorizations have been obtained, by resolution or other action, and that the persons whose names appear as signatories below were authorized to accept this Zoning Agreement on behalf of the Party under whose name they signed.

A. Each Party specifically represents and warrants that it has the legal authority to enter into a Zoning Agreement of the type and kind herein, and,

B. The City represents and warrants that this Zoning Agreement and the regulations applied to the Property ("The Applicable Regulations") are:

i. Consistent with the General Plan for the City and any Specific Plans that apply to the area in which any portion of the Property is located, and

ii. Consistent with the Local Coastal Land Use Plan ("CLUP) for the City of Newport Beach and that the CLUP has been approved by the California Coastal Commission.

5. Operation of Property; Applicable Regulations. Other than as expressly set forth in this Zoning Agreement, during the Term of this Zoning Agreement, the terms and conditions concerning the operation of the Property, including but not limited to the permitted uses and density and intensity of use and the location of buildings involved shall be those set forth in the "Applicable Regulations" delineated in **Exhibit B** and as set forth in Section 6 below. During the term of this Zoning Agreement, City shall not prevent operation of the Property that is in compliance with the Applicable Regulations and all other applicable laws and regulations specified in Section 9 hereof.

6. Operator's Vested Rights. During the Term of this Zoning Agreement, except to the extent City reserves its discretion as expressly set forth in this Zoning Agreement or in the Applicable Regulations and all other applicable laws and regulations specified in Section 9 hereof, Operator shall have the vested right, within the limits and constraints of the Applicable Regulations, to conduct its operation of Licensed Facilities and Sober Living Homes on the Property. The letter from City to Operator dated August 25, 2006 regarding Operator's leased office and meeting facility at 2811 Villa Way ("Villa Way") is incorporated herein by reference as **Exhibit C**. City acknowledges that Operator has complied with all conditions set out in Exhibit C except for Paragraph 12 relating to parking. City acknowledges Operator has been exercising due diligence to complete the parking lot which is unfinished due to circumstances beyond Operator's control. Operator agrees to use good faith efforts to get the parking lot at Villa Way completed. In the event meetings are no longer held at Villa Way, the currently permitted non-conforming right to use said property as an office use shall continue until termination of this Zoning Agreement. The Operator's leased property at 505 29th Street, commonly known as

"The Victorian," is a legal nonconforming single family residence and shall be treated as a Licensed Facility. In the event Ordinance No. 2008-5 is repealed by action of the City Council or the electorate or if said Ordinance is declared invalid or unenforceable by a court of competent jurisdiction, then the Operator will no longer be bound by the provision of Paragraph 6 of Exhibit B as to the limit of one Licensed Facility or Sober Living Home per block in the event other operators open facilities on the same block.

7. Police Power. In all respects not provided for in this Zoning Agreement, City shall retain full rights to exercise City's police power to regulate the operation of Residential Care Facilities on the Property provided such powers are applied consistently with the provisions of state law and Section C2 of Exhibit B to this Zoning Agreement.

8. No Conflicting Enactments. During the Term of this Zoning Agreement City shall not apply to the Property any City-adopted ordinance, policy, rule, regulation, or other measure relating to the operation of Facilities on the Property to the extent it conflicts with this Zoning Agreement.

9. Reservations of Authority. Notwithstanding any provisions set forth in this Zoning Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 9 shall apply to and govern the development and operations of the Property:

A. Procedural Regulations. Then current procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that they are adopted and applied City-wide or to all other properties consistent with the provision of Section C2 of Exhibit B.

B. Consistent City Regulations. City ordinances, resolutions, regulations, and official policies governing development and building which do not conflict with the Applicable Regulations, or with the provisions of Section C2 of Exhibit B where Operator has consented in writing to the regulations, shall apply to the Property.

C. Public Health and Safety. Any City ordinance, regulation, rule, regulation, program, or official policy, that is necessary to protect persons on the Property or in the immediate community from conditions dangerous to their health or safety shall apply to the Property, consistent with Section C2 of Exhibit B.

10. No Agency. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Zoning Agreement. This Zoning Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the operation of private property by the owner or lessee of the property.

11. Effective Date; Term. This Zoning Agreement shall not become effective, and except as set forth in Subsection C of this Section 11, neither party shall have any rights or obligations hereunder, until the "Effective Date."

A. Effective Date of This Zoning Agreement : This Zoning Agreement shall become effective on:

i. The 91st day following the City Council's passage of the ordinance approving this Zoning Agreement, or

ii. If a referendum or other elective challenge to the ordinance approving this Zoning Agreement qualifies to be placed on the ballot, then on the 31st day after the City Clerk certifies that the referendum or other elective challenge has failed to pass, or

iii. If litigation is instituted to challenge this Zoning Agreement prior to the Effective Date established in accordance with Section 11 A. i. and ii above, then on the 31st day after the litigation is terminated, the time for appeal has expired, and the legal challenge has been unsuccessful.

B. Term. The term of this Zoning Agreement (the "Term") shall commence on the Effective Date and shall expire at the conclusion of the 25th year thereafter. However in no event shall the term of this Zoning Agreement exceed thirty (30) years after its execution.

C. Stay of Ordinance 2008-05 Pending Effective Date. Prior to the effective date of the ordinance adopting this Zoning Agreement, or that date upon which it becomes clear that there shall be no Effective Date, whichever is later, the Operator's use permit process shall be tolled, and the City shall not otherwise enforce the provisions of Ordinance 2008-5.

12. Amendment or Cancellation of Zoning Agreement. Other than modifications of this Zoning Agreement under Section 9C of this Zoning Agreement, this Zoning Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code §65868 and City of Newport Beach Municipal Code §15.45.060.

13. Enforcement. Unless amended or canceled as provided in Section 12 of this Zoning Agreement, or modified or suspended pursuant to California Government Code §65869.5, this Zoning Agreement is enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

14. Periodic Review of Compliance. City and Operator shall each comply in good faith with the terms of this Zoning Agreement. The Parties shall review this Zoning Agreement at least once every 12 months from the Effective Date for good faith compliance with its terms consistent with California Government Code §65865 and §65865.1 and City of Newport Beach Municipal Code §15.45.070. At the reviews, Operator shall demonstrate its good faith compliance with this Zoning Agreement and shall document the current status of its operation. Operator also agrees to furnish evidence of good faith compliance as City may require in the reasonable exercise of its discretion and after reasonable notice to Operator. On or before December 31 and June 30 of each year during the Term of this Zoning Agreement, Sober Living shall submit a Compliance Review Report, whose template is attached as **Exhibit G.** The requirement of good faith compliance shall be met upon the submittal to the City of an accurate form showing information relating to facility locations and bed counts. City shall have the right to audit the accuracy of the form through on-site inspections of the Facilities at mutually-agreeable times and during regular business hours.

15. Events of Default.

A. Default by Operator. Pursuant to California Government Code §65865.1, if City determines that Operator has not complied in good faith with Operator's obligations pursuant to this Zoning Agreement, City shall by written notice to Operator specify the manner in which Operator has failed to comply and state the steps Operator must take to bring itself into compliance. If Operator does not commence compliance within 30 days after receipt of the written notice from City specifying the manner in which Operator has failed to comply, and diligently pursue steps to achieve full compliance, then Operator shall be deemed to be in default under the terms of this Zoning Agreement. City may then seek available remedies as provided in Section 15.C of this Zoning Agreement.

B. Default by City. If City has not complied with any of its obligations and limitations under this Zoning Agreement, Operator shall by written notice to City specify the manner in which City has failed to comply and state the steps necessary for City to bring itself into compliance. If City does not commence compliance within 30 days after receipt of the written notice from Operator specifying the manner in which City has failed to comply, and diligently pursue steps to achieve full compliance, then City shall be deemed to be in default under the terms of this Zoning Agreement. Operator may then seek a specific performance or similar equitable remedy as provided in Section 15.C of this Zoning Agreement

C. Specific Performance and Damages Remedies. The Parties acknowledge that remedies at law generally are inadequate and that specific performance is appropriate for the enforcement of this Zoning Agreement. The remedy of specific performance or, in the alternative, a writ of mandate, shall be the sole and exclusive remedy available to either Party in the event of the default or alleged default by the other. Prior to exercising such a remedy, the Party seeking to do so shall submit the matter to nonbinding arbitration through JAMS or another arbitrator mutually acceptable.

D. Recovery of Legal Expenses by Prevailing Party in Any Action. In any judicial proceeding ("Action") between the Parties that seeks to enforce the provisions of this Zoning Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action.

16. Cooperation. Each Party covenants to take all reasonable actions and execute all documents that may be necessary to achieve the purposes and objectives of this Zoning Agreement.

17. Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Zoning Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, war, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions.

18. Third Party Legal Challenge. If a third party brings a legal action challenging the validity or enforceability of any provision of this Zoning Agreement or the Applicable Regulations or the manner in which the ordinance approving this Zoning Agreement was processed and approved, including the application of the California Environmental Quality Act to that process, ("Third Party Legal Challenge") the parties shall defend the Third Party Legal Challenge jointly,

and each party shall be responsible for its legal expenses incurred in connection with the Third Party Legal Challenge.

19. Right to Assign. Operator shall have the right to transfer or assign the rights and obligations contained herein in whole to any person, partnership, joint venture, firm, or corporation at any time during the Term of this Zoning Agreement without the consent of City. Upon the effective date of any such transfer or assignment of the Property, the transferor-assignor shall notify City of the name and address of the transferee. Any assignment of this Zoning Agreement must be pursuant to a sale or transfer of Operator's rights in the entirety of the Property. Any sale or transfer of the Property shall include the assignment and assumption of the rights, duties, and obligations arising from this Zoning Agreement to the transferee with respect to all of the Property. Operator shall no longer be obligated under this Zoning Agreement for the Property if Operator is not in default under this Zoning Agreement at the time of the sale or transfer.

20. Zoning Agreement Binding on Successors and Assigns. The burdens of this Zoning Agreement are binding upon, and the benefits of this Zoning Agreement shall inure to, all successors in interest of the Parties to this Zoning Agreement.

21. Estoppel Certificate. At any time, either Party may deliver written notice to the other Party requesting that the Party certify in writing that, to the best of its knowledge:

A. This Zoning Agreement is in full force and effect and is binding on the Party;

B. This Zoning Agreement has not been amended or modified either orally or in writing. If this Zoning Agreement has been amended, the Party providing the certification shall identify the amendments; and

C. The requesting Party is not in default in the performance of its obligations under this Zoning Agreement. If the requesting Party is in default, the other Party must describe the nature of the default.

The requesting party shall execute and return the certificate within sixty (60) days following receipt. Any assignee of a Party's rights and obligations hereunder, as referred to in this Section 21, shall be entitled to rely on the certificate.

22. Further Actions and Instruments. Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Zoning Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Zoning Agreement or to evidence or consummate the transactions contemplated by this Zoning Agreement.

23. Notices. Any notice or demand that shall be required or permitted by law or any provision of this Zoning Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

To City:	City of Newport Beach 3300 Newport Boulevard Post Office Box 1768 Newport Beach, California 92663-3884 Attention: City Manager Fax: 949-644-3020
With a copy to:	City Attorney City of Newport Beach 3300 Newport Boulevard Post Office Box 1768 Newport Beach, California 92663-3884
To Operator:	Sober Living by the Sea, Inc. 2811 Villa Way Newport Beach, California 92663 Attn: Executive Director
With a copy to:	CRC Health Group, Inc. 2400 Stevens Creek Boulevard, Suite 600 Cupertino, California 95014 Attn: General Counsel Fax: 415-358-8444

Either Party may change the address stated in this Section 23 by notice to the other Party in the manner provided in this Section 23, and notices shall be addressed and submitted to the new address. Notice shall be deemed to be delivered upon the earlier of: (a) the date received; or (b) three business days after deposit in the mail as provided above.

24. Rules of Construction and Miscellaneous Terms.

A. Rules of Construction. The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; "may" is permissive.

B. Time is of the Essence. Time is of the essence regarding each provision of this Zoning Agreement in which time is an element.

C. Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Zoning Agreement by the other Party, and failure by a Party to exercise its rights upon a default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

D. Counterparts. This Zoning Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same Zoning Agreement.

E. Entire Agreement. Except for the Settlement Agreement, this Zoning Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Zoning Agreement.

F. Construction. This Zoning Agreement has been drafted after extensive negotiation and revision. Both City and Operator are sophisticated parties who were represented by independent counsel throughout the negotiations. City and Operator each agree and acknowledge that the terms of this Zoning Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Zoning Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Zoning Agreement in favor of or against either party.

G. No Third Party Beneficiaries. The only parties to this Zoning Agreement are City and Operator. This Zoning Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

H. Applicable Law and Venue. This Zoning Agreement shall be construed and enforced consistent with the internal laws of the State of California. Any action arising under this Zoning Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Zoning Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

I. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Zoning Agreement.

J. Authority to Execute. The persons executing this Zoning Agreement warrant and represent that they have the authority to execute this Zoning Agreement on behalf of the entity for which they are executing this Zoning Agreement. They further warrant and represent that they have the authority to bind their respective Party to the performance of its obligations under this Zoning Agreement.

CITY:
CITY OF NEWPORT BEACH

By: _____
Edward Selich
Title: MAYOR OF NEWPORT BEACH

OPERATOR:
SOBER LIVING BY THE SEA, INC.

By: _____
Kevin Hogge
Title: CHIEF FINANCIAL OFFICER

By: _____
Pamela Burke
Title: VICE PRESIDENT/SECRETARY

OPERATOR:
COMPREHENSIVE ADDICTIONS PROGRAMS, INC.

By: _____
Kevin Hogge
Title: CHIEF FINANCIAL OFFICER

By: _____
Pamela Burke
Title: VICE PRESIDENT/SECRETARY

OPERATOR:
CRC HEALTH CORPORATION

By: _____
Kevin Hogge
Title: CHIEF FINANCIAL OFFICER

By: _____
Pamela Burke
Title: VICE PRESIDENT/SECRETARY

OPERATOR:
CRC HEALTH GROUP, INC.

By: _____
Kevin Hogge
Title: CHIEF FINANCIAL OFFICER

By: _____
Pamela Burke
Title: VICE PRESIDENT/SECRETARY

APPROVED AS TO FORM:

By: _____
David R. Hunt
Title: CITY ATTORNEY, CITY OF NEWPORT BEACH

ATTEST:

By: _____
Leilani Brown
Title: CITY CLERK, CITY OF NEWPORT BEACH

Exhibit A
List of SLBTS Facilities

Street No.	Units	Street	Licensed?	*
208		Via Lido Soud	ADP Licensed	
100		Via Antibes	ADP Licensed	
102		Via Antibes	ADP Licensed	
505		29th Street	ADP Licensed	
116	A & B	34th Street	Sober Living	X
307	1/2	34th Street	Sober Living	X
309	1/2	34th Street	Sober Living	X
125	+ 1/2	39th Street	ADP Licensed	X
112	A & B	40th Street	Sober Living	
118	A & B	45th Street	Sober Living	X
122	A & B	45th Street	ADP Licensed	
5004	A & B	Neptune	Sober Living	
5101	A & B	River	ADP Licensed	
3960-80		Seashore	ADP Licensed	
4500-04		Seashore	ADP Licensed	
4711		Seashore	ADP Licensed	
4800		Seashore	ADP Licensed	X[1]
4816		Seashore	Sober Living	
6111		Seashore	ADP Licensed	
6110		W Oceanfront	ADP Licensed	
** "X" = Closed or closing*				

[1] May not be closed if 4816 Seashore is closed

Exhibit B
Applicable Regulations

A. Number and Location of Facilities. Number and location of facilities which may be utilized as Licensed Facilities or Sober Living Homes.

1. On and after the Effective Date of the ordinance adopting this Zoning Agreement, there shall be no more than 204 beds occupied in the City at any time by persons who are patients, clients or customers of Sober Living, whether contained within Licensed Facilities or Sober Living Homes. More than one such facility may be operated in a single building.

2. On and after the effective date of the ordinance adopting this Agreement, there shall be no more than 156 beds occupied in total in those parts of the City referred to as the Peninsula, Lido Isle, West Newport and Newport Shores (the "Peninsula Zone") as depicted in **Exhibit D** at any time by persons who are patients, clients or customers of Sober Living, whether contained within Residential Care Facilities, General, Residential Care Facilities, Small Licensed or Residential Care Facilities, Small Unlicensed as defined in §20.05.030 of the Newport Beach Municipal Code.

3. On and after the effective date of the ordinance adopting this Agreement, there shall be no more than 12 beds (12 of the 156 described in Section A2 above) occupied Lido Isle at any time by persons who are patients, clients or customers of Sober Living, whether contained within Residential Care Facilities, General, Residential Care Facilities, Small Licensed or Residential Care Facilities, Small Unlicensed as defined in §20.03.030 of the Newport Beach Municipal Code.

4. On and after the effective date of the ordinance adopting this Agreement, all beds in the City in addition to those provided for in Sections A.2. and A.3. of this Exhibit B occupied at any time by persons who are patients, clients or customers of Sober Living, whether contained within Residential Care Facilities, General, Residential Care Facilities, Small Licensed or Residential Care Facilities, Small Unlicensed as defined in §20.03.030 of the Newport Beach Municipal Code shall be located only in zones accommodating multi-family residential uses outside of the Peninsula Zone. Sober Living shall provide the City with the address of any new Facility resulting from placing beds per this section within thirty (30) days of establishing the Facility.

5. On and after the Effective Date of the ordinance adopting this Agreement, Sober Living shall locate all of its newly established facilities utilized as Licensed Facilities or Sober Living Homes so that only one building shall contain such facilities, whether operated by Sober Living or any other person or entity, is located either on a block in the City or across a bordering street. To facilitate transfers of properties to attain or maintain this "one building per block" standard, Sober Living may, for not more than 120 days, hold leases for two properties on one block if the properties are involved in a Facility transfer. For purposes of this Agreement, a block is an area bounded by four streets (not alleys).

6. Except as provided in Section A.7. below, within thirty (30) months of the Effective Date of the ordinance adopting this Agreement, Sober Living shall relocate its presently operating facilities as necessary to comply with the criterion set forth in Section A.5. above as to its presently operating Licensed Facilities and Sober Living Homes. All such relocations must be to sites which have no other Facility, whether operated by Sober Living or

any other person or entity, either on the block to which the facility is relocated or across a bordering street.

7. Notwithstanding the provisions of Section A.5 above, Sober Living may continue to operate Facilities at the following addresses during the term of this Agreement:

- 112 40th Street and 3960-3980 Seashore (on the same block);
- 122 45th Street and 4500-4504 Seashore(across a bordering street);
- 6110 Oceanfront and 6111 Ocean Front (across a bordering street/alley); and
- 4711 Seashore and either 4800 Seashore or 4816 Seashore (across a bordering street and down a block).

8. Sober Living shall not establish any Facility pursuant to Section 4 of this Exhibit B unless and until Sober Living has fully and timely complied with the relocation requirements set forth in Section 6 of this Exhibit B.

9. Sober Living shall not establish or operate a Facility on a parcel of property which has a lot line located within 1,000 feet of any NMUSD elementary school or the large commercial State-licensed day care facility listed on **Exhibit E**.

10. Sober Living shall not establish or operate a Facility at any location which is adjacent to the 36th Street Tot Lot or the Marina Park Tot Lot so long as those tot lots are so utilized.

B. Operational Regulations.

During the term hereof, Sober Living shall comply with all of the following operational criteria:

1. Sober Living shall not provide any services to or house any parolee or parolees from the California Department of Corrections or its equivalent in any other State or the Federal Bureau of Prisons in any of its Facilities located in the City.

2. Any and all medical waste generated through the operation of a Sober Living Homes or Licensed Facility shall be disposed of in accordance with all laws and best industry standards and practices.

3. Sober Living shall comply with City code provisions pertaining to trash enclosures at all of its Sober Living Homes or Licensed Facilities.

4. Smoking and Tobacco Products.

(a) Sober Living shall make good faith efforts to prevent second hand smoke from leaving any of its Facilities in a manner that significantly affects occupants of neighboring residents in the use and enjoyment of their properties. These efforts may include, but are not limited to:

- The designation of a smoking area at each site, with a device to mitigate or disperse secondhand smoke;
- An active smoking cessation program made available to all clients;

(b) Apply a policy directing clients or residents to avoid littering cigarette butts on the ground, floor, deck, sidewalk, gutter, or street.

(c) Apply a policy reminding clients not to use tobacco on beaches, boardwalks, and piers consistent with City prohibitions against smoking in those areas.

5. Sober Living shall comply with all City code provisions requiring off street parking in residential zones.

6. Sober Living shall establish, provide public notice of and continuously operate a 24 hour per day hotline for receiving inquiries and/or complaints in reference to its operation of its Facilities in the City.

7. Sober Living shall apply the following Quiet Hours to its patients, clients and customers occupying beds in all Facilities which Sober Living operates in the City. During these Quiet Hours, all residents will be inside except during emergencies:

- Sunday through Thursday - 10 pm to 7 am;
- Friday through Saturday - 11 pm to 7 am.

8. Sober Living shall use good faith efforts to implement the Route Plans for transport of its staff, residents, clients and customers which Sober Living submitted to the City as part of its applications for Use Permits on file with City's staff as of July, 2008. A true and correct copy of those Route Plans are attached as **Exhibit F**. Short-term interruptions, such as medical emergencies or street maintenance which are beyond Sober Living's control, are allowable modifications to the Route Plans.

9. Sober Living shall accept deliveries of goods and services to the Residential Care Facilities which it operates in the City only during customary times for such deliveries of goods and services to occur in residential areas of the City and in accordance with any City regulation adopted which controls times for such deliveries on a citywide basis applicable to all residential properties.

10. Sober Living 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.

11. Sober Living shall maintain its present policy not to allow more than two (2) clients per bedroom in the facilities unless the size of the structure warrants a larger occupancy for any single bedroom.

C. General Constraints on Regulation.

1. Most Favored Nation. If the City enters into an agreement with any operator of a Sober Living Home or Licensed Facility in the City which, includes one or more of the below three provisions and provides a materially more favorable regulatory treatment to that operator than is afforded to Sober Living hereunder, the more favorable regulatory provision or provisions shall then apply to Sober Living and shall be deemed to supersede any conflicting provision or provisions contained in this Zoning Agreement. Approvals within the Group Residential Uses

Ordinance's Use Permit process do not constitute agreements for the purposes of this paragraph.

The three provisions are:

(a) An allowance of a percentage increase greater in bed counts greater than 30% above the number operated by the Operator at the time of the agreement;
(b) Dispersion (i.e. one building per block and no facilities on streets facing each other) more concentrated than for SLBTS under the terms of this Agreement; and
(c) Distancing from public elementary schools and large licensed day care that is less than for SLBTS under the terms of this Agreement.

2. The City shall respect and adhere to the exemption in California Health and Safety Code §11834.23 that directs that the City apply the same building, fire, and other related codes to Facilities with six or fewer clients as it does for any single-family residential property provided that:

(a) The exemption is not repealed or otherwise invalidated by an appellate court decision;
(b) The exemption is being applied to a single family dwelling unit (including condominiums) or a duplex;
(c) SLBTS does not place non-ambulatory residents in their facilities; and
(d) SLBTS does not accept referrals or placements within a SLBTS home for protective social care and supervision services by any governmental agency.

3. This Agreement, and, more specifically, these Applicable Regulations obviate the need for and shall supersede the processing or issuance of any Use Permit or Use Permits concerning Sober Living's operations in the City.

Exhibit C
2811 Villa Way Letter

CITY OF NEWPORT BEACH

PLANNING DEPARTMENT
Patricia L. Temple, Director

August 25, 2006

Bill Swiney
Sober Living by the Sea
2811 Villa Way
Newport Beach, California 92663

RE: Sober Living by the Sea – 2809, 2811, 2813 Villa Way, Newport Beach

Dear Bill:

I am in receipt of your correspondence dated July 21, 2006. In your correspondence, you discuss a proposal whereby Sober Living by the Sea ("Sober Living") would modify its use of the property located at 2809-2813 Villa Way ("Sober Living Facility") so that it is no longer designated as a social club, as defined by Newport Beach Municipal Code Section 20.05.040. I have carefully reviewed your proposal and have determined that Sober Living would not be designated as a social club if it was operated in the following manner:

1. The "large conference room," designated on the floor plans submitted on August 4, 2006 ("Plans"), must be reduced so that the maximum occupancy for this room is approximately 20 persons. Two cubicle type offices, the design of which will need to be approved by the Planning Director in writing, will need to be constructed in the large conference room.

2. The "small conference room," designated on the Plans, must be reduced so that the maximum occupancy for this room is approximately 20 persons. A wall will need to be constructed across the back of the small conference room, as indicated on the marked up Plans which are attached hereto. The construction of the wall must comply with all laws and regulations including, but not limited to, the Building Code.

3. A revised set of plans showing the wall in the small conference room and the uses for each area of the property will need to be submitted to and approved in writing by the Planning Director. After approval of the Plans, Sober Living must use each of the areas for the designated use and obtain the Planning Director's approval in writing prior to any change in use.

4. The area designated as the "covered patio," and other outdoor areas, designated on the Plans may not be used by Sober Living clients except as provided hereafter. Clients attending meetings scheduled at the Sober Living Facility may assemble in the covered patio area, or other outdoor areas, 10 minutes prior to a meeting and 10 minutes after a meeting. Between the hours of 7:00 a.m. and 8:30 a.m., clients that attend meetings scheduled at the Sober Living Facility, may be transported by van to any other location provided that they do not assemble in the covered patio area, or other

outdoor area, for more than 10 minutes after a meeting ("Clients Transported by Van"). Between the hours of 1:00 p.m. and 3:00 p.m., clients that Clients Transported by Van may be dropped back off at the Sober Living Facility provided that they: (a) do not arrive at the Sober Living Facility more than 10 minutes before their next scheduled meeting; or (b) that they disperse within 10 minutes after being dropped off at the Sober Living Facility.

5. An average of 10 meetings per week may be held at the Sober Living Facility. However, no more than 12 meetings may be held in any one week and no more than 20 people may attend any meeting. Up to two meetings may be held concurrently. The basis for determining the average number of meetings will be based on a 4 week period. On an ongoing basis, Sober Living will maintain records for the past 12 month period that document the number of meetings held per week and the number of persons in attendance. These records will be verified by a representative of Sober Living and will be made available to the Planning Director upon request.

6. No client enrolled in any of the Sober Living programs that meet at the Sober Living Facility will be allowed to operate a motor vehicle.

7. All large meetings, in excess of 20 persons, will be held at some other location (any other locations used in the City shall be approved for large assembly use).

8. The hours of operation for conducting meetings and picking up prescriptions at the Sober Living Facility will be from 6:30 a.m. to 8:30 p.m. Clients picking up or consuming prescription medicine at the Sober Living Facility will be required to leave the Sober Living Facility within 10 minutes after they have picked up or consumed their medication.

9. Any nurse at the Sober Living Facility shall only be on site Monday through Friday from 7:00 am to 5:00 pm and on Saturday from 8:00 am to noon. There shall be no nurse at the Sober Living Facility on Sundays.

10. Two staff employees shall be allowed to remain at the Sober Living Facility until 11:00 pm, 7 days a week to receive calls.

11. Except as provided herein, clients will not be allowed to assemble at the Sober Living Facility for the purpose of being transported to any other location.

12. Sober Living will provide and maintain 13 off-site parking spaces at the lot directly across the street from the Sober Living Facility and will park vehicles associated with the Sober Living Facility at the lot rather than on City streets or public parking lots. For instance, Sober Living currently uses six vans. These vans would be parked on the lot rather than on City streets in the surrounding neighborhood or the City parking lot.

13. Sober Living will direct clients and ensure that clients riding bikes to the Sober Living Facility access the facility by a route approved by the Planning Director in writing.

14. Sober living will provide trash and cigarette disposal containers and inform their clients that they are not to dispose of litter on City streets or adjoining properties.

In summary, if Sober Living operated in conformance with the foregoing conditions, it would be my determination that Sober Living would not be defined as "social club". However, please be advised that it is my opinion that any deviation from the foregoing conditions or any additional assembly at the Sober Living Facility would change the category of use.

Please contact me at your earliest convenience so we can discuss a timeline for Sober Living to implement the foregoing changes. Simply put, I cannot make a determination that Sober Living is operating in conformance with the Municipal Code until the above-referenced changes have been made. Further, as a condition to making my determination that a use permit is no longer required, Sober Living will need to withdraw its appeal without prejudice.

I appreciate your continuing assistance in this matter.

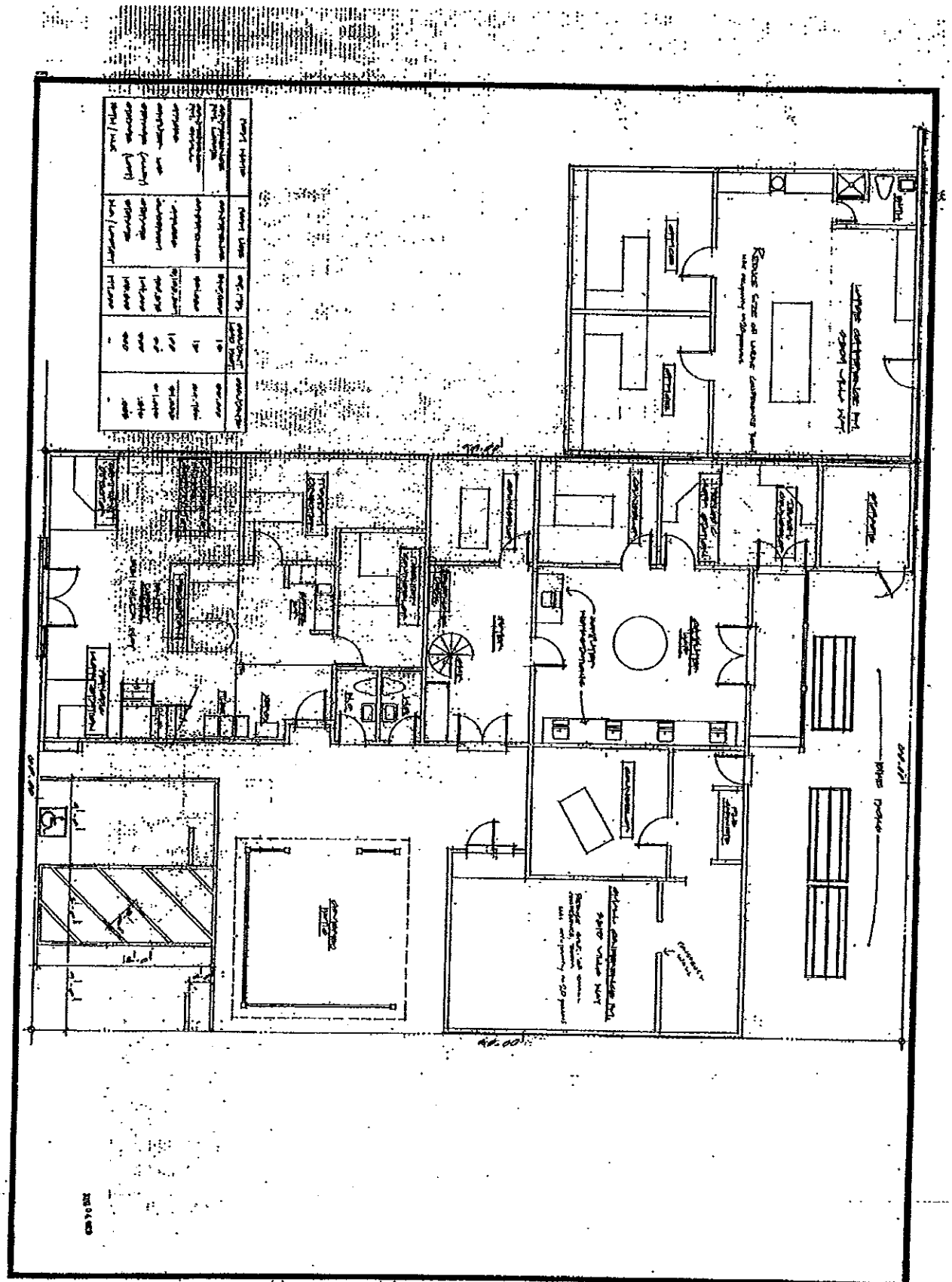
Very truly yours,

Patricia L. Temple

Patricia L. Temple,
Planning Director for the
City of Newport Beach

cc: Aaron C. Harp, Assistant City Attorney
Dennis O'Neil, Esq.

Enclosure: Modified Plans



1

FIRST FLOOR PLAN

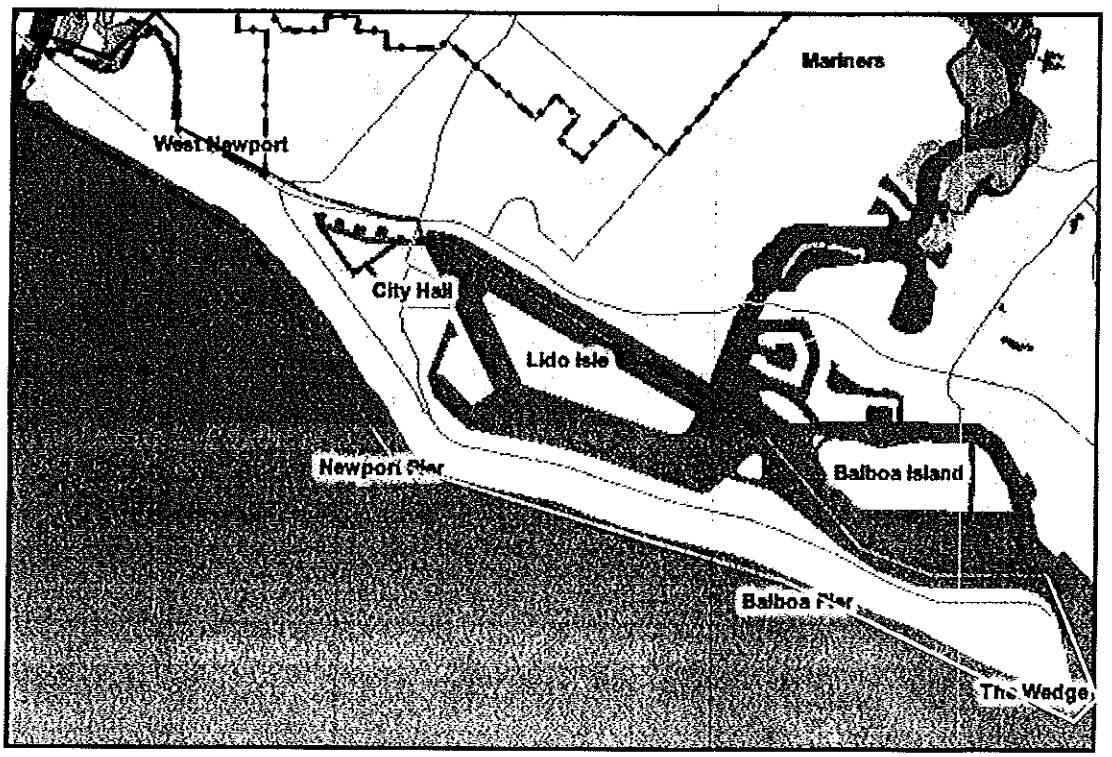
SCALE ¼" = 1'-0"

SOBER LIVING BY THE SEA
209 / 211 / 213 VILLA WAY
NEWPORT BEACH, CA.

DORRIE DESIGN GROUP
RESIDENTIAL DESIGN & PLANNING
949 / 673-8500

Exhibit D
Depiction and Description of "Peninsula Zone"

Depiction of Peninsula Zone:
The lands within the yellow boundary as shown below.



Description of Peninsula Zone:
Starting at the mouth of the Santa Ana River:

- The land area southerly of the Newport and Seminouk Sloughs known as Newport Shores, and
- The land coastward of Pacific Coast Highway to Newport Boulevard known as Balboa Coves, West Newport Beach, Lido Sands, and Newport Island; and
- The land southerly of a line extending along the Federal Navigational Channel between Newport Boulevard and the Newport Harbor Jetty, known as the Balboa Peninsula, Lido Peninsula, Lido Isle, Bay Island, and Cannery Village; and
- Southward on Newport Boulevard about 50 feet to Lower Newport Bay; and
- All lands southerly of Lower Newport Bay between Newport Boulevard down the Federal Navigational Channel within the Lower Bay, inclusive of Lido Isle and Bay Island and inclusive of the Balboa Peninsula.

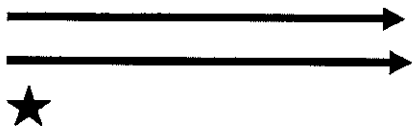
Exhibit E

Specific Large DSS-Licensed Day Care Facilities – Peninsula Zone

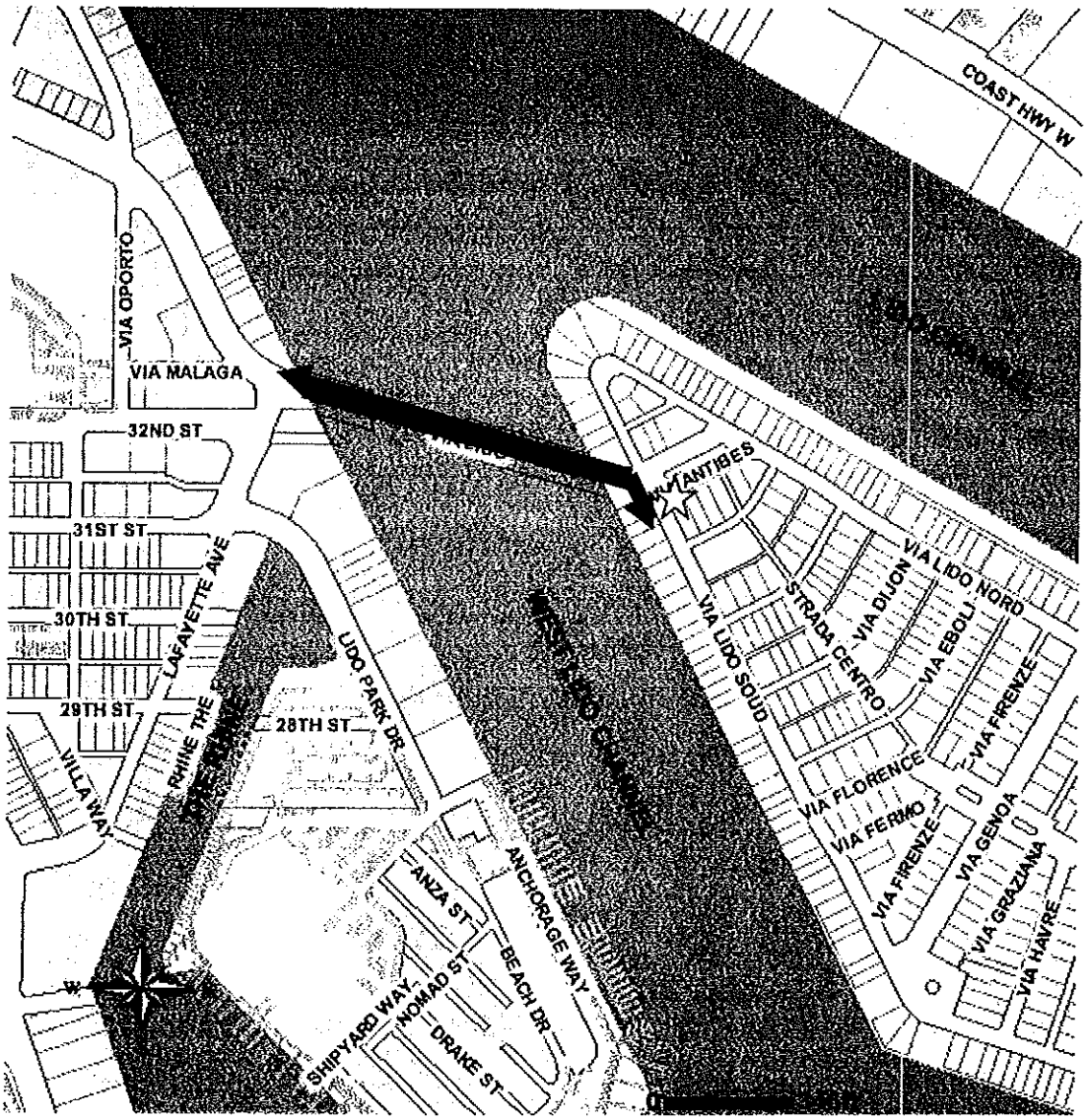
Facility No: 300600193 Capacity: 0044
CHRIST CHURCH BY THE SEA CHILDREN'S CENTER
1400 WEST BALBOA BOULEVARD
NEWPORT BEACH, CA

Exhibit F
Route Plans

In the attached Route Plans, the red arrow designates arrival route, the blue arrow designates departure route. The star designates the facility location.

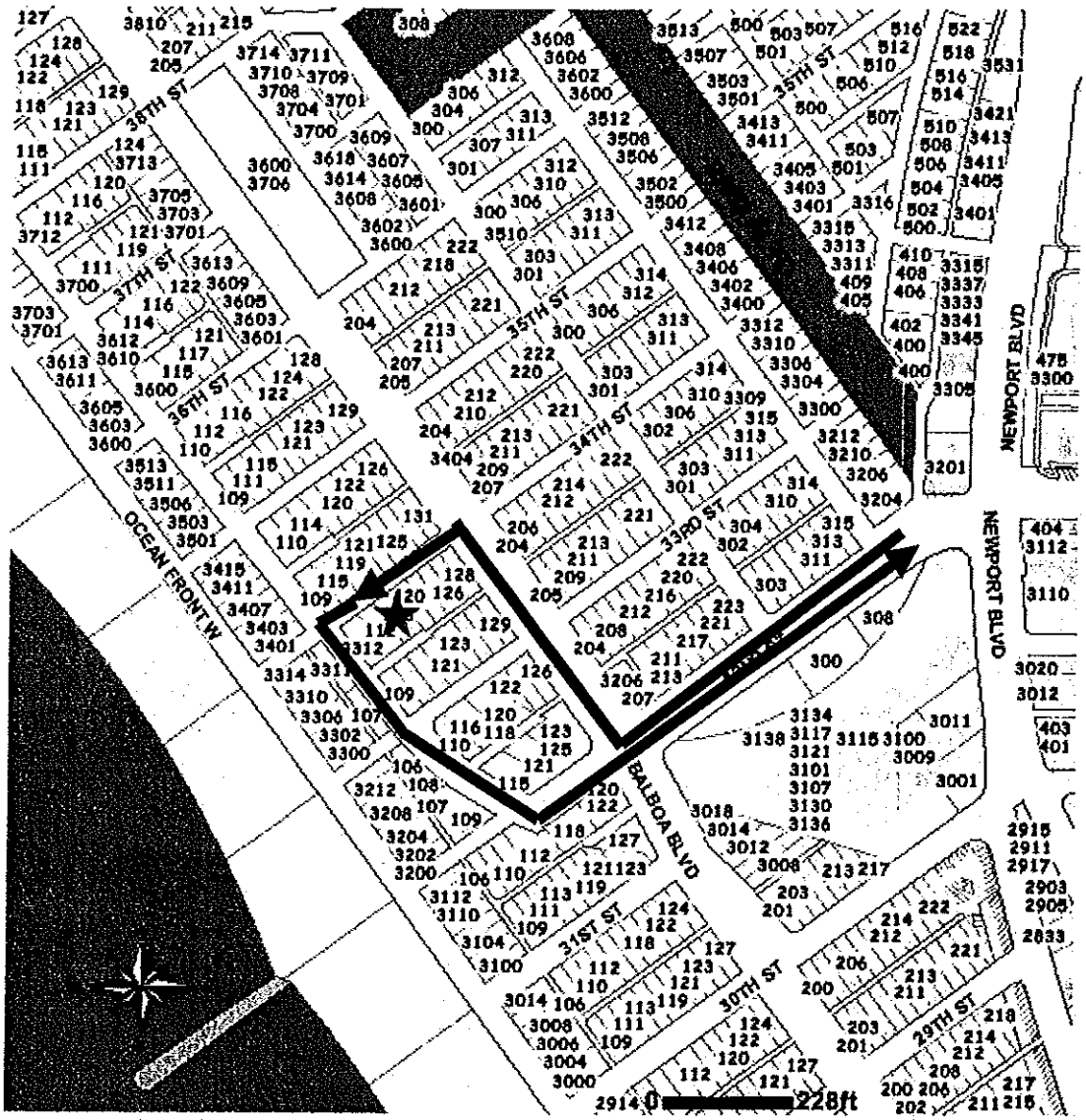


100 Via Antibes
102 Via Antibes
208 Via Lido Soud
(one triplex)



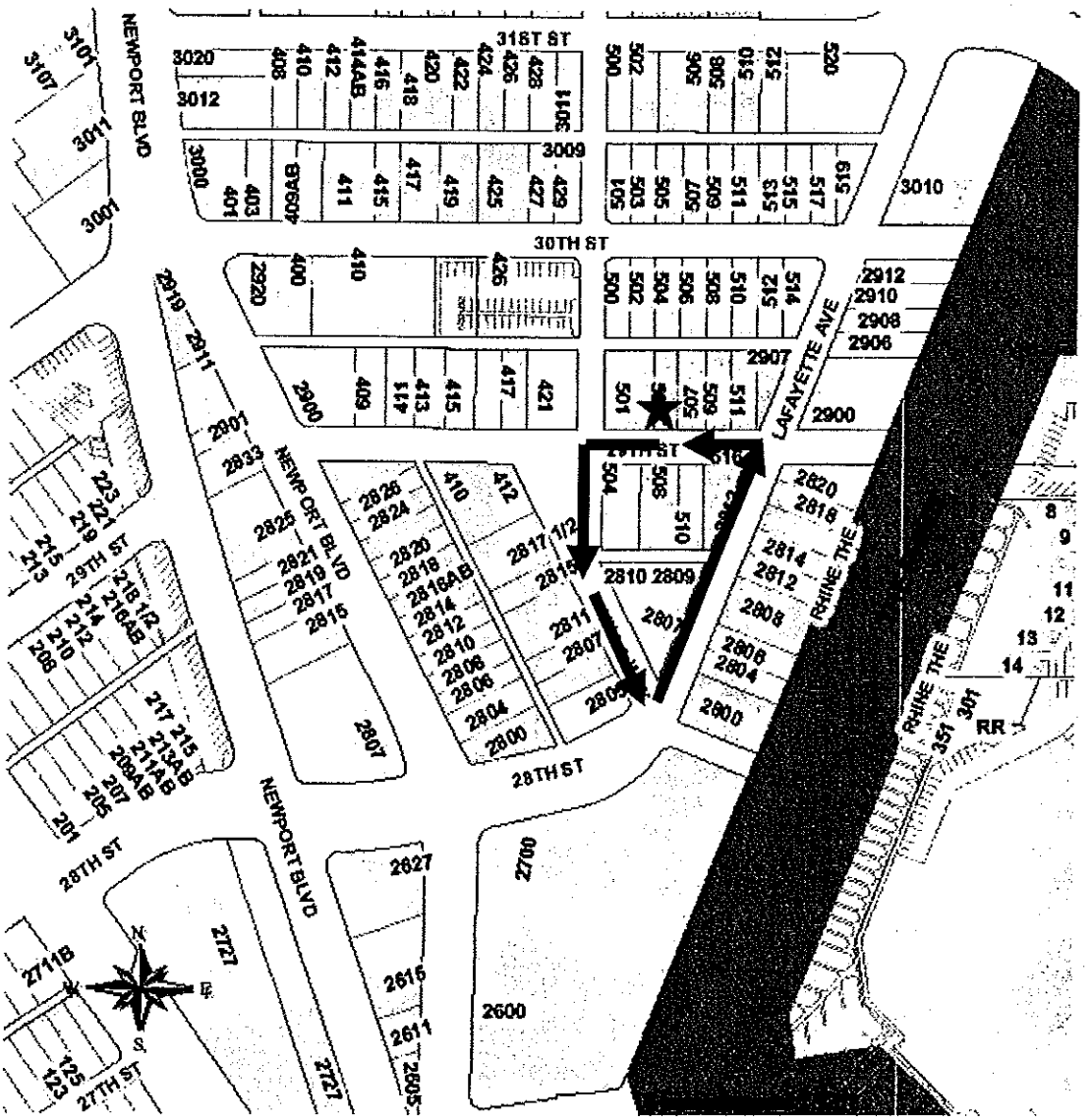
The primary route of travel between Sober Living by the Sea's administrative offices in Cannery Village (2811 Villa Way) and these residential dwelling units is Lafayette, Via Lido, Via Antibes, and Via Lido Soud.

116 34th Street, A & B



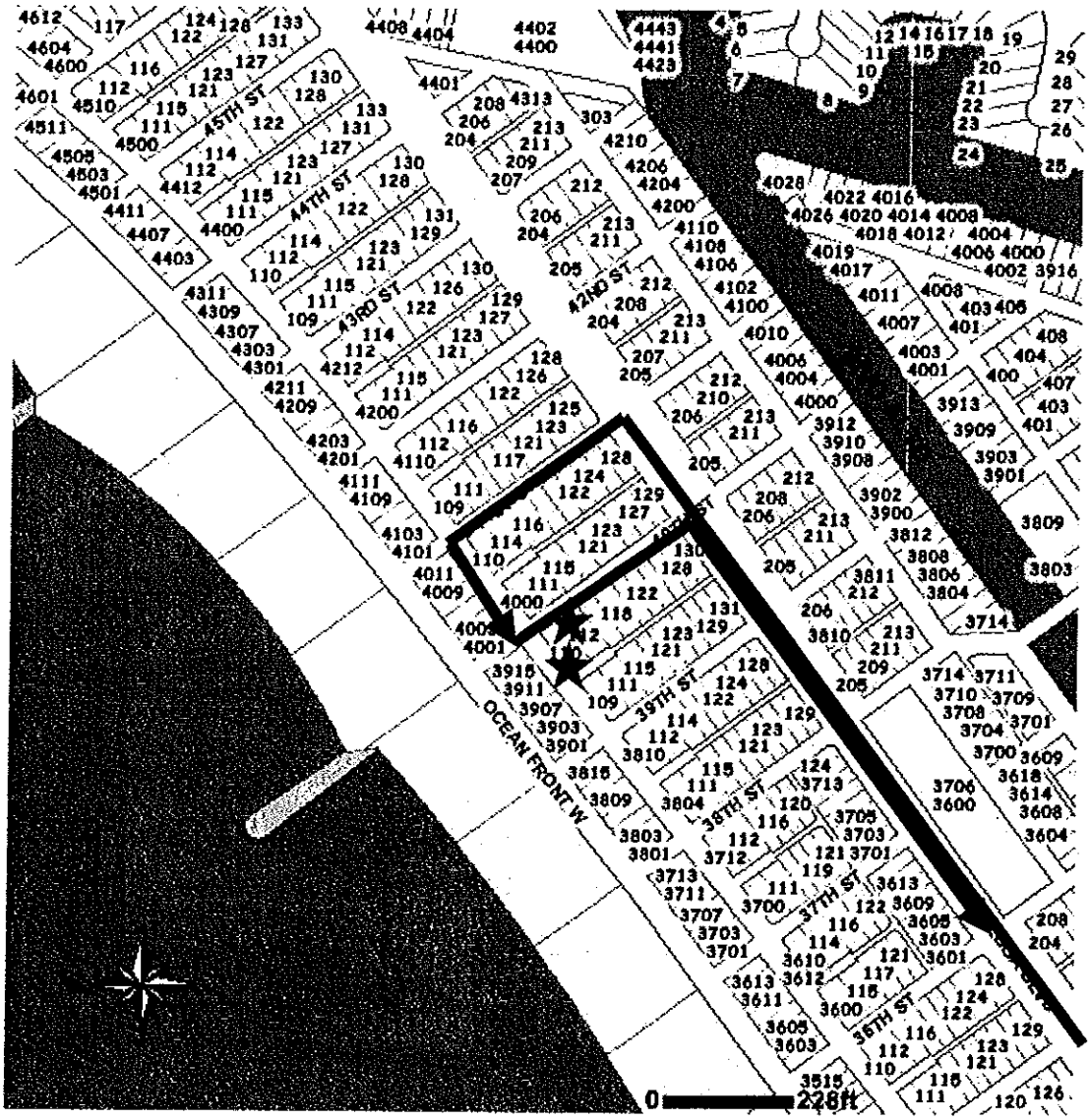
The primary route of travel between Sober Living by the Sea's administrative offices in Cannery Village (2811 Villa Way) and these residential dwelling units is 32nd Street, Balboa Boulevard, 34th Street, and Seashore Drive.

505 29th Street



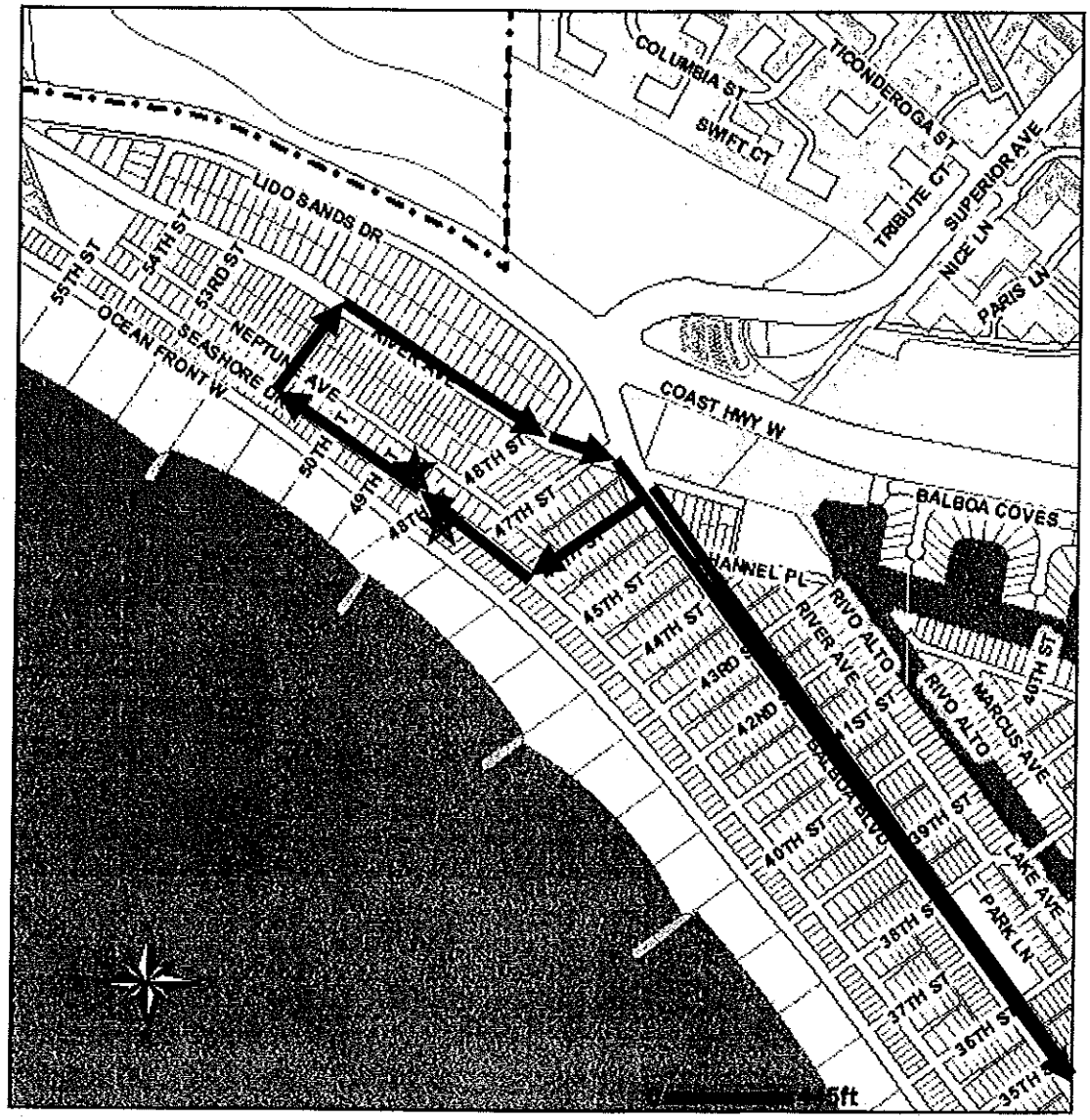
The primary route of travel between Sober Living by the Sea's administrative offices in Cannery Village (2811 Villa Way) and these residential dwelling units is Lafayette, 29th Street, and Villa Way.

112 40th Street, Units A and B
3960-3980 Seashore Drive



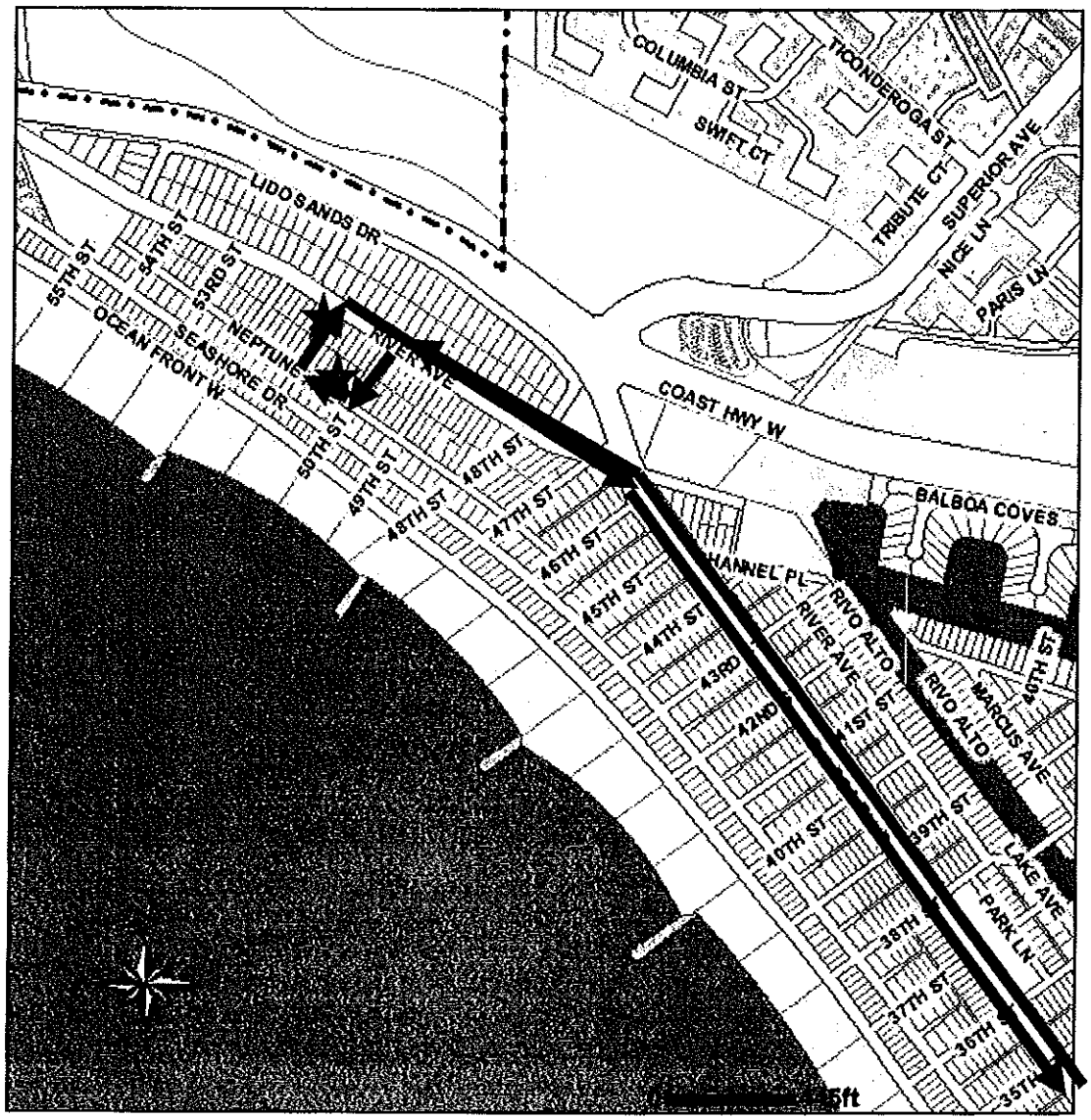
The primary route of travel between Sober Living by the Sea's administrative offices in Cannery Village (2811 Villa Way) and these residential dwelling units is along Balboa Boulevard, Seashore, and 32nd Street.

4816 Seashore
4711 Seashore



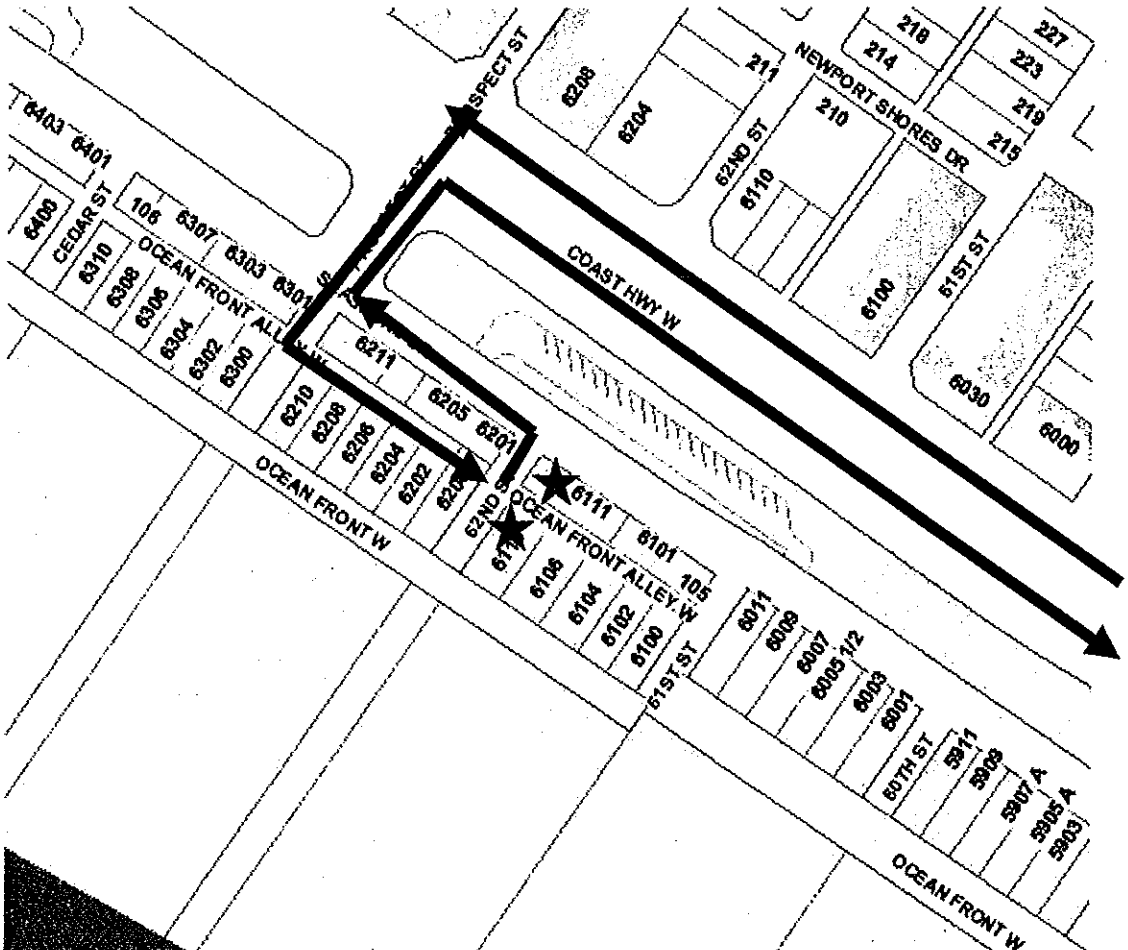
The primary route of travel between Sober Living by the Sea's administrative offices in Cannery Village (2811 Villa Way) and these residential dwelling units is along Balboa Boulevard, 46th Street, Seashore, 51st Street, and River Avenue.

5101 River
5004 Neptune, A & B



The primary route of travel between Sober Living by the Sea's administrative offices in Cannery Village (2811 Villa Way) and these residential dwelling units is along Balboa Boulevard, River Avenue, 50th Street, Neptune, and 51st Street.

6111 Seashore
6110 West Ocean Front



The primary route of travel between Sober Living by the Sea's administrative offices in Cannery Village (2811 Villa Way) and these residential dwelling units is along Newport Boulevard, Coast Highway, Prospect, Ocean Front Alley W, 62nd Street, and Seashore.

Exhibit G
Compliance Report Template

_____ (Date Report Submitted)

This form covers the period of _____ (month, day) through _____ (month, day), 20___.

During the above period, Sober Living by the Sea managed or controlled the following facilities in Newport Beach:

SLBTS FACILITIES

	Property Address	Peninsula Zone? (Y or N)	Bed Count		ADP License? (Y or N)
			Peninsula	Off Peninsula	
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
	Total Bed Count				